

**§ 1.752-5(a) [Amended]**

8. Section 1.752-5 is amended as follows:

1. Paragraph 1.752-5(a) is amended by removing the language “Unless” at the beginning of the first sentence and adding “Except as otherwise provided in §§ 1.752-1 through 1.752-4, unless” in its place.

9. Section 1.752-6 is added to read as follows:

**§ 1.752-6 Partnership assumption of partner's section 358(h)(3) liability after October 18, 1999, and before June 24, 2003.**

The text of proposed § 1.752-6 is the same as the text of § 1.752-6T published elsewhere in this issue of the **Federal Register**.

10. Section 1.752-7 is added to read as follows:

**§ 1.752-7 Partnership assumption of partner's § 1.752-7 liability on or after June 24, 2003.**

(a) *General rules*—(1) *Purpose and structure*. The purpose of this section is to prevent the acceleration or duplication of loss through the assumption of obligations not described in § 1.752-1(a)(1) in transactions involving partnerships. Under paragraph (c) of this section, any such obligation that is assumed by a partnership from a partner in a transaction governed by section 721(a) must be taken into account by applying principles under section 704(c). Paragraphs (e), (f), and (g) of this section provide rules for situations where a partnership assumes such an obligation from a partner and, subsequently, that partner sells or exchanges all or part of the partnership interest, that partner receives a distribution in liquidation of the partnership interest, or another partner assumes part or all of that obligation from the partnership. These rules prevent the duplication of loss by prohibiting the partnership and any person other than the partner from whom the obligation was assumed from claiming a deduction or capital expense to the extent of the built-in loss associated with the obligation. These rules also prevent the acceleration of loss by deferring the partner's deduction or loss attributable to the obligation (if any) until economic performance occurs. Paragraph (d) of this section provides a number of exceptions to paragraphs (e), (f), and (g) of this section, including a *de minimis* exception. Paragraph (i) of this section provides special rules for tiered partnership transactions.

(2) *Exception from disguised sale rules*. The assumption of a § 1.752-7 liability is not treated as an assumption

of a liability or as a transfer of cash for purposes of section 707(a)(2)(B).

(b) *Definitions*. For purposes of this section, the following definitions apply—

(1) *Assumption*. A person that takes property subject to a § 1.752-7 liability of another person is treated as assuming the § 1.752-7 liability, but only to the extent of the fair market value of the property taken subject to the § 1.752-7 liability.

(2) *§ 1.752-7 liability*—(i) *In general*. A § 1.752-7 liability is an obligation (as defined in § 1.752-1(a)(1)(ii)) that is not described in § 1.752-1(a)(1)(i).

(ii) *Amount and share of § 1.752-7 liability*. The amount of a § 1.752-7 liability is the amount of cash that a willing assignor would pay to a willing assignee to assume the § 1.752-7 liability in an arm's-length transaction. A partner's share of a partnership's § 1.752-7 liability is the amount of deduction that would be allocated to the partner with respect to the § 1.752-7 liability if the partnership disposed of all of its assets, satisfied all of its liabilities (other than § 1.752-7 liabilities), and paid an unrelated person to assume all of its § 1.752-7 liabilities in a fully taxable arm's-length transaction (assuming such payment would give rise to an immediate deduction to the partnership).

(3) *§ 1.752-7 liability partner*. A § 1.752-7 liability partner is a partner from whom a partnership assumes a § 1.752-7 liability as part of a § 1.752-7 liability transfer or any person who acquires a partnership interest from the § 1.752-7 liability partner in a transaction described in paragraph (e)(3) of this section. If a partnership (lower-tier partnership) assumes a § 1.752-7 liability from another partnership (upper-tier partnership), then both the upper-tier partnership and the partners of the upper-tier partnership are § 1.752-7 liability partners. Therefore, paragraphs (e) and (f) of this section apply on a sale or liquidation of any partner's interest in the upper-tier partnership and on a sale or liquidation of the upper-tier partnership's interest in the lower-tier partnership. See paragraph (i)(3) of this section.

(4) *Remaining built-in loss associated with a § 1.752-7 liability*. The remaining built-in loss associated with a § 1.752-7 liability equals the amount of the § 1.752-7 liability as of the time of the assumption of the § 1.752-7 liability by the partnership, reduced by the portion of the § 1.752-7 liability previously taken into account by the § 1.752-7 liability partner under paragraph (i)(4) of this section and adjusted as provided

in paragraph (c) of this section and § 1.704-3 for—

(i) Partnership allocations of loss or deduction with respect to the § 1.752-7 liability on or prior to the testing date; and

(ii) Any assumption of all or part of the § 1.752-7 liability by the § 1.752-7 liability partner (including any assumption that occurs on the testing date).

(5) *§ 1.752-7 liability reduction*—(i) *In general*. The § 1.752-7 liability reduction is the amount by which the § 1.752-7 liability partner is required to reduce the basis in the partner's partnership interest by operation of paragraphs (e), (f), and (g) of this section. The § 1.752-7 liability reduction is the lesser of—

(A) The excess of the § 1.752-7 liability partner's basis in the partner's partnership interest over the adjusted value of that interest (as defined in paragraph (b)(9) of this section); or

(B) The remaining built-in loss associated with the § 1.752-7 liability.

(ii) *Partial dispositions and assumptions*. In the case of a partial disposition of the § 1.752-7 liability partner's partnership interest or a partial assumption of the § 1.752-7 liability by another partner, the § 1.752-7 liability reduction is pro rated based on the portion of the interest sold or the portion of the § 1.752-7 liability assumed.

(6) *§ 1.752-7 liability transfer*. A § 1.752-7 liability transfer is any assumption of a § 1.752-7 liability by a partnership from a partner in a transaction governed by section 721(a).

(7) *Testing date*. The testing date is—

(i) For purposes of paragraph (e) of this section, the date of the sale, exchange, or other disposition of part or all of the § 1.752-7 liability partner's partnership interest;

(ii) For purposes of paragraph (f) of this section, the date of the partnership's distribution in liquidation of the § 1.752-7 liability partner's partnership interest; and

(iii) For purposes of paragraph (g) of this section, the date of the assumption (or partial assumption) of the § 1.752-7 liability by a partner other than the § 1.752-7 liability partner.

(8) *Trade or business*—(i) *In general*. A trade or business is a specific group of activities carried on by a person for the purpose of earning income or profit if the activities included in that group include every operation that forms a part of, or a step in, the process of earning income or profit. Such group of activities ordinarily includes the collection of income and the payment of expenses. Subject to paragraph (b)(8)(ii)