

Internal Revenue Service, Treasury

§ 1.752-1

§ 1.752-6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.

- (a) In general.
- (b) Exceptions.
- (1) In general.
- (2) Transactions described in Notice 2000-44.
- (c) Example.
- (d) Effective date.
- (1) In general.
- (2) Election to apply § 1.752-7.

§ 1.752-7 Partnership assumption of partner's § 1.752-7 liability on or after June 24, 2003.

- (a) Purpose and structure.
- (b) Definitions.
- (1) Assumption.
- (2) Adjusted value.
- (3) § 1.752-7 liability.
- (i) In general.
- (ii) Amount and share of § 1.752-7 liability.
- (iii) Example.
- (4) § 1.752-7 liability transfer.
- (i) In general.
- (ii) Terminations under section 708(b)(1)(B).
- (5) § 1.752-7 liability partner.
- (i) In general.
- (ii) Tiered partnerships.
- (A) Assumption by a lower-tier partnership.
- (B) Distribution of partnership interest.
- (6) Remaining built-in loss associated with a § 1.752-7 liability.
- (i) In general.
- (ii) Partial dispositions and assumptions.
- (7) § 1.752-7 liability reduction.
- (i) In general.
- (ii) Partial dispositions and assumptions.
- (8) Satisfaction of § 1.752-7 liability.
- (9) Testing date.
- (10) Trade or business.
- (i) In general.
- (ii) Examples.
- (c) Application of section 704(b) and (c) to assumed § 1.752-7 liabilities.
- (1) In general.
- (i) Section 704(c).
- (ii) Section 704(b).
- (2) Example.
- (d) Special rules for transfers of partnership interests, distributions of partnership assets, and assumptions of the § 1.752-7 liability after a § 1.752-7 liability transfer.
- (1) In general.
- (2) Exceptions.
- (i) In general.
- (ii) Examples.
- (e) Transfer of § 1.752-7 liability partner's partnership interest.
- (1) In general.
- (2) Examples.
- (3) Exception for nonrecognition transactions.
- (i) In general.

- (ii) Examples.
- (f) Distribution in liquidation of § 1.752-7 liability partner's partnership interest.
- (1) In general.
- (2) Example.
- (g) Assumption of § 1.752-7 liability by a partner other than § 1.752-7 liability partner.
- (1) In general.
- (2) Consequences to § 1.752-7 liability partner.
- (3) Consequences to partnership.
- (4) Consequences to assuming partner.
- (5) Example.
- (h) Notification by the partnership (or successor) of the satisfaction of the § 1.752-7 liability.
- (i) Special rule for amounts that are capitalized prior to the occurrence of an event described in paragraphs (e), (f), or (g).
- (1) In general.
- (2) Example.
- (j) Tiered partnerships.
- (1) Look-through treatment.
- (2) Trade or business exception.
- (3) Partnership as a § 1.752-7 liability partner.
- (4) Transfer of § 1.752-7 liability by partnership to another partnership or corporation after a transaction described in paragraphs (e), (f), or (g).
- (i) In general.
- (ii) Subsequent transfers.
- (5) Example.
- (k) Effective dates.
- (1) In general.
- (2) Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003.
- (i) In general.
- (ii) Manner of making election.
- (iii) Filing of amended returns.
- (iv) Time for making election.

[T.D. 8380, 56 FR 66350, Dec. 23, 1991, as amended by T.D. 9207, 70 FR 30342, May 26, 2005]

§ 1.752-1 Treatment of partnership liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(3) *Related person.* Related person means a person having a relationship

§ 1.752-1

26 CFR Ch. I (4-1-12 Edition)

to a partner that is described in § 1.752-4(b).

(4) *Liability defined*—(i) *In general.* An obligation is a liability for purposes of section 752 and the regulations thereunder (§ 1.752-1 liability), only if, when, and to the extent that incurring the obligation—

(A) Creates or increases the basis of any of the obligor's assets (including cash);

(B) Gives rise to an immediate deduction to the obligor; or

(C) Gives rise to an expense that is not deductible in computing the obligor's taxable income and is not properly chargeable to capital.

(ii) *Obligation.* For purposes of this paragraph and § 1.752-7, an obligation is any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Internal Revenue Code. Obligations include, but are not limited to, debt obligations, environmental obligations, tort obligations, contract obligations, pension obligations, obligations under a short sale, and obligations under derivative financial instruments such as options, forward contracts, futures contracts, and swaps.

(iii) *Other liabilities.* For obligations that are not § 1.752-1 liabilities, see §§ 1.752-6 and 1.752-7.

(iv) *Effective date.* Except as otherwise provided in § 1.752-7(k), this paragraph (a)(4) applies to liabilities that are incurred or assumed by a partnership on or after June 24, 2003.

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner.

(d) *Assumption of liability.* Except as otherwise provided in paragraph (e) of

this section, a person is considered to assume a liability only to the extent that:

(1) The assuming person is personally obligated to pay the liability; and

(2) If a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability immediately after the assumption.

(e) *Property subject to a liability.* If property is contributed by a partner to the partnership or distributed by the partnership to a partner and the property is subject to a liability of the transferor, the transferee is treated as having assumed the liability, to the extent that the amount of the liability does not exceed the fair market value of the property at the time of the contribution or distribution.

(f) *Netting of increases and decreases in liabilities resulting from same transaction.* If, as a result of a single transaction, a partner incurs both an increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities), only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction. When two or more partnerships merge or consolidate under section 708(b)(2)(A), as described in § 1.708-1(c)(3)(i), increases and decreases in partnership liabilities associated with the merger or consolidation are netted by the partners in the

terminating partnership and the re-terminating partnership to determine the effect of the merger under section 752.

(g) *Example.* The following example illustrates the principles of paragraphs (b), (c), (e), and (f) of this section.

Example 1. Property contributed subject to a liability; netting of increase and decrease in partner's share of liability. B contributes property with an adjusted basis of \$1,000 to a general partnership in exchange for a one-third interest in the partnership. At the time of the contribution, the partnership does not have any liabilities outstanding and the property is subject to a recourse debt of \$150 and has a fair market value in excess of \$150. After the contribution, B remains personally liable to the creditor and none of the other partners bears any of the economic risk of loss for the liability under state law or otherwise. Under paragraph (e) of this section, the partnership is treated as having assumed the \$150 liability. As a result, B's individual liabilities decrease by \$150. At the same time, however, B's share of liabilities of the partnership increases by \$150. Only the net increase or decrease in B's share of the liabilities of the partnership and B's individual liabilities is taken into account in applying section 752. Because there is no net change, B is not treated as having contributed money to the partnership or as having received a distribution of money from the partnership under paragraph (b) or (c) of this section. Therefore B's basis for B's partnership interest is \$1,000 (B's basis for the contributed property).

Example 2. Merger or consolidation of partnerships holding property encumbered by liabilities. (i) B owns a 70 percent interest in partnership T. Partnership T's sole asset is property X, which is encumbered by a \$900 liability. Partnership T's adjusted basis in property X is \$600, and the value of property X is \$1,000. B's adjusted basis in its partnership T interest is \$420. B also owns a 20 percent interest in partnership S. Partnership S's sole asset is property Y, which is encumbered by a \$100 liability. Partnership S's adjusted basis in property Y is \$200, the value of property Y is \$1,000, and B's adjusted basis in its partnership S interest is \$40.

(ii) Partnership T and partnership S merge under section 708(b)(2)(A). Under section 708(b)(2)(A) and § 1.708-1(c)(1), partnership T is considered terminated and the resulting partnership is considered a continuation of partnership S. Partnerships T and S undertake the form described in § 1.708-1(c)(3)(i) for the partnership merger. Under § 1.708-1(c)(3)(i), partnership T contributes property X and its \$900 liability to partnership S in exchange for an interest in partnership S. Immediately thereafter, partnership T distributes the interests in partnership S to its

partners in liquidation of their interests in partnership T. B owns a 25 percent interest in partnership S after partnership T distributes the interests in partnership S to B.

(iii) Under paragraph (f) of this section, B nets the increases and decreases in its share of partnership liabilities associated with the merger of partnership T and partnership S. Before the merger, B's share of partnership liabilities was \$650 (B had a \$630 share of partnership liabilities in partnership T and a \$20 share of partnership liabilities in partnership S immediately before the merger). B's share of S's partnership liabilities after the merger is \$250 (25 percent of S's total partnership liabilities of \$1,000). Accordingly, B has a \$400 net decrease in its share of S's partnership liabilities. Thus, B is treated as receiving a \$400 distribution from partnership S under section 752(b). Because B's adjusted basis in its partnership S interest before the deemed distribution under section 752(b) is \$460 (\$420 + \$40), B will not recognize gain under section 731. After the merger, B's adjusted basis in its partnership S interest is \$60.

(h) *Sale or exchange of a partnership interest.* If a partnership interest is sold or exchanged, the reduction in the transferor partner's share of partnership liabilities is treated as an amount realized under section 1001 and the regulations thereunder. For example, if a partner sells an interest in a partnership for \$750 cash and transfers to the purchaser the partner's share of partnership liabilities in the amount of \$250, the seller realizes \$1,000 on the transaction.

(i) *Bifurcation of partnership liabilities.* If one or more partners bears the economic risk of loss as to part, but not all, of a partnership liability represented by a single contractual obligation, that liability is treated as two or more separate liabilities for purposes of section 752. The portion of the liability as to which one or more partners bear the economic risk of loss is a recourse liability and the remainder of the liability, if any, is a nonrecourse liability.

[T.D. 8380, 56 FR 66351, Dec. 23, 1991, as amended by T.D. 8925, 66 FR 723, Jan. 4, 2001; T.D. 9207, 70 FR 30343, May 26, 2005]

§ 1.752-2 Partner's share of recourse liabilities.

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for