



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9963]

RIN 1545-BN94

Streamlining the Section 754 Election Statement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for making a valid election to adjust the basis of partnership property in the case of a distribution of property by the partnership or a transfer of an interest in the partnership. These regulations affect partnerships and their partners by removing a regulatory burden in making an election to adjust the basis of partnership property.

DATES: Effective date: These regulations are effective on August 5, 2022.

Applicability date: For dates of applicability, see §1.754-1(d).

FOR FURTHER INFORMATION CONTACT: Charles D. Wien, at (202) 317-5279 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 754 of the Internal Revenue Code (Code). Section 754 provides that if a partnership files an election (section 754 election), in accordance with regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), the basis of partnership property shall be adjusted, in the case of a distribution of property, in the manner provided in section 734 and, in the case of a transfer of a partnership

interest, in the manner provided in section 743. The section 754 election applies with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which the election was filed and all subsequent taxable years. The section 754 election may be revoked by the partnership, subject to such limitations as may be provided by regulations prescribed by the Secretary.

Section 1.754-1(b) prescribes the requirements for making the section 754 election. Generally, a partnership makes the section 754 election in a written statement (section 754 election statement) filed with the partnership return (whether filed electronically or on paper) for the taxable year during which the distribution or transfer occurs. For the section 754 election to be valid, the return must be filed not later than the time prescribed for filing the return for such taxable year, including extensions. Under §1.754-1(b) of the existing regulations, one of the partners must sign the section 754 election statement.

On October 12, 2017, the Department of the Treasury (Treasury Department) and the IRS published a notice of proposed rulemaking (REG-116256-17) in the **Federal Register** (82 FR 47408) to remove the signature requirement from §1.754-1(b). The IRS did not receive any substantive written public comments in response to the notice of proposed rulemaking. No public hearing was requested or held. Therefore, the proposed regulations are adopted by this Treasury decision without change.

Special Analyses

I. Regulatory Planning and Review

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax

regulations.

II. Regulatory Flexibility Act

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that these regulations reduce the information currently required to be collected in making an election to adjust the basis of partnership property and thereby will reduce burden on small entities.

Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132 Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding

requirements of section 6 of the Executive Order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. The information collection described in this final rule has been assigned control number 1545-0123.

Drafting Information

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

List of Subjects in 26 CFR part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Par. 1. The authority citation for part 1 is amended by adding an entry for §1.754-1 in numerical order to read as follows:

* * * * *

Section 1.754-1 also issued under 26 U.S.C. 754.

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Par. 2. Section 1.754-1 is amended by revising the fourth sentence of paragraph (b)(1) and adding paragraph (d) to read as follows:

§1.754-1 Time and manner of making election to adjust basis of partnership property.

* * * * *

(b) * * *

(1) * * * The statement required by this paragraph (b)(1) must set forth the name and address of the partnership making the election and contain a declaration that the partnership elects under section 754 to apply the provisions of section 734(b) and section 743(b). * * *

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(d) *Applicability date.* The fourth sentence of paragraph (b)(1) of this section applies to taxable years ending on or after **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Taxpayers may, however, apply the fourth sentence of paragraph (b)(1) of this section to taxable years ending before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Approved: June 7, 2022.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).