

year ending December 31, 1955, which is allocable to H, will be included in H's taxable income for his last taxable year (January 1 through March 31, 1955) or in the taxable income of H's estate for the taxable year April 1 through November 30, 1955. The distributive share of partnership taxable income for the full calendar year that is allocable to H will be includible in the taxable income of W for her taxable year ending December 31, 1955, and she may file a joint return under sections 2 and 6013(a)(3). That part of the distributive share attributable to the decedent for the period ending with the date of his death (January 1 through March 31, 1955) is income in respect of a decedent under section 691.

Example 4. M is a member of partnership JKM which operates on a calendar year. M and his wife S file joint returns for calendar years. In accordance with the partnership agreement, M designated S to succeed to his interest in the partnership upon his death. M, who had withdrawn \$10,000 from the partnership before his death, dies on October 20, 1955. S's distributive share of income for the taxable year 1955 is \$15,000 (\$10,000 of which represents the amount withdrawn by M). S shall include \$15,000 in her income, even though M received \$10,000 of this amount before his death. S may file a joint return with M for the year 1955 under sections 2 and 6013(a). That part of the \$15,000 distributive share attributable to the decedent for the period ending with the date of his death (January 1 through October 20, 1955) is income in respect of a decedent under section 691.

(4) *Disposition of less than entire interest.* If a partner sells or exchanges a part of his interest in a partnership, or if the interest of a partner is reduced, the partnership taxable year shall continue to its normal end. In such case, the partner's distributive share of items which he is required to include in his taxable income under the provisions of section 702(a) shall be determined by taking into account his varying interests in the partnership during the partnership taxable year in which such sale, exchange, or reduction of interest occurred.

(5) *Transfer of interest by gift.* The transfer of a partnership interest by gift does not close the partnership taxable year with respect to the donor. However, the income up to the date of gift attributable to the donor's interest shall be allocated to him under section 704(e)(2).

(d) *Effective date.* The rules of this section are applicable for taxable years ending on or after May 17, 2002, except

for paragraph (c), which applies for taxable years beginning after December 31, 1953.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7286, 38 FR 26912, Sept. 27, 1973; T.D. 8123, 52 FR 3623, Feb. 5, 1987; T.D. 8996, 67 FR 35020, May 17, 2002; T.D. 9009, 67 FR 48019, July 23, 2002]

§ 1.706-2T Temporary regulations; question and answer under the Tax Reform Act of 1984.

Question 1: For purposes of section 706(d), how is an otherwise deductible amount that is deferred under section 267(a)(2) treated?

Answer 1: In the year the deduction is allowed, the deduction will constitute an allocable cash basis item under section 706(d)(2)(B)(iv).

(Secs. 267(f)(2)(B), 706(d)(2)(B)(iv), 1502, and 7805, Internal Revenue Code of 1954 (98 Stat. 704, 26 U.S.C. 267; 98 Stat. 589, 26 U.S.C. 706; 68A Stat. 367, 26 U.S.C. 1502; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7991, 49 FR 47001, Nov. 30, 1984]

§ 1.707-0 Table of contents.

This section lists the captions that appear in §§ 1.707-1 through 1.707-9.

Section 1.707-1 Transactions Between Partner and Partnership

- (a) Partner not acting in capacity as partner.
- (b) Certain sales or exchanges of property with respect to controlled partnerships.
 - (1) Losses disallowed.
 - (2) Gains treated as ordinary income.
 - (3) Ownership of a capital or profits interest.
- (c) Guaranteed payments.

Section 1.707-2 Disguised Payments for Services. [Reserved]

Section 1.707-3 Disguised Sales of Property to Partnership; General Rule.

- (a) Treatment of transfers as a sale.
 - (1) In general.
 - (2) Definition and timing of sale.
 - (3) Application of disguised sale rules.
- (b) Transfers treated as a sale.
 - (1) In general.
 - (2) Facts and circumstances.
- (c) Transfers made within two years presumed to be a sale.
 - (1) In general.
 - (2) Disclosure of transfers made within two years.
- (d) Transfers made more than two years apart presumed not to be a sale.

§ 1.707-1

26 CFR Ch. I (4-1-04 Edition)

- (e) Scope.
- (f) Examples.

Section 1.707-4 Disguised Sales of Property to Partnership; Special Rules Applicable to Guaranteed Payments, Preferred Returns, Operating Cash Flow Distributions, and Reimbursements of Preformation Expenditures

- (a) Guaranteed payments and preferred returns.
 - (1) Guaranteed payment not treated as part of a sale.
 - (i) In general.
 - (ii) Reasonable guaranteed payments.
 - (iii) Unreasonable guaranteed payments.
 - (2) Presumption regarding reasonable preferred returns.
 - (3) Definition of reasonable preferred returns and guaranteed payments.
 - (i) In general.
 - (ii) Reasonable amount.
 - (4) Examples.
 - (b) Presumption regarding operating cash flow distributions.
 - (1) In general.
 - (2) Operating cash flow distributions.
 - (i) In general.
 - (ii) Operating cash flow safe harbor.
 - (iii) Tiered partnerships.
 - (c) Accumulation of guaranteed payments, preferred returns, and operating cash flow distributions.
 - (d) Exception for reimbursements of preformation expenditures.
 - (e) Other exceptions.

Section 1.707-5 Disguised Sales of Property to Partnership; Special Rules Relating to Liabilities

- (a) Liability assumed or taken subject to by partnership.
 - (1) In general.
 - (2) Partner's share of liability.
 - (i) Recourse liability.
 - (ii) Nonrecourse liability.
 - (3) Reduction of partner's share of liability.
 - (4) Special rule applicable to transfers of encumbered property to a partnership by more than one partner pursuant to a plan.
 - (5) Special rule applicable to qualified liabilities.
 - (6) Qualified liability of a partner defined.
 - (7) Liability incurred within two years of transfer presumed to be in anticipation of the transfer.
 - (i) In general.
 - (ii) Disclosure of transfers of property subject to liabilities incurred within two years of the transfer.
 - (b) Treatment of debt-financed transfers of consideration by partnerships.
 - (1) In general.
 - (2) Partner's allocable share of liability.
 - (i) In general.
 - (ii) Debt-financed transfers made pursuant to a plan.

- (A) In general.
- (B) Special rule.
 - (iii) Reduction of partner's share of liability.
 - (c) Refinancings.
 - (d) Share of liability where assumption accompanied by transfer of money.
 - (e) Tiered partnerships and other related persons.
 - (f) Examples.

Section 1.707-6 Disguised Sales of Property by Partnership to Partner; General Rules

- (a) In general.
- (b) Special rules relating to liabilities.
 - (1) In general.
 - (2) Qualified liabilities.
- (c) Disclosure rules.
- (d) Examples.

Section 1.707-7 Disguised Sales of Partnership Interests. [Reserved]

Section 1.707-8 Disclosure of Certain Information

- (a) In general.
- (b) Method of providing disclosure.
- (c) Disclosure by certain partnerships.

Section 1.707-9 Effective Dates and Transitional Rules

- (a) Sections 1.707-3 through 1.707-6.
 - (1) In general.
 - (2) Transfers occurring on or before April 24, 1991.
 - (3) Effective date of section 73 of the Tax Reform Act of 1984.
 - (b) Section 1.707-8 disclosure of certain information.
 - [T.D. 8439, 57 FR 44978, Sept. 30, 1992]

§ 1.707-1 Transactions between partner and partnership.

- (a) *Partner not acting in capacity as partner.* A partner who engages in a transaction with a partnership other than in his capacity as a partner shall be treated as if he were not a member of the partnership with respect to such transaction. Such transactions include, for example, loans of money or property by the partnership to the partner or by the partner to the partnership, the sale of property by the partner to the partnership, the purchase of property by the partner from the partnership, and the rendering of services by the partnership to the partner or by the partner to the partnership. Where a partner retains the ownership of property but allows the partnership to use such separately owned property for partnership purposes (for example, to