

97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as a note under section 263 of this title.

Pub. L. 95-600, title VII, §701(u)(13)(C), Nov. 6, 1978, 92 Stat. 2918, provided that: "The amendments made by this paragraph [amending this section and section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 205(b) of Pub. L. 94-455 effective for taxable years ending after Dec. 31, 1975, see section 205(e) of Pub. L. 94-455, set out as an Effective Date note under section 1254 of this title.

Amendment by section 1042(c)(2) of Pub. L. 94-455 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges and distributions taking place after that date, see section 1042(e)(1) of Pub. L. 94-455, set out as a note under section 367 of this title.

Amendment by section 1101(d)(2) of Pub. L. 94-455 applicable to sales, exchanges, or other dispositions after Dec. 31, 1975, in taxable years ending after such date, see section 1101(g)(4) of Pub. L. 94-455, set out as a note under section 995 of this title.

Amendment by section 1901(a)(93) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Pub. L. 94-455, title XXI, §2110(b), Oct. 4, 1976, 90 Stat. 1905, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Subsection (a) [amending this section] shall apply to transactions described in sections 731, 736, 741, or 751 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which occur after December 31, 1976, in taxable years ending after that date."

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years beginning after Dec. 31, 1969, see section 211(c) of Pub. L. 91-172, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-570 applicable to taxable years ending after Sept. 12, 1966, but only in respect of expenditures paid or incurred after such date see section 3 of Pub. L. 89-570, set out as an Effective Date note under section 617 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to dispositions after Dec. 31, 1963, in taxable years ending after such date, see section 231(c) of Pub. L. 88-272, set out as an Effective Date note under section 1250 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 13(f)(1) of Pub. L. 87-834 applicable to taxable years beginning after Dec. 31, 1962, see section 13(g) of Pub. L. 87-834, set out as an Effective Date note under section 1245 of this title.

Amendment by section 14(b)(2) of Pub. L. 87-834 applicable with respect to taxable years beginning after Dec. 31, 1962, see section 14(c) of Pub. L. 87-834, set out as a note under section 312 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147

and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 752. Treatment of certain liabilities

(a) Increase in partner's liabilities

Any increase in a partner's share of the liabilities of a partnership, or any increase in a partner's individual liabilities by reason of the assumption by such partner of partnership liabilities, shall be considered as a contribution of money by such partner to the partnership.

(b) Decrease in partner's liabilities

Any decrease in a partner's share of the liabilities of a partnership, or any decrease in a partner's individual liabilities by reason of the assumption by the partnership of such individual liabilities, shall be considered as a distribution of money to the partner by the partnership.

(c) Liability to which property is subject

For purposes of this section, a liability to which property is subject shall, to the extent of the fair market value of such property, be considered as a liability of the owner of the property.

(d) Sale or exchange of an interest

In the case of a sale or exchange of an interest in a partnership, liabilities shall be treated in the same manner as liabilities in connection with the sale or exchange of property not associated with partnerships.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

Statutory Notes and Related Subsidiaries

OVERRULING OF RAPHAN CASE

Pub. L. 98-369, div. A, title I, §79, July 18, 1984, 98 Stat. 597, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of *Raphan vs the United States*, 3 Cl. Ct. 457 (1983).

"(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements."

§ 753. Partner receiving income in respect of decedent

The amount includible in the gross income of a successor in interest of a deceased partner under section 736(a) shall be considered income in respect of a decedent under section 691.

(Aug. 16, 1954, ch. 736, 68A Stat. 251.)

§ 754. Manner of electing optional adjustment to basis of partnership property

If a partnership files an election, in accordance with regulations prescribed by the Secretary, the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and,

in the case of a transfer of a partnership interest, in the manner provided in section 743. Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years. Such election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

(Aug. 16, 1954, ch. 736, 68A Stat. 251; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834.)

Editorial Notes

AMENDMENTS

1976—Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

§ 755. Rules for allocation of basis

(a) General rule

Any increase or decrease in the adjusted basis of partnership property under section 734(b) (relating to the optional adjustment to the basis of undistributed partnership property) or section 743(b) (relating to the optional adjustment to the basis of partnership property in the case of a transfer of an interest in a partnership) shall, except as provided in subsection (b), be allocated—

(1) in a manner which has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties, or

(2) in any other manner permitted by regulations prescribed by the Secretary.

(b) Special rule

In applying the allocation rules provided in subsection (a), increases or decreases in the adjusted basis of partnership property arising from a distribution of, or a transfer of an interest attributable to, property consisting of—

(1) capital assets and property described in section 1231(b), or

(2) any other property of the partnership,

shall be allocated to partnership property of a like character except that the basis of any such partnership property shall not be reduced below zero. If, in the case of a distribution, the adjustment to basis of property described in paragraph (1) or (2) is prevented by the absence of such property or by insufficient adjusted basis for such property, such adjustment shall be applied to subsequently acquired property of a like character in accordance with regulations prescribed by the Secretary.

(c) No allocation of basis decrease to stock of corporate partner

In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).

(Aug. 16, 1954, ch. 736, 68A Stat. 252; Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 108-357, title VIII, §834(a), Oct. 22, 2004, 118 Stat. 1592.)

Editorial Notes

AMENDMENTS

2004—Subsec. (c). Pub. L. 108-357 added subsec. (c).
1976—Subsecs. (a), (b). Pub. L. 94-455 struck out “or his delegate” after “Secretary” wherever appearing.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-357, title VIII, §834(b), Oct. 22, 2004, 118 Stat. 1592, provided that: “The amendment made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 2004].”

PART III—DEFINITIONS

Sec.

761. Terms defined.

§ 761. Terms defined

(a) Partnership

For purposes of this subtitle, the term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct of a business,

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or

(3) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) Partner

For purposes of this subtitle, the term “partner” means a member of a partnership. In the case of a capital interest in a partnership in which capital is a material income-producing factor, whether a person is a partner with respect to such interest shall be determined without regard to whether such interest was derived by gift from any other person.