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Final regulations for partnerships: Disguised sales; recourse liabilities under section 752 (text of regulations)

The IRS today released in advance of being released for publication in the Federal Register two sets of final regulations concerning partnership liabilities. These final regulations were released by the U.S. Treasury Department and IRS to the Federal Register late in the day on October 4, 2019.

- The first set of [final regulations \(T.D. 9876\)](#) [PDF 72 KB] (10 pages) concerns how partnership liabilities are allocated for disguised sale purposes. The regulations withdraw existing temporary regulations, and finalize regulations that were proposed before the temporary regulations were issued. Read [TaxNewsFlash](#) on the June 2018 proposed regulations. The preamble to the final regulations states:

...the 2018 Proposed Regulations proposing to withdraw the 707 Temporary Regulations and reinstate the Prior 707 Regulations are adopted by this Treasury decision without change, except the applicability date has been revised. To avoid a lapse in rules for allocating partnership liabilities for disguised sale purposes, these final regulations apply to any transaction with respect to which all transfers occur on or after October 4, 2019, the date that the 707 Temporary Regulations expire.

- The second set of [final regulations \(T.D. 9877\)](#) [PDF 224 KB] (52 pages) concerns: (1) when certain obligations to restore a deficit balance in a partner's capital account are disregarded under section 704, (2) when partnership liabilities are treated as recourse liabilities under section 752, and (3) how "bottom dollar payment obligations" are treated under section 752. These final regulations provide guidance necessary for a partnership to allocate its liabilities among its partners. These regulations affect partnerships and their partners. The preamble to these final regulations states:

... this Treasury decision adopts the rules in the 752 Temporary Regulations and the 752 Proposed Regulations with some changes.

Notably, the final regulations revise the definition of a bottom dollar payment obligation to specifically address capital contribution obligations and deficit restoration obligations. A bottom dollar payment obligation now includes any payment obligation other than one in which the partner is or would be required to make the full amount of the partner's capital contribution or to restore the full amount of the partner's deficit capital account.

The final regulations also amend the regulations under section 1.752-2(k) and clarify how the satisfaction presumption in section 1.752-2(b)(6) relates to section 1.752-2(k). Specifically, section 1.752-2(b)(6) now provides that for purposes of determining the extent to which a partner or related person has a payment obligation and the economic risk of loss, it is assumed that all partners and related persons who have obligations to make payments actually perform those obligations, irrespective of their actual net worth, unless the facts and circumstances indicate a plan to circumvent or avoid the obligation under section 1.752-2(j) (related to the anti-abuse rule which includes a list of factors indicating a plan to circumvent or avoid an obligation and examples) or there is not a commercially reasonable expectation that the payment obligor will have the ability to make the required payments under the term of the obligation if the obligation becomes due and payable as described in 1.752-2(k). Amended section 1.752-2(k) applies to all partners of a partnership, including partners that are disregarded entities or grantor trusts.

The final regulations generally apply to liabilities incurred or assumed by a partnership and to payment obligations imposed or undertaken with respect to a partnership liability on or after the date of publication in the Federal Register, other than liabilities incurred or assumed by a partnership and payment obligations imposed or undertaken pursuant to a written binding contract in effect prior to that date. The scheduled date of publication in the Federal Register is October 9, 2019.

The final regulations provide specific applicability dates and transition rules for bottom dollar obligations.

The regulations released by the IRS today were submitted to the Office of the Federal Register (OFR) and according to a statement that appears at the top of each regulation package "may vary slightly from the published documents if minor editorial changes are made during the OFR review process." The documents published in the Federal Register will be the official documents: [T.D. 9876](#) [PDF 244 KB] (nine pages) and [T.D. 9877](#) [PDF 330 KB] (51 pages).

The purpose of this report is to provide text of the regulations released today. A more detailed discussion of these regulations will be provided in the future by KPMG.

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