

*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]

**§ 1.706-3T Temporary regulations under the Tax Reform Act of 1986 and the Revenue Act of 1987 (temporary).**

(a) *Certain tax-exempt partners disregarded*—(1) *General rule.* In determining the taxable year (the “current year”) of a partnership under section 706(b) and the regulations thereunder, a partner that is tax-exempt under section 501(a) shall be disregarded if such partner was not subject to tax, under chapter 1 of the Code, on any income attributable to its investment in the partnership during the partnership’s taxable year immediately preceding the current year. However, if a partner that is tax-exempt under section 501(a) was not a partner during the partnership’s immediately preceding taxable year, such partner will be disregarded for the current year if the partnership reasonably believes that the partner will not be subject to tax, under chapter 1 of the Code, on any income attributable to such partner’s investment in the partnership during the current year.

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example.

*Example.* Assume that partnership A has historically used the calendar year as its taxable year. In addition, assume that A is owned by 5 partners, 4 calendar year individuals (each owning 10 percent of A’s profits and capital) and a tax-exempt organization (owning 60 percent of A’s profits and capital). The tax-exempt organization has never had unrelated business taxable income with respect to A and has historically used a June 30 fiscal year. Finally, assume that A desires to retain the calendar year for its taxable year beginning January 1, 1987. Under these facts and but for the special rule in paragraph (a)(1) of this section, A would be required under section 706(b)(1)(B)(i) to change to a year ending June 30, for its taxable year beginning January 1, 1987. However, under the special rule provided in paragraph (a)(1)

of this section, and assuming the optional effective date provided in paragraph (c) of this section is chosen, the partner that is tax-exempt is disregarded, and A must retain the calendar year, under section 706(b)(1)(B)(i), for its taxable year beginning January 1, 1987.

(b) *Effect of partner elections under section 444.* For purposes of section 706(b)(1)(B), any section 444 election by a partner in a partnership shall be taken into account in determining the taxable year of the partnership. See example 4 of § 1.7519-1T(d).

(c) *Effective date.* The provisions of this section are generally effective for taxable years beginning after December 31, 1987. However, a partnership may, at its option, apply the provisions of this section for taxable years beginning after December 31, 1986.

[T.D. 8205, 53 FR 19710, May 27, 1988]

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

## § 1.707-1

## 26 CFR Ch. I (4-1-02 Edition)

### *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.
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  - (ii) Reasonable guaranteed payments.
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- (2) Presumption regarding reasonable preferred returns.
- (3) Definition of reasonable preferred returns and guaranteed payments.
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- (4) Examples.
- (b) Presumption regarding operating cash flow distributions.
  - (1) In general.
  - (2) Operating cash flow distributions.
    - (i) In general.
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- (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.
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  - (2) Partner's share of liability.
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  - (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.
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    - (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.
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      - (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 obtain credit or to secure firm creditors by guaranty, pledge, or other agreement) the transaction is treated