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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9728]

RIN 1545-BD71

Determination of Distributive Share When Partner's Interest Changes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9728) that were published in the *Federal Register* on Monday, August 3, 2015 (80 FR 45865). The final regulations are regarding the determination of a partner's distributive share of partnership items of income, gain, loss, deduction, and credit when a partner's interest varies during a partnership taxable year.

DATES: This correction is effective November 4, 2015 and is applicable on or after August 3, 2015.

FOR FURTHER INFORMATION CONTACT: Benjamin H. Weaver of the Office of Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317-6850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9728) that are the subject of this correction are under section 706 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9728) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.706-0 is amended by revising the entries of the table of contents for § 1.706-1(b)(3)(iii), § 1.706-2, § 1.706-3, § 1.706-4(a)(2), and § 1.706-4(d)(1), and adding entries to § 1.706-1(c)(6), and § 1.706-4(c)(3)(i) and (ii). The revisions and additions read as follows:

§ 1.706-0 Table of contents.

* * * * *

§ 1.706-1 *Taxable years of partner and partnership.*

(b) * * *

(3) * * *

(iii) Special de minimis rule.

* * * * *

(c) * * *

(6) Foreign taxes.

* * * * *

§ 1.706-2 *Certain allocable cash basis items. [Reserved]*

* * * * *

§ 1.706-3 *Items attributable to interest in lower tier partnership. [Reserved]*

§ 1.706-4 *Determination of distributive share when a partner's interest varies.*

(a) * * *

(2) Coordination with section 706(d)(2) and (3) and other Code sections.

* * * * *

(c) * * *

(3) * * *

(i) Rules applicable to all partnerships.

(ii) Publicly treated partnerships.

(4) * * *

(d)(1) Optional regular monthly or semimonthly interim closings.

* * * * *

■ **Par. 3.** Section 1.706-1 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 1.706-1 Taxable years of partner and partnership.

* * * * *

(c) * * *

(2) * * *

(ii)

Example. H is a partner of a partnership having a taxable year ending December 31. Both H and his wife W are on a calendar year and file joint returns. H dies on March 31, 2016. Administration of the estate is completed and the estate, including the partnership interest, is distributed to W as legatee on November 30, 2016. Such distribution by the estate is not a sale or exchange of H's partnership interest. The taxable year of the partnership will close with respect to H on March 31, 2016, and H will include in his final return for his final taxable year (January 1, 2016, through March 31, 2016) his distributive share of partnership items for that period under the rules of sections 706(d)(2), 706(d)(3), and § 1.706-4. W will include in her return for the taxable year ending December 31, 2016, her distributive share of partnership items for the period of April 1, 2016, through December 31, 2016, under the rules of sections 706(d)(2), 706(d)(3), and § 1.706-4.

* * * * *

■ **Par. 4.** Section 1.706-2 is amended by revising the section heading to read as follows:

§ 1.706-2 Certain allocable cash to as is items. [Reserved]

■ **Par. 5.** Section 1.706-3 is amended by revising the section heading to read as follows:

§ 1.706-3 Items attributable to interest in lower tier partnership. [Reserved]

■ **Par. 6.** Section 1.706-4 is amended by revising paragraphs (a)(2) and (a)(3)(viii), the introductory text of paragraph (a)(4), and the third sentence of paragraph (g) to read as follows:

§ 1.706-4 Determination of distributive share when a partner's interest varies.

(a) * * *

(2) Coordination with sections 706(d)(2) and 706(d)(3) and other Code sections. Items subject to allocation under other rules, including sections 108(e)(8) and 108(i) (which provide special allocation rules for certain items from the discharge or retirement of indebtedness section), section 704(c) (relating to allocations with respect to certain contributed property), § 1.704-3(a)(6) (relating to allocations with respect to revalued property), section 706(d)(2) (relating to the determination of partners' distributive shares of allocable cash basis items), and section 706(d)(3) (relating to the determination of partners' distributive share of any item of an upper tier partnership attributable to a lower tier partnership), are not

subject to the rules of this section. In addition, the rules of this section do not apply in making allocation of book items pursuant to § 1.704–1(b)(2)(iv)(e), (f), or (s). In all cases, all partnership items for each taxable year must be allocated among the partners, and no partnership items may be duplicated, regardless of the particular provision of section 706 (or other Code section) which applies, and regardless of the method or convention adopted by the partnership.

(3) * * *
 (viii) Eighth, determine the partnership’s proration periods, which are specific portions of a segment created by a variation for which the partnership chooses to apply the proration method. The first proration period in each segment begins at the beginning of the segment, and ends at the first time of the first variation within the segment for which the partnership selects the proration method. The next

proration period begins immediately after the close of the prior proration period and ends at the time of the next variation for which the partnership selects the proration method. However, each proration period shall end no later than the close of the segment.

* * * * *

(4)

Example. At the beginning of 2017, PRS, a calendar year partnership, has three equal partners, A, B, and C. On April 16, 2017, A sells 50% of its interest in PRS to new partner D. On August 6, 2017, B sells 50% of its interest in PRS to new partner E. During 2015, PRS earned \$75,000 of ordinary income, incurred \$33,000 of ordinary deductions, earned \$12,000 of capital gain in the ordinary course of its business, and sustained \$9,000 of capital loss in the ordinary course of its business. Within that year, PRS earned \$60,000 of ordinary income, incurred \$24,000 of ordinary deductions, earned \$12,000 of capital gain, and sustained \$6,000 of capital loss between January 1, 2017, and July 31, 2017, and PRS earned

\$15,000 of gross ordinary income, incurred \$9,000 of gross ordinary deductions, and sustained \$3,000 of capital loss between August 1, 2017, and December 31, 2017. None of PRS’s items are extraordinary items within the meaning of paragraph (e)(2) of this section. Capital is a material income-producing factor for PRS. For 2017, PRS determines the distributive shares of A, B, C, D, and E as follows:

* * * * *

(g) * * * For purposes of the immediately preceding sentence, an existing publicly traded partnership is a partnership described in section 7704(b) that was formed prior to April 14, 2009.
 * * *

§ 1.706–4 [Amended]

■ **Par. 7.** For each entry in § 1.706–4 in the “Section” column, remove the language in “Remove” column from wherever it appears in the Example and add in its place the language in the “Add” column as set forth below:

Section	Remove	Add
Paragraph (a)(4) <i>Example.</i> (iii)	2015.	2017.
Paragraph (a)(4) <i>Example.</i> (iv)	2015.	2017.
Paragraph (a)(4) <i>Example.</i> (v)	2015.	2017.
Paragraph (a)(4) <i>Example.</i> (vi)	2015.	2017.
Paragraph (a)(4) <i>Example.</i> (vii)	2015.	2017.
Paragraph (a)(4) <i>Example.</i> (viii)	2015.	2017.
Paragraph (c)(4) <i>Example.</i> 1	2015.	2016.
Paragraph (c)(4) <i>Example.</i> 1	February 28, 2015.	February 29, 2016.
Paragraph (c)(4) <i>Example.</i> 2	2015.	2016.
Paragraph (d)(2) <i>Example.</i> (i)	2015.	2016.
Paragraph (d)(2) <i>Example.</i> (ii)	2015.	2016.
Paragraph (d)(2) <i>Example.</i> (iii)	2015.	2016.
Paragraph (d)(2) <i>Example.</i> (iv)	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 1	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 2	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 3	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 4	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 5	2015.	2016.
Paragraph (e)(4) <i>Example.</i> 6	item.	items.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9728]

RIN 1545–BD71

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