

# **Section 704.—Partner's Distributive Share**

*26 CFR 1.704–1: Partner's distributive share.*

**T.D. 9126**

## **DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1**

### **Section 704(b) and Capital Account Revaluations**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the capital account maintenance rules under section 704 of the Internal Revenue Code. These regulations expand the rules regarding a partnership's right to adjust capital accounts to

reflect unrealized appreciation and depreciation in the value of partnership assets.

DATE: *Effective Date*: These regulations are effective May 6, 2004.

FOR FURTHER INFORMATION CONTACT: Laura Nash at (202) 622-3050 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### Background

On July 2, 2003, proposed regulations (REG-116914, 2003-32 I.R.B. 338 [68 FR 39498]) relating to the capital account maintenance rules under section 704 of the Internal Revenue Code (Code) were published in the **Federal Register**. The proposed regulations expanded the circumstances under which a partnership is permitted to increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books. Specifically, the regulations proposed to allow revaluations in connection with the grant of an interest in the partnership (other than a *de minimis* interest) on or after the date these final regulations are published in the **Federal Register** as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner. In addition, the notice of proposed rulemaking requested comments on other situations in which revaluations of partnership property should be permitted. No written or electronic comments were received in response to the notice of proposed rulemaking. No requests for a public hearing were received, and accordingly, no hearing was held.

#### Explanation of Provisions

This Treasury decision adopts the proposed regulations without change. The regulations apply to the grant of an interest in a partnership (other than a *de minimis* interest) on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

#### Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### Drafting Information

The principal author of these regulations is Laura Nash, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### 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 1.704-1 is amended as follows:

1. Paragraph (b)(2)(iv)(f)(5)(iii) is redesignated as paragraph (b)(2)(iv)(f)(5)(iv).

2. New paragraph (b)(2)(iv)(f)(5)(iii) is added to read as follows:

*§1.704-1 Partner's distributive share.*

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(f) \* \* \*

(5) \* \* \*

(iii) In connection with the grant of an interest in the partnership (other than a *de*

*minimis* interest) on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the partnership by an existing partner acting in a partner capacity, or by a new partner acting in a partner capacity or in anticipation of being a partner.

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Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved April 29, 2004.

Gregory F. Jenner,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on May 5, 2004, 8:45 a.m., and published in the issue of the Federal Register for May 6, 2004, 69 F.R. 25315)