

(4) *Transfer of § 1.752-7 liability by partnership to another partnership or corporation after a transaction described in paragraphs (e),(f), or (g)—*  
 (i) *In general.* If, after a transaction described in paragraphs (e), (f), or (g) of this section with respect to a § 1.752-7 liability assumed by a partnership (the upper-tier partnership), another partnership or a corporation assumes the § 1.752-7 liability from the upper-tier partnership (or the assuming partner) in a transaction in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the upper-tier partnership (or assuming partner), then—

(A) The upper-tier partnership (or assuming partner) must reduce its basis in any corporate stock or partnership interest received by the remaining built-in loss associated with the § 1.752-7 liability (but the partners of the upper-tier partnership do not reduce their bases or capital accounts in the upper-tier partnership); and

(B) No deduction or capital expense is allowed to the assuming partnership or corporation on the economic performance of the § 1.752-7 liability to the extent of the remaining built-in loss associated with the § 1.752-7 liability.

(ii) *Subsequent transfers.* Similar rules apply to subsequent assumptions of the § 1.752-7 liability in transactions in which the basis of property is determined, in whole or in part, by reference to the basis of the property in the hands of the transferor. If, subsequent to an assumption of the § 1.752-7 liability by a partnership in a transaction to which paragraph (i)(4)(i) of this section applies, the § 1.752-7 liability is assumed from the partnership by a partner other than the partner from whom the partnership assumed the § 1.752-7 liability, then the rules of paragraph (g)(4) of this section apply.

(5) *Example.* The following example illustrates the provisions of paragraphs (i)(3) and (i)(4) of this section.

*Example —(i) Assumption of § 1.752-7 liability by UTP and transfer of § 1.752-7 liability partner's interest in UTP.*

In 2004, A, B, and C form partnership UTP. A contributes Property 1 with a fair market value and basis of \$5,000,000 subject to a § 1.752-7 liability of \$2,000,000 in exchange for a 25% interest in UTP. B contributes \$3,000,000 cash in exchange for a 25% interest in UTP, and C contributes \$6,000,000 cash in exchange for a 50% interest in UTP. UTP invests the \$9,000,000 cash in Property 2. In 2006, A sells A's interest in UTP to D for \$3,000,000. At the time of the sale, the basis of A's UTP interest is \$5,000,000, the remaining built-in loss associated with the § 1.752-7 liability is \$2,000,000, and UTP has

no liabilities other than § 1.752-7 liabilities. Assume that none of the exceptions of paragraph (d)(2) of this section apply and that economic performance of the § 1.752-7 liability would give rise to a deductible expense to the payor. Under paragraph (e) of this section, immediately before the sale of the UTP interest to D, A's basis in UTP is reduced to \$3,000,000 by the \$2,000,000 § 1.752-7 liability reduction. Therefore, A recognizes no gain or loss on the sale of the UTP interest to D. D's basis in the UTP interest is \$3,000,000.

(ii) *Assumption of § 1.752-7 liability by LTP from UTP.* In 2008, at a time when the estimated amount of the § 1.752-7 liability has increased to \$3,500,000, UTP contributes Property 1 and Property 2, subject to the § 1.752-7 liability, to LTP in exchange for a 50% interest in LTP. At the time of the contribution, Property 1 still has a value and basis of \$5,000,000 and Property 2 still has a value and basis of \$9,000,000. UTP's basis in LTP under section 722 is \$14,000,000. Under paragraph (i)(4) of this section, UTP must reduce its basis in LTP by the \$2,000,000 remaining built-in loss associated with the § 1.752-7 liability (as of the time of the sale of the UTP interest by A). The partners in UTP are not required to reduce their bases in UTP by this amount.

(iii) *Sale by UTP of LTP interest.* In 2010, UTP sells its interest in LTP to E for \$10,500,000. At the time of the sale, Property 1 still has a value and basis of \$5,000,000, Property 2 still has a value and basis of \$9,000,000, and the remaining built-in loss associated with the § 1.752-7 liability is still \$3,500,000. Under paragraph (e) of this section, immediately before the sale, UTP must reduce its basis in the LTP interest by the § 1.752-7 liability reduction. Under paragraph (a)(4) of this section, the remaining built-in loss associated with the § 1.752-7 liability is \$1,500,000 (remaining built-in loss associated with the § 1.752-7 liability, \$3,500,000, reduced by the amount of the § 1.752-7 liability taken into account under paragraph (i)(4) of this section, \$2,000,000). The difference between the basis of the LTP interest held by UTP (\$12,000,000) and the adjusted value of that interest (\$10,500,000) is also \$1,500,000. Therefore, the § 1.752-7 liability reduction is \$1,500,000 and UTP's basis in the LTP interest must be reduced to \$10,500,000. In addition, UTP's partners must reduce their bases in their UTP interests by their proportionate shares of the § 1.752-7 liability reduction. Thus, the basis of each of B's and D's interest in UTP must be reduced by \$375,000 and the basis of C's interest in UTP must be reduced by \$750,000. In 2011, D sells the UTP interest to F.

(iv) *Economic performance of § 1.752-7 liability by LTP.* In 2012, LTP pays \$3,500,000 to satisfy the § 1.752-7 liability. Under paragraphs (e) and (i)(4) of this section, LTP is not entitled to any deduction with respect to the § 1.752-7 liability. Under paragraph (i)(3) of this section, UTP also is not entitled to any deduction with respect to the § 1.752-7 liability. If LTP notifies A, B, C and D of the economic performance of the § 1.752-7 liability, then A is entitled to a deduction in 2012 of \$2,000,000, B and D are each entitled to deductions in 2012 of

\$375,000, and C is entitled to a deduction in 2012 of \$750,000.

(j) *Effective date—(1) In general.* This section applies to § 1.752-7 liability transfers occurring on or after June 24, 2003.

(2) *Election to apply this section to assumptions of liabilities occurring after October 18, 1999 and before June 24, 2003—(i) In general.* A partnership may elect to apply this section to assumptions of liabilities (including § 1.752-7 liabilities) occurring after October 18, 1999, and before June 24, 2003. Such an election is binding on the partnership and all of its partners. A partnership making such an election must apply all of the provisions of these proposed regulations (other than § 1.752-6).

(ii) *Manner of making election.* A partnership makes an election under this paragraph (j)(2) by attaching the following statement to its timely filed return: “[Insert name and employer identification number of electing partnership] elects under § 1.752-7 of the Income Tax Regulations to be subject to the rules of § 1.358-7, 1.752-7, § 1.704-1(b)(2)(iv)(b), 1.704-2(b)(3), 1.705-1(a)(7), and 1.752-1 with respect to all liabilities (including § 1.752-7 liabilities) assumed by the partnership after October 18, 1999 and before June 24, 2003. In the statement, the partnership must list, with respect to each liability (including each § 1.752-7 liability) assumed by the partnership after October 18, 1999 and before June 24, 2003—

(A) The name, address, and taxpayer identification number of the partner from whom the liability was assumed;

(B) The date on which the liability was assumed by the partnership;

(C) The amount of the liability as of the time of its assumption; and

(D) A description of the liability.

(iii) *Filing of amended returns.* An election under this paragraph (j)(2) will be valid only if the partnership and its partners promptly amend any returns for open taxable years that would be affected by the election.

(iv) *Time for making election.* An election under this paragraph (j)(2) must be filed with the first Federal income tax return filed by the partnership on or after September 24, 2003.

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