

Internal Revenue Service, Treasury**§ 1.704-1T**

made between members of a family (including collaterals) under a purported purchase agreement, if the characteristics of a gift are ascertained from the terms of the purchase agreement, the terms of any loan or credit arrangements made to finance the purchase, or from other relevant data.

(c) In the case of a limited partnership, for the purpose of the allocation provisions of subdivision (i) of this subparagraph, consideration shall be given to the fact that a general partner, unlike a limited partner, risks his credit in the partnership business.

(4) *Purchased interest*—(i) *In general*. If a purported purchase of a capital interest in a partnership does not meet the requirements of subdivision (ii) of this subparagraph, the ownership by the transferee of such capital interest will be recognized only if it qualifies under the requirements applicable to a transfer of a partnership interest by gifts. In a case not qualifying under subdivision (ii) of this subparagraph, if payment of any part of the purchase price is made out of partnership earnings, the transaction may be regarded in the same light as a purported gift subject to deferred enjoyment of income. Such a transaction may be lacking in reality either as a gift or as a bona fide purchase.

(ii) *Tests as to reality of purchased interests*. A purchase of a capital interest in a partnership, either directly or by means of a loan or credit extended by a member of the family, will be recognized as bona fide if:

(a) It can be shown that the purchase has the usual characteristics of an arm's-length transaction, considering all relevant factors, including the terms of the purchase agreement (as to price, due date of payment, rate of interest, and security, if any) and the terms of any loan or credit arrangement collateral to the purchase agreement; the credit standing of the purchaser (apart from relationship to the seller) and the capacity of the purchaser to incur a legally binding obligation; or

(b) It can be shown, in the absence of characteristics of an arm's-length transaction, that the purchase was genuinely intended to promote the success of the business by securing partici-

pation of the purchaser in the business or by adding his credit to that of the other participants.

However, if the alleged purchase price or loan has not been paid or the obligation otherwise discharged, the factors indicated in (a) and (b) of this subdivision shall be taken into account only as an aid in determining whether a bona fide purchase or loan obligation existed.

(f) *Applicability dates*—(1) *In general*. Except as provided in paragraph (f)(2) of this section, paragraph (b)(2)(iv)(f)(6) of this section applies with respect to contributions occurring on or after January 18, 2017, and with respect to contributions that occurred before January 18, 2017 resulting from an entity classification election made under § 301.7701-3 of this chapter that was effective on or before January 18, 2017 but was filed on or after January 18, 2017.

(2) *Election to apply the provisions described in paragraph (f)(1) of this section retroactively*. Paragraph (b)(2)(iv)(f)(6) of this section may, by election, be applied with respect to a contribution that occurred on or after August 6, 2015 but before January 18, 2017, and with respect to a contribution that occurred before August 6, 2015 resulting from an entity classification election made under § 301.7701-3 of this chapter that was effective on or before August 6, 2015 but was filed on or after August 6, 2015. The election must have been made by applying paragraph (b)(2)(iv)(f)(6) of this section on a timely filed original return (including extensions) or an amended return filed no later than July 18, 2017.

[T.D. 6500, 25 FR 11814, Nov. 26, 1960]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.704-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.

§ 1.704-1T Partner's distributive share (temporary).

(a) For further guidance, see § 1.704-1(a).

(b)(1) For further guidance, see § 1.704-1(b)(1).

(2) For further guidance, see § 1.704-1(b)(2)(i) through (b)(2)(iv)(f)(5).

(i) through (iii) [Reserved]

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(iv)(a) through (e) [Reserved]
(f)(1) through (5) [Reserved]

[T.D. 9748, 81 FR 5912, Feb. 4, 2016, as amended by T.D. 9814, 82 FR 7597, Jan. 19, 2017; T.D. 9871, 84 FR 35544, July 24, 2019; 85 FR 3838, Jan. 23, 2020]

§ 1.704-2 Allocations attributable to nonrecourse liabilities.

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.704-2.

§ 1.704–2 Allocations attributable to nonrecourse liabilities.

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- (i) Partnership nonrecourse liabilities where a partner bears the economic risk of loss.

(1) In general.

(2) Definition of and determination of partner nonrecourse deductions.

(3) Determination of partner nonrecourse debt minimum gain.

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(ii) Partnership nonrecourse deductions.

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(1) Increase in upper-tier partnership's minimum gain.

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(5) Coordination with partner nonrecourse debt rules.

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(1) In general.

(i) Prospective application.

(ii) Partnerships subject to temporary regulations.

(iii) Partnerships subject to former regulations.

(2) Special rule applicable to pre-January 30, 1989, related party nonrecourse debt.

(3) Transition rule for pre-March 1, 1984, partner nonrecourse debt.

(4) Election.

(m) Examples.

(b) *General principles and definitions—*

(1) *Definition of and allocations of nonrecourse deductions.* Allocations of losses, deductions, or section 705(a)(2)(B) expenditures attributable to partnership nonrecourse liabilities ("nonrecourse deductions") cannot have economic effect because the creditor alone bears any economic burden that corresponds to those allocations. Thus, nonrecourse deductions must be