

position in one trading day. This initial margin is revised on a daily basis.

NB: The characteristics described in this document were applicable on January 1, 1991, but are subject to modification.

Option Contract on Three-Month Eurodem

Option Type:

- American options.
- Buy options (calls) and sell options (puts).

Type of Operators:

In addition to the usual operators, there are some market-makers who undertake to:

- quote the buy and sell premiums for each open strike price,
- issue upon request up to 50 option contracts for each quoted price.

Underlying Contract: A "3-month Eurodem" future.

Premium:

- The option price, or premium, is expressed as a percentage of the nominal contract value, to three decimal places, by reference to the deposit duration, *i.e.*, 90 days.
- The premium is paid by the option buyer and is collected by the option seller.

Trading Unit: An option bears on one futures contract.

Quotation: Quotation of the premium.

Example: A premium of 0.655% is worth $0.00655 \times 1,000,000 \times 90 / 360 = 1,637.5$ DM.

Minimum Price Movement (Tick): $0.005\% \times 1,000,000 \times 90 / 360 = 12.5$ DM.

Strike Price:

- When a delivery month begins trading, 15 strike prices are initially listed: the strike price that is closest to the price of the underlying contract, the 7 immediately lower strike prices and the 7 immediately higher strike prices.

- The difference between two strike prices is set at 10 basis points.

Example: . . . 91.60/91.70/91.80/ . . .

Expiration Dates:

- The expiration dates correspond to the 4 quarterly delivery months of the 3-month Eurodem futures contract: March, June, September and December.
- Delivery months for options open and close simultaneously with delivery months for the underlying futures contract.

Exercise Procedure:

- If an option is exercised, the option seller must buy from (in the case of a put) or sell to (in the case of a call) the buyer a firm futures contract, at the option strike price

- Options that are "in-the-money" on the option expiration date are automatically exercised.

- Options that are "at-the-money" and "out-of-the-money" on their expiration dates are automatically abandoned.

Trading Procedure: Open outcry from 9:10 a.m. to 3:50 p.m.

No Daily Price Fluctuation Limit

Initial Margin:

MATIF S.A. has the option seller set aside, as initial margin, a sum corresponding to the loss that would result from the most unfavorable change in the liquidation value of the option seller's overall net-position for one trading day. This initial margin is revised daily.

NB: The characteristics described in this document are those applying on June 1, 1990, but they are subject to modification.

3-Month Pibor Traded Option Contract

Option Type:

- American options.
- Buy options (calls) and sell options (puts).

Type of Operators:

In addition to the usual operators, there are some market-makers who undertake to:

- Quote the buy and sell premiums for each open strike price,
- Issue upon request up to 20 option contracts for each quoted price.

Underlying Contract: A "3-month PIBOR" future.

Premium:

- The option price, or premium, is expressed as a percentage of the nominal contract value, to three decimal places, with reference to the deposit duration, *i.e.*, 90 days.
- The premium is paid by the option buyer and is collected by the option seller.

Trading Unit: An option bears on one futures contract.

Quotation: Premium quotation.

Example: a premium of 0.200% is worth $0.002\% \times 5,000,000 \times 90 / 360 = 2,500$ FRF

Minimum Price Movement (Tick):

$0.005\% \times 5,000,000 \times 90 / 360 = 62.50$ FRF

Strike Price:

- When delivery month begins trading, 15 strike prices are initially listed: the strike price that is closest to the price of the underlying contract, as well as the 7 immediately lower prices and the 7 immediately higher.
- The difference between two strike prices is 10 basis points.

Example: . . . 92.00/92.10/92.20 . . .

Expiration Dates:

- The expiration dates of the options correspond to the four quarterly delivery months of the 3-month PIBOR futures contract: March, June, September and December.

- The opening and the closing of a delivery month for PIBOR options are simultaneous with those of the underlying futures contract.

Exercise Procedure:

- If an option is exercised, the option seller must buy from (in the case of a put) or sell to (in the case of a call) the buyer a firm futures contract at the option strike price.

- Options that are "in-the-money" on the option expiration date are automatically exercised.

- Options that are "at-the-money" and "out-of-the-money" on their expiration dates are automatically abandoned.

Trading Procedure: Open outcry from 9 am to 3:30 pm.

There is no Daily Price Fluctuation Limit

Initial Margin:

MATIF S.A. calls from the option seller an amount corresponding to the loss that would result from the most unfavorable change in the liquidation value of the seller's overall net position in one trading day. This initial margin is revised daily.

NB: The characteristics described in this document are those applying on June 1, 1990, but are subject to modification.

[PR Doc. 91-30503 Filed 12-20-91; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 3

[Docket No. 91N-0257]

Assignment of Agency Component for Review of Premarket Applications; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 21, 1992, the period for submission of comments on the final rule for assignment of agency component for review of premarket applications (56 FR 58754, November 21, 1991). FDA is taking this action in response to a request to extend the comment period for an additional 60

days to allow more time to comment on this rule.

DATES: Written comments by February 21, 1992.

ADDRESSES: Submit written comments to the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Edwin V. Dutra, Jr., Office of the Commissioner (HF-7), Food and Drug Administration, 5800 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 21, 1991 (56 FR 58754), FDA issued a final rule describing how the agency will determine which component within FDA will have primary jurisdiction for the premarket review and regulation of: (1) A combination drug, device, or biologic product or (2) any drug, device, or biologic product where the center with primary jurisdiction is unclear or in dispute. This rule describes how to identify the agency's assigned review component which will, in most cases, eliminate the need for a sponsor to obtain approval from more than one FDA component for a combination product. The rule became effective on the date of publication, however, comments could be submitted on the rule through December 23, 1991.

On December 10, 1991, the Health Industry Manufacturers Association (HIMA) requested a 60-day extension in which to file written comments. HIMA contended that the extension was necessary because the final rule has widespread ramifications and it will take the additional time to assemble the interested parties and provide meaningful comments. HIMA's membership includes many firms that will be directly affected by the final rule.

FDA has carefully considered the request by HIMA. The agency believes that the additional time for the preparation and submission of meaningful comments from affected firms is in the public interest. The agency also notes that, because this is a final rule already in effect, the additional time for comments will not delay implementation of the Congressionally mandated procedures contained in the rule. Therefore, interested persons may, on or before February 21, 1992, submit to the Dockets Management Branch (address above) written comments on this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this

document. Comments received may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 17, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 91-30542 Filed 12-20-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8380]

RIN 1545-AP76

Treatment of Partnership Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the treatment of partnership liabilities. The final regulations reflect changes to the applicable tax law made by section 79 of the Tax Reform Act of 1984. The regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 28, 1991, and generally apply to liabilities incurred or assumed by a partnership on or after December 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mary A. Berman at (202) 566-3440 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

The estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Introduction

This document adds new regulation §§ 1.752-0 through 1.752-5 to the Income Tax Regulations (26 CFR part 1) under section 752 of the Internal Revenue Code of 1986 and removes existing §§ 1.752-0T through 1.752-4T.

Background

Proposed and temporary regulations under section 752 were published on December 30, 1988, and amended on November 21, 1989, and July 26, 1991, ("temporary regulations"). This document removes the temporary regulations effective December 27, 1991. On July 26, 1991, the Internal Revenue Service published proposed regulations simplifying the temporary regulations and addressing several issues raised by commentators with respect to the temporary regulations. Written comments were received and a public hearing was held on September 17, 1991.

Explanation of Provisions

I. Sharing Recourse Liabilities

The final regulations provide that a partnership liability is a recourse liability to the extent that any partner bears the economic risk of loss for that liability, and a partner's share of any recourse liability of the partnership equals the portion, if any, of the economic risk of loss for the liability that is borne by the partner. The final regulations also provide that a partner bears the economic risk of loss for partnership liability to the extent that the partner or related person would be obligated to make a contribution or payment with respect to a partnership liability (and would not be entitled to be reimbursed for the contribution or payment by another partner, a person related to another partner, or the partnership) if the partnership constructively liquidates. In a constructive liquidation the following events are deemed to occur: (A) All of the partnership's liabilities become due and payable in full, (B) with the exception of property contributed to secure a partnership liability, all of the partnership's assets (including money) become worthless, (C) the partnership

disposes of all of its assets in a fully taxable transaction for no consideration (other than relief from certain liabilities), (D) the partnership allocates its items of income, gain, loss, deduction, and credit for the year among the partners, and (E) the partnership completely liquidates. The constructive liquidation approach is used to determine who bears the economic risk of loss for a partnership liability taking into account the manner in which the partners have agreed to share economic losses and taking into account all arrangements among the partners, related persons, and the partnership.

II. Sharing Nonrecourse Liabilities

The final regulations provide that, if no partner bears the economic risk of loss for a partnership liability, the liability is a nonrecourse liability of the partnership. The partners generally share nonrecourse liabilities in accordance with their interests in partnership profits. However, the final regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain (within the meaning of section 704(b)) and any gain that would be allocated to the partners under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration.

III. Modifications To Proposed Regulations

After full consideration of the comments and the statements made at the public hearing, the following actions were taken with respect to the proposed regulations issued on July 26, 1991:

A. Guarantee of Interest Rule

Section 1.752-2(e) of the proposed and final regulations contains a guarantee of interest rule generally providing that if one or more partners guarantee the payment of more than 25 percent of the total interest that will accrue on an otherwise nonrecourse partnership liability during its term, the loan is deemed to be recourse to those partners to the extent of the present value of the guaranteed future interest payments. To the extent that the guarantee of interest is subject to a contingency, the principles of § 1.752-2(b)(4) apply.

The final regulations added a de minimis exception to the guarantee of interest rule that generally parallels the

de minimis exception to the rule for a guarantee of a nonrecourse loan by a partner or related person.

B. Economic Risk of Loss Analysis

Section 1.752-2(b)(2) of the proposed regulations provides that, for purposes of the constructive liquidation analysis, gain or loss on the deemed disposition of the partnership's assets is computed as follows: (1) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis in those assets; and (2) a loss is recognized equal to the remaining tax basis of all of the partnership's assets not taken into account in (1). The final regulations clarify that the use of book value rather than tax basis for purposes of the constructive liquidation analysis is appropriate if tax basis and book value differ by reason of adjustments made under section 704(c) and the section 704(b) regulations.

C. Pledged Assets

Section 1.752-2(h)(1) of the proposed regulations provides that a partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any of the partner's separate property (other than an interest in the partnership) that is pledged as security for the partnership liability. This provision has been clarified in the final regulations as applying to a related person's separate property that is pledged as security, as well as that of a partner.

Section 1.752-2(h)(2) of the proposed and final regulations provides that a partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of securing a partnership liability. The rule governing when property is contributed solely for the purpose of securing a partnership liability is modified in the final regulations. The purpose of the modification is to provide some flexibility in applying the rule in situations where allocations are mandated by the provisions of section 704 and the regulations thereunder.

D. Partner's Share of Nonrecourse Liabilities

The proposed and final regulations require that the nonrecourse liabilities of a partnership be allocated among the partners first to reflect the partners' shares of any partnership minimum gain,

then to reflect any gain that would be allocated to the partners under section 704(c), and finally in accordance with the partners' interests in partnership profits. The partnership agreement may specify the partners' interests in partnership profits provided the interests so specified are reasonably consistent with allocations (which have substantial economic effect under the section 704(b) regulations) of some significant item of partnership income or gain. Alternatively, nonrecourse liabilities in excess of those allocated to reflect partnership minimum gain and section 704(c) gain ("excess nonrecourse liabilities") may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. The final regulations provide that excess nonrecourse liabilities need not be allocated under the same method each year.

E. De Minimis Rules

Section 1.752-2(d) of the proposed and final regulations provides de minimis exceptions to the general economic risk of loss analysis in certain situations when a partner is the lender or guarantor. One of the requirements of the de minimis rules in the proposed regulations was that a partner maintain a 10 percent or less interest in each item of partnership income, gain, loss, deduction, and credit for any taxable year of the partnership. The final regulations clarify that the de minimis rules apply only as long as the partner maintains a 10 percent or less interest in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership.

Some commentators suggested that the 10 percent requirement of the de minimis rule be eliminated. After full consideration of the comments, the requirement has not been eliminated. The legislative history of section 752 indicates that regulations under this section should apportion partnership liabilities based on the manner in which the partners, and persons related to the partners, share the economic risk of loss for the liabilities (other than bona fide nonrecourse liabilities). H.R. Rep. No. 861, 98th Cong., 2d Sess. 869 (1984). The de minimis rule is a narrow exception to the general risk of loss analysis, applying only when a partner who is in the business of lending money and whose relationship to the partnership is primarily that of a lender also owns a small equity interest in the partnership. Because it is limited to these narrow

circumstances, the exception provided by the de minimis rule does not distort the economic risk of loss analysis.

F. Effective Dates

The final regulations are effective for liabilities incurred or assumed by the partnership on or after December 28, 1991. The final regulations provide a partnership with an election to apply the regulations to all of its liabilities to which the provisions of §§ 1.752-1 through 1.752-4 do not otherwise apply as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991. Several commentators have suggested that there is some confusion regarding the treatment of certain situations under the effective date rules of the temporary and final regulations. The following addresses the comments received and is not intended to be a complete restatement of the effective date provisions.

First, regulations under section 752 are generally effective based on the date liabilities are incurred. As a result, a partnership with liabilities incurred in different periods may allocate basis to its partners under different sets of regulations: (1) § 1.751-1 (TD 6175 and TD 6500) (the "old" regulations); (2) § 1.752-0T to § 1.752-4T (TD 8237, TD 8274, and TD 8355) (the "temporary" regulations); and (3) the final regulations contained in this document.

Second, if a grandfathered partnership liability is materially modified, it loses its grandfathering and becomes subject to a different set of regulations, depending on when the material modification occurs. Third, a nonrecourse liability incurred or assumed by a partnership prior to March 1, 1984, is not governed by the temporary or final regulations unless an election has been made to apply the temporary or final regulations to the liability or unless a material modification of the liability has occurred. If a liability incurred or assumed by the partnership prior to March 1, 1984, is guaranteed by a partner after March 1, 1984, the liability is not governed by the temporary or final regulations. Similarly, if a third-party nonrecourse liability incurred or assumed by a partnership prior to January 30, 1989, is guaranteed by a related person after January 30, 1989, and again assuming no election is made to apply the temporary or final regulations to the liability, the liability is not governed by the temporary or final regulations. In addition, the subsequent guarantee by a partner of a liability incurred or assumed by the partnership prior to March 1, 1984, or the subsequent

guarantee by a related person of a liability incurred or assumed by the partnership prior to January 30, 1989, is not considered a material modification of the liability for purposes of applying the regulations under section 752.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Small Business Administration for comment on the impact of the rules on small business.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. Sections 1.752-0T through 1.752-4T are removed.

Par. 3. Sections 1.752-0 through 1.752-5 are added to read as follows:

§ 1.752-0 Table of Contents.

This section lists the captions that appear in §§ 1.752-1 through 1.752-5.

§ 1.752-1 Treatment of partnership liabilities.

- (a) Definitions.
 - (1) Recourse liability defined.
 - (2) Nonrecourse liability defined.
 - (3) Related person.
- (b) Increase in partner's share of liabilities.
- (c) Decrease in partner's share of liabilities.
- (d) Assumption of liability.
- (e) Property subject to a liability.
- (f) Netting of increases and decreases in liabilities resulting from same transaction.
- (g) Example.
- (h) Sale or exchange of partnership interest.
- (i) Bifurcation of partnership liabilities.

§ 1.752-2 Partner's share of recourse liabilities.

- (a) In general.
- (b) Obligation to make a payment.
 - (1) In general.
 - (2) Treatment upon deemed disposition.
 - (3) Obligations recognized.
 - (4) Contingent obligations.
 - (5) Reimbursement rights.
 - (6) Deemed satisfaction or obligation.
- (c) Partner or related person as lender.
 - (1) In general.
 - (2) Wrapped debt.
 - (d) De minimis exceptions.
 - (1) Partner as lender.
 - (2) Partner as guarantor.
 - (e) Special rule for nonrecourse liability with interest guaranteed by a partner.
 - (1) In general.
 - (2) Computation of present value.
 - (3) Safe harbor.
 - (4) De minimis exception.
 - (f) Examples.
 - (g) Time-value-of-money considerations.
 - (1) In general.
 - (2) Valuation of an obligation.
 - (3) Satisfaction of obligation with partner's promissory note.
 - (4) Example.
 - (h) Partner providing property as security for partnership liability.
 - (1) Direct pledge.
 - (2) Indirect pledge.
 - (3) Valuation.
 - (4) Partner's promissory note.
 - (i) Treatment of recourse liabilities in tiered partnerships.
 - (j) Anti-abuse rules.
 - (1) In general.
 - (2) Arrangements tantamount to a guarantee.
 - (3) Plan to circumvent or avoid the regulations.
 - (4) Examples.

§ 1.752-3 Partner's share of nonrecourse liabilities.

- (a) In general.
- (b) Examples.

§ 1.752-4 Special rules.

- (a) Tiered partnerships.
- (b) Related person definition.
 - (1) In general.
 - (2) Person related to more than one partner.
 - (i) In general.
 - (ii) Natural persons.
 - (iii) Related partner exception.
 - (iv) Special rule where entity structured to avoid related person status.
 - (A) In general.
 - (B) Ownership interest.
 - (C) Example.
 - (c) Limitation.
 - (d) Time of determination.

§ 1.752-5 Effective dates and transition rules.

- (a) In general.
- (b) Election.
 - (1) In general.
 - (2) Time and manner of election.
 - (c) Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.

§ 1.752-1 Treatment of Partnership Liabilities.

(a) *Definitions.* For purposes of section 752, the following definitions apply:

(1) *Recourse liability defined.* A partnership liability is a recourse liability to the extent that any partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(2) *Nonrecourse liability defined.* A partnership liability is a nonrecourse liability to the extent that no partner or related person bears the economic risk of loss for that liability under § 1.752-2.

(3) *Related person.* Related person means a person having a relationship to a partner that is described in § 1.752-4(b).

(b) *Increase in partner's share of liabilities.* Any increase in a partner's share of partnership liabilities, or any increase in a partner's individual liabilities by reason of the partner's assumption of partnership liabilities, is treated as a contribution of money by that partner to the partnership.

(c) *Decrease in partner's share of liabilities.* Any decrease in a partner's share of partnership liabilities, or any decrease in a partner's individual liabilities by reason of the partnership's assumption of the individual liabilities of the partner, is treated as a distribution of money by the partnership to that partner.

(d) *Assumption of liability.* Except as otherwise provided in paragraph (e) of this section, a person is considered to assume a liability only to the extent that:

(1) The assuming person is personally obligated to pay the liability; and

(2) If a partner or related person assumes a partnership liability, the person to whom the liability is owed knows of the assumption and can directly enforce the partner's or related person's obligation for the liability, and no other partner or person that is a related person to another partner would bear the economic risk of loss for the liability immediately after the assumption.

(e) *Property subject to a liability.* If property is contributed by a partner to the partnership or distributed by the partnership to a partner and the property is subject to a liability of the transferor, the transferee is treated as having assumed the liability, to the extent that the amount of the liability does not exceed the fair market value of the property at the time of the contribution or distribution.

(f) *Netting of increases and decreases in liabilities resulting from same transaction.* If, as a result of a single transaction, a partner incurs both an

increase in the partner's share of the partnership liabilities (or the partner's individual liabilities) and a decrease in the partner's share of the partnership liabilities (or the partner's individual liabilities), only the net decrease is treated as a distribution from the partnership and only the net increase is treated as a contribution of money to the partnership. Generally, the contribution to or distribution from a partnership of property subject to a liability or the termination of the partnership under section 708(b) will require that increases and decreases in liabilities associated with the transaction be netted to determine if a partner will be deemed to have made a contribution or received a distribution as a result of the transaction.

(g) *Example.* The following example illustrates the principles of paragraphs (b), (c), (e), and (f) of this section.

Example. Property contributed subject to a liability; netting of increase and decrease in partner's share of liability. B contributes property with an adjusted basis of \$1,000 to a general partnership in exchange for a one-third interest in the partnership. At the time of the contribution, the partnership does not have any liabilities outstanding and the property is subject to a recourse debt of \$150 and has a fair market value in excess of \$150. After the contribution, B remains personally liable to the creditor and none of the other partners bears any of the economic risk of loss for the liability under state law or otherwise. Under paragraph (e) of this section, the partnership is treated as having assumed the \$150 liability. As a result, B's individual liabilities decrease by \$150. At the same time, however, B's share of liabilities of the partnership increases by \$150. Only the net increase or decrease in B's share of the liabilities of the partnership and B's individual liabilities is taken into account in applying section 752. Because there is no net change, B is not treated as having contributed money to the partnership or as having received a distribution of money from the partnership under paragraph (b) or (c) of this section. Therefore B's basis for B's partnership interest is \$1,000 (B's basis for the contributed property).

(h) *Sale or exchange of a partnership interest.* If a partnership interest is sold or exchanged, the reduction in the transferor partner's share of partnership liabilities is treated as an amount realized under section 1001 and the regulations thereunder. For example, if a partner sells an interest in a partnership for \$750 cash and transfers to the purchaser the partner's share of partnership liabilities in the amount of \$250, the seller realizes \$1,000 on the transaction.

(i) *Bifurcation of partnership liabilities.* If one or more partners bears the economic risk of loss as to part, but not all, of a partnership liability

represented by a single contractual obligation, that liability is treated as two or more separate liabilities for purposes of section 752. The portion of the liability as to which one or more partners bear the economic risk of loss is a recourse liability and the remainder of the liability, if any, is a nonrecourse liability.

§ 1.752-2 Partner's share of resource liabilities.

(a) *In general.* A partner's share of a recourse partnership liability equals the portion of that liability, if any, for which the partner or related person bears the economic risk of loss. The determination of the extent to which a partner bears the economic risk of loss for a partnership liability is made under the rules in paragraphs (b) through (j) of this section.

(b) *Obligation to make a payment.* (1) *In general.* Except as otherwise provided in this section, a partner bears the economic risk of loss for a partnership liability to the extent that, if the partnership constructively liquidated, the partner or related person would be obligated to make a payment to any person (or a contribution to the partnership) because that liability becomes due and payable and the partner or related person would not be entitled to reimbursement from another partner or person that is a related person to another partner. Upon a constructive liquidation, all of the following events are deemed to occur simultaneously:

(i) All of the partnership's liabilities become payable in full;

(ii) With the exception of property contributed to secure a partnership liability (see § 1.752-2(h)(2)), all of the partnership's assets, including cash, have a value of zero;

(iii) The partnership disposes of all of its property in a fully taxable transaction for no consideration (except relief from liabilities for which the creditors' right to repayment is limited solely to one or more assets of the partnership);

(iv) All items of income, gain, loss, or deduction are allocated among the partners; and

(v) The partnership liquidates.

(2) *Treatment upon deemed disposition.* For purposes of paragraph (b)(1) of this section, gain or loss on the deemed disposition of the partnership's assets is computed in accordance with the following:

(i) If the creditor's right to repayment of a partnership liability is limited solely to one or more assets of the partnership, gain or loss is recognized in an amount

equal to the difference between the amount of the liability that is extinguished by the deemed disposition and the tax basis (or book value to the extent section 704(c) or § 1.701-1(b)(4)(i) applies) in those assets.

(ii) A loss is recognized equal to the remaining tax basis (or book value to the extent section 704(c) or § 1.704-1(b)(4)(i) applies) of all the partnership's assets not taken into account in paragraph (b)(2)(i) of this section.

(3) *Obligations recognized.* The determination of the extent to which a partner or related person has an obligation to make a payment under paragraph (b)(1) of this section is based on the facts and circumstances at the time of the determination. All statutory and contractual obligations relating to the partnership liability are taken into account for purposes of applying this section, including:

(i) Contractual obligations outside the partnership agreement such as guarantees, indemnifications, reimbursement agreements, and other obligations running directly to creditors or to other partners, or to the partnership;

(ii) Obligations to the partnership that are imposed by the partnership agreement, including the obligation to make a capital contribution and to restore a deficit capital account upon liquidation of the partnership; and

(iii) Payment obligations (whether in the form of direct remittances to another partner or a contribution to the partnership) imposed by state law including the governing state partnership statute.

To the extent that the obligation of a partner to make a payment with respect to a partnership liability is not recognized under this paragraph (b)(3), paragraph (b) of this section is applied as if the obligation did not exist.

(4) *Contingent obligations.* A payment obligation is disregarded if, taking into account all the facts and circumstances, the obligation is subject to contingencies that make it unlikely that the obligation will ever be discharged. If a payment obligation would arise at a future time after the occurrence of an event that is not determinable with reasonable certainty, the obligation is ignored until the event occurs.

(5) *Reimbursement rights.* A partner's or related person's obligation to make a payment with respect to a partnership liability is reduced to the extent that the partner or related person is entitled to reimbursement from another partner or a person who is a related person to another partner.

(5) *Deemed satisfaction of obligation.* 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. See § 1.752-2(j).

(c) *Partner or related person as lender—(1) In general.* A partner bears the economic risk of loss for a partnership liability to the extent that the partner or a related person makes (or acquires an interest in) a nonrecourse loan to the partnership and the economic risk of loss for the liability is not borne by another partner.

(2) *Wrapped debt.* If a partnership liability is owed to a partner or related person and that liability includes (*i.e.*, is "wrapped" around) a nonrecourse obligation encumbering partnership property that is owed to another person, the partnership liability will be treated as two separate liabilities. The portion of the partnership liability corresponding to the wrapped debt is treated as a liability owed to another person.

(d) *De minimis exceptions—(1) Partner as lender.* The general rule contained in paragraph (c)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent or less, makes a loan to the partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed).

(2) *Partner as guarantor.* The general rule contained in paragraph (b)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent or less, guarantees a loan that would otherwise be a nonrecourse loan of the partnership and which constitute qualified nonrecourse financing within the meaning of section 465(b)(6) (without regard to the type of activity financed) if the guarantor had made the loan to the partnership.

(e) *Special rule for nonrecourse liability with interest guaranteed by a partner—(1) In general.* For purposes of this section, if one or more partners or related persons have guaranteed the payment of more than 25 percent of the total interest that will accrue on a partnership nonrecourse liability over its remaining term, and it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if the partnership fails to do so, then the liability is treated as two separate partnership liabilities. If this rule applies, the partner or related person that has guaranteed the payment of interest is treated as bearing the economic risk of loss for the partnership liability to the extent of the present value of the guaranteed future interest payments. The remainder of the stated principal amount of the partnership liability constitutes a nonrecourse liability. Generally, in applying this rule, it is reasonable to expect that the guarantor will be required to pay substantially all of the guaranteed future interest if, upon a default in payment by the partnership, the lender can enforce the interest guaranty without foreclosing on the property and thereby extinguishing the underlying debt. The guarantee of interest rule continues to apply even after the point at which the amount of guaranteed interest that will accrue is less than 25% of the total interest that will accrue on the liability.

(2) *Computation of present value.* The present value of the guaranteed future interest payments is computed using a discount rate equal to either the interest rate stated in the loan documents, or if interest is imputed under either section 483 or section 1274, the applicable federal rate, compounded semi-annually. The computation takes into account any payment of interest that the partner or related person may be required to make only to the extent that the interest will accrue economically (determined in accordance with section 446 and the regulations thereunder) after the date of the interest guarantee. If the loan document contains a variable rate of interest that is an interest rate based on current values of an objective interest index, the present value is computed on the assumption that the interest determined under the objective interest index on the date of the computation will remain constant over the term of the loan. The term "objective interest index" has the meaning given to it in section 1275 and the regulations thereunder (relating to variable rate debt instruments). Examples of an objective interest index include the

prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), and the applicable federal rate under section 1274(d).

(3) *Safe harbor.* The general rule contained in paragraph (e)(1) of this section does not apply to a partnership nonrecourse liability if the guarantee of interest by the partner or related person is for a period not in excess of the lesser of five years or one-third of the term of the liability.

(4) *De minimis exception.* The general rule contained in paragraph (e)(1) of this section does not apply if a partner or related person whose interest (directly or indirectly through one or more partnerships including the interest of any related person) in each item of partnership income, gain, loss, deduction, or credit for every taxable year that the partner is a partner in the partnership is 10 percent of less, guarantees the interest on a loan to that partnership which constitutes qualified nonrecourse financing within the meaning of section 465(b)(6) (determined without regard to the type of activity financed). An allocation of interest to the extent paid by the guarantor is not treated as a partnership item of deduction or loss subject to the 10 percent or less rule.

(f) *Examples.* The following examples illustrate the principles of paragraphs (a) through (e) of this section.

Example 1. Determining when a partner bears the economic risk of loss. A and B form a general partnership with each contributing \$100 in cash. The partnership purchases an office building on leased land for \$1,000 from an unrelated seller, paying \$200 in cash and executing a note to the seller for the balance of \$800. The note is a general obligation of the partnership, i.e., no partner has been relieved from personal liability. The partnership agreement provides that all items are allocated equally except that tax losses are specially allocated 90% to A and 10% to B and that capital accounts will be maintained in accordance with the regulations under section 704(b), including a deficit capital account restoration obligation on liquidation. In a constructive liquidation, the \$800 liability becomes due and payable. All of the partnership's assets, including the building, are deemed to be worthless. The building is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	\$100	\$100
Loss on hypothetical sale	(900)	(100)
	(\$800)	\$0

Other than the partners' obligation to fund negative capital accounts on liquidation,

there are no other contractual or statutory payment obligations existing between the partners, the partnership and the lender. Therefore, \$800 of the partnership liability is classified as a recourse liability because one or more partners bears the economic risk of loss for non-payment. B has no share of the \$800 liability since the constructive liquidation produces no payment obligation for B. A's share of the partnership liability is \$800 because A would have an obligation in that amount to make a contribution to the partnership.

Example 2. Recourse liability; deficit restoration obligation. C and D each contribute \$500 in cash to the capital of a new general partnership, CD. CD purchases property from an unrelated seller for \$1,000 in cash and a \$9,000 mortgage note. The note is a general obligation of the partnership, i.e., no partner has been relieved from personal liability. The partnership agreement provides that profits and losses are to be divided 40% to C and 60% to D. C and D are required to make up any deficit in their capital accounts. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	C	D
Initial contribution	\$500	\$500
Loss on hypothetical sale	(4,000)	(6,000)
	(\$3,500)	(\$5,500)

C's capital account reflects a deficit that C would have to make up to \$3,500 and D's Capital account reflects a deficit that D would have to make up of \$5,500. Therefore, the \$9,000 mortgage note is a recourse liability because one or more partners bear the economic risk of loss for the liability. C's share of the recourse liability is \$3,500 and D's share is \$5,500.

Example 3. Guarantee by limited partner; partner deemed to satisfy obligation. E and F form a limited partnership. E, the general partner, contributes \$2,000 and F the limited partner, contributes \$8,000 in cash to the partnership. The partnership agreement allocates losses 20% to E and 80% to F until F's capital account is reduced to zero, after which all losses are allocated to E. The partnership purchases depreciable property for \$25,000 using its \$10,000 cash and a \$15,000 recourse loan from a bank. F guarantee payment of the \$15,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. In a constructive liquidation, the \$15,000 liability becomes due and payable. All of the partnership's assets, including the depreciable property, are deemed to be worthless. The depreciable property is deemed sold for a value of zero. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	E	F
Initial contribution	\$2,000	\$8,000
Loss on hypothetical sale	(17,000)	(8,000)
	(\$15,000)	\$0

E, as a general partner, would be obligated by operation of law to make a net contribution to the partnership of \$15,000. Because E is assumed to satisfy that obligation, it is also assumed that F would not have to satisfy F's guarantee. The \$15,000 mortgage is treated as a recourse liability because one or more partners bear the economic risk of loss. E's share of the liability is \$15,000, and F's share is zero. This would be so even if E's net worth at the time of the determination is less than \$15,000, unless the facts and circumstances indicate a plan to circumvent or avoid E's obligation to contribute to the partnership.

Example 4. Partner guarantee with right of subrogation. G, a limited partner in the GH partnership, guarantees a portion of a partnership liability. The liability is a general obligation of the partnership, i.e., no partner has been relieved from personal liability. If under state law G is subrogated to the rights of the lender, G would have the right to recover the amount G paid to the recourse lender from the general partner. Therefore, G does not bear the economic risk of loss for the partnership liability.

Example 5. Bifurcation of partnership liability; guarantee of part of nonrecourse liability. A partnership borrows \$10,000, secured by a mortgage on real property. The mortgage note contains an exoneration clause which provides that in the event of default, the holder's only remedy is to foreclose on the property. The holder may not look to any other partnership asset or to any partner to pay the liability. However, to induce the lender to make the loan, a partner guarantees payment of \$200 of the loan principal. The exoneration clause does not apply to the partner's guarantee. If the partner paid pursuant to the guarantee, the partner would be subrogated to the rights of the lender with respect to \$200 of the mortgage debt, but the partner is not otherwise entitled to reimbursement from the partnership or any partner. For purposes of section 752, \$200 of the \$10,000 mortgage liability is treated as a recourse liability of the partnership and \$9,800 is treated as a nonrecourse liability of the partnership. The partner's share of the recourse liability of the partnership is \$200.

Example 6. Wrapped debt. I, an individual, purchases real estate from an unrelated seller for \$10,000, paying \$1,000 in cash and giving a \$9,000 purchase mortgage note on which I has no personal liability and as to which the seller can look only to the property for satisfaction. At a time when the property is worth \$15,000, I sells the property to a partnership in which I is a general partner. The partnership pays for the property with a partnership purchase money mortgage note of \$15,000 on which neither the partnership nor any partner (or person related to a partner) has personal liability. The \$15,000 mortgage

note is a wrapped debt that includes the \$9,000 obligation to the original seller. The liability is a recourse liability to the extent of \$8,000 because I is the creditor with respect to the loan and I bears the economic risk of loss for \$8,000. I's share of the recourse liability is \$8,000. The remaining \$9,000 is treated as a partnership nonrecourse liability that is owed to the unrelated seller.

Example 7. Guarantee of interest by partner treated as part recourse and part nonrecourse. On January 1, 1992, a partnership obtains a \$4,000,000 loan secured by a shopping center owned by the partnership. Neither the partnership nor any partner has any personal liability under the loan documents for repayment of the stated principal amount. Interest accrues at a 15 percent annual rate and is payable on December 31 of each year. The principal is payable in a lump sum on December 31, 2006. A partner guarantees payment of 50 percent of each interest payment required by the loan. The guarantee can be enforced without first foreclosing on the property. When the partnership obtains the loan, the present value (discounted at 15 percent, compounded annually) of the future interest payments is \$3,508,422, and of the future principal payment is \$491,578. If tested on that date, the loan would be treated as a partnership liability of \$1,754,211 ($\$3,508,422 \times .5$) for which the guaranteeing partner bears the economic risk of loss and a partnership nonrecourse liability of \$2,245,789 ($\$1,754,211 + \$491,578$).

Example 8. Contingent obligation not recognized. J and K form a general partnership with cash contributions of \$2,500 each. J and K share partnership profits and losses equally. The partnership purchases an apartment building for its \$5,000 of cash and a \$20,000 nonrecourse loan from a commercial bank. The nonrecourse loan is secured by a mortgage on the building. The loan documents provide that the partnership will be liable for the outstanding balance of the loan on a recourse basis to the extent of any decrease in the value of the apartment building resulting from the partnership's failure properly to maintain the property. There are no facts that establish with reasonable certainty the existence of any liability on the part of the partnership (and its partners) for damages resulting from the partnership's failure properly to maintain the building. Therefore, no partner bears the economic risk of loss, and the liability constitutes a nonrecourse liability. Under § 1.752-3, J and K share this nonrecourse liability equally because they share all profits and losses equally.

(g) *Time-value-of-money considerations*—(1) *In general.* The extent to which a partner or related person bears the economic risk of loss is determined by taking into account any delay in the time when a payment or contribution obligation with respect to a partnership liability is to be satisfied. If a payment obligation with respect to a partnership liability is not required to be satisfied within a reasonable time after the liability becomes due and payable,

or if the obligation to make a contribution to the partnership is not required to be satisfied before the later of—

- (i) The end of the year in which the partner's interest is liquidated, or
 - (ii) 90 days after the liquidation,
- the obligation is recognized only to the extent of the value of the obligation.

(2) *Valuation of an obligation.* The value of a payment or contribution obligation that is not required to be satisfied within the time period specified in paragraph (g)(1) of this section equals the entire principal balance of the obligation only if the obligation bears interest equal to or greater than the applicable federal rate under section 1274(d) at the time of valuation, commencing on—

- (i) In the case of a payment obligation, the date that the partnership liability to a creditor or other person to whom the obligation relates becomes due and payable, or

- (ii) In the case of a contribution obligation, the date of the liquidation of the partner's interest in the partnership.

If the obligation does not bear interest at a rate at least equal to the applicable federal rate at the time of valuation, the value of the obligation is discounted to the present value of all payments due from the partner or related person (*i.e.*, the imputed principal amount computed under section 1274(b)). For purposes of making this present value determination, the partnership is deemed to have constructively liquidated as of the date on which the payment obligation is valued and the payment obligation is assumed to be a debt instrument subject to the rules of section 1274 (*i.e.*, the debt instrument is treated as if it were issued for property at the time of the valuation).

(3) *Satisfaction of obligation with partner's promissory note.* An obligation is not satisfied by the transfer to the obligee of a promissory note by a partner or related person unless the note is readily tradeable on an established securities market.

(4) *Example.* The following example illustrates the principle of paragraph (g) of this section.

Example. Value of obligation not required to be satisfied within specified time period. A, the general partner, and B, the limited partner, each contributes \$10,000 to partnership AB. AB purchases property from an unrelated seller for \$20,000 in cash and a \$70,000 recourse purchase money note. The partnership agreement provides that profits and losses are to be divided equally. A and B are required to make up any deficit in their capital accounts. While A is required to restore any deficit balance in A's capital account within 90 days after the date of

liquidation of the partnership, B is not required to restore any deficit for two years following the date of liquidation. The deficit in B's capital account will not bear interest during that two-year period. In a constructive liquidation, all partnership assets are deemed to become worthless and all partnership liabilities become due and payable in full. The partnership is deemed to dispose of all its assets in a fully taxable transaction for no consideration. Capital accounts are adjusted to reflect the loss on the hypothetical disposition, as follows:

	A	B
Initial contribution	\$10,000	\$10,000
Loss on hypothetical sale	(45,000)	(45,000)
	(35,000)	(35,000)

A's and B's capital accounts each reflect deficits of \$35,000. B's obligation to make a contribution pursuant to B's deficit restoration obligation is recognized only to the extent of the fair market value of that obligation at the time of the constructive liquidation because B is not required to satisfy that obligation by the later of the end of the partnership taxable year in which B's interest is liquidated or within 90 days after the date of the liquidation. Because B's obligation does not bear interest, the fair market value is deemed to equal the imputed principal amount under section 1274(b). Under section 1274(b), the imputed principal amount of a debt instrument equals the present value of all payments due under the debt instrument. Assume the applicable federal rate with respect to B's obligation is 10 percent compounded semiannually. Using this discount rate, the present value of the \$35,000 payment that B would be required to make two years after the constructive liquidation to restore the deficit balance in B's capital account equals \$28,795. To the extent that B's deficit restoration obligation is not recognized, it is assumed that B's obligation does not exist. Therefore, A, as the sole general partner, would be obligated by operation of law to contribute an additional \$6,205 of capital to the partnership. Accordingly, under paragraph (g) of this section, B bears the economic risk of loss for \$28,795 and A bears to economic risk of loss for \$41,205 (\$35,000 + \$6,205).

(h) *Partner providing property as security for partnership liability*—(1) *Direct pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any the partner's or related person's separate property (other than a direct or indirect interest in the partnership) that is pledged as security for the partnership liability.

(2) *Indirect pledge.* A partner is considered to bear the economic risk of loss for a partnership liability to the extent of the value of any property that the partner contributes to the partnership solely for the purpose of

securing a partnership liability. Contributed property is not treated as contributed solely for the purpose of securing a partnership liability unless substantially all of the items of income, gain, loss, and deduction attributable to the contributed property are allocated to the contributing partner, and this allocation is generally greater than the partner's share of other significant items of partnership income, gain, loss, or deduction.

(3) *Valuation.* The extent to which a partner bears the economic risk of loss as a result of a direct pledge described in paragraph (h)(1) of this section or an indirect pledge described in paragraph (h)(2) of this section is limited to the fair market value of the property at the time of the pledge or contribution.

(4) *Partner's promissory note.* For purposes of paragraph (h)(2) of this section, a promissory note of the partner or related person that is contributed to the partnership shall not be taken into account unless the note is readily tradeable on an established securities market.

(i) *Treatment of recourse liabilities in tiered partnerships.* If a partnership (the "upper-tier partnership") owns (directly or indirectly through one or more partnerships) an interest in another partnership (the "lower-tier partnership"), the liabilities of the lower-tier partnership are allocated to the upper-tier partnership in an amount equal to the sum of the following—

(1) The amount of the economic risk of loss that the upper-tier partnership bears with respect to the liabilities; and

(2) Any other amount of the liabilities with respect to which partners of the upper-tier partnership bear the economic risk of loss.

(j) *Anti-abuse rules—(1) In general.* An obligation of a partner or related person to make a payment may be disregarded or treated as an obligation of another person for purposes of this section if facts and circumstances indicate that a principal purpose of the arrangement between the parties is to eliminate the partner's economic risk of loss with respect to that obligation or create the appearance of the partner or related person bearing the economic risk of loss when, in fact, the substance of the arrangement is otherwise. Circumstances with respect to which a payment obligation may be disregarded include, but are not limited to, the situations described in paragraphs (j)(2) and (j)(3) of this section.

(2) *Arrangements tantamount to a guarantee.* Irrespective of the form of a contractual obligation, a partner is considered to bear the economic risk of loss with respect to a partnership

liability, or a portion thereof, to the extent that:

(i) The partner or related person undertakes one or more contractual obligations so that the partnership may obtain a loan;

(ii) The contractual obligations of the partner or related person eliminate substantially all the risk to the lender that the partnership will not satisfy its obligations under the loan; and

(iii) One of the principal purposes of using the contractual obligations is to attempt to permit partners (other than those who are directly or indirectly liable for the obligation) to include a portion of the loan in the basis of their partnership interests.

The partners are considered to bear the economic risk of loss for the liability in accordance with their relative economic burdens for the liability pursuant to the contractual obligations. For example, a lease between a partner and a partnership which is not on commercially reasonable terms may be tantamount to a guarantee by the partner of a partnership liability.

(3) *Plan to circumvent or avoid the obligation.* An obligation of a partner to make a payment is not recognized if the facts and circumstances evidence a plan to circumvent or avoid the obligation.

(4) *Example.* The following example illustrates the principle of paragraph (j)(3) of this section.

Example. Plan to circumvent or avoid obligation. A and B form a general partnership. A, a corporation, contributes \$20,000 and B contributes \$80,000 to the partnership. A is obligated to restore any deficit in its partnership capital account. The partnership agreement allocates losses 20% to A and 80% to B until B's capital account is reduced to zero, after which all losses are allocated to A. The partnership purchases depreciable property for \$250,000 using its \$100,000 cash and a \$150,000 recourse loan from a bank. B guarantees payment of the \$150,000 loan to the extent the loan remains unpaid after the bank has exhausted its remedies against the partnership. A is a subsidiary, formed by a parent of a consolidated group, with capital limited to \$20,000 to allow the consolidated group to enjoy the tax losses generated by the property while at the same time limiting its monetary exposure for such losses. These facts, when considered together with B's guarantee, indicate a plan to circumvent or avoid A's obligation to contribute to the partnership. The rules of section 752 must be applied as if A's obligation to contribute did not exist. Accordingly, the \$150,000 liability is a recourse liability that is allocated entirely to B.

§ 1.752-3 Partner's share of nonrecourse liabilities.

(a) *In general.* A partner's share of the nonrecourse liabilities of a partnership

equals the sum of paragraphs (a)(1) through (a)(3) of this section as follows—

(1) The partner's share of partnership minimum gain determined in accordance with the rules of section 704(b) and the regulations thereunder;

(2) The amount of any taxable gain that would be allocated to the partner under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration; and

(3) The partner's share of the excess nonrecourse liabilities (those not allocated under paragraphs (a)(1) and (a)(2) of this section) of the partnership as determined in accordance with the partner's share of partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. The partnership agreement may specify the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the interests so specified are reasonably consistent with allocations (that have substantial economic effect under the section 704(b) regulations) of some other significant item of partnership income or gain. Alternatively, excess nonrecourse liabilities may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Excess nonrecourse liabilities are not required to be allocated under the same method each year.

(b) *Examples.* The following examples illustrate the principles of paragraph (a) of this section.

Example 1. Partner's share of nonrecourse liabilities. The AB partnership purchases depreciable property for a \$1,000 purchase money note that is nonrecourse liability under the rules of this section. Assume that this is the only nonrecourse liability of the partnership, and that no principal payments are due on the purchase money note for a year. The partnership agreement provides that all items of income, gain, loss, and deduction are allocated equally. Immediately after purchasing the depreciable property, the partners share the nonrecourse liability equally because they have equal interests in partnership profits. A and B are each treated as if they contributed \$500 to the partnership to reflect each partner's increase in his or her share of partnership liabilities (from \$0 to \$500). The minimum gain with respect to an

item of partnership property subject to a nonrecourse liability equals the amount of gain that would be recognized if the partnership disposed of the property in full satisfaction of the nonrecourse liability and for no other consideration. Therefore, if the partnership claims a depreciation deduction of \$200 for the depreciable property for the year it acquires that property, partnership minimum gain for the year will increase by \$200 (the excess of the \$1,000 nonrecourse liability over the \$800 adjusted tax basis of the property). See section 704(b) and the regulations thereunder. A and B each have a \$100 share of partnership minimum gain at the end of that year because the depreciation deduction is treated as a nonrecourse deduction. See section 704(b) and the regulation thereunder. Accordingly, at the end of that year, A and B are allocated \$100 each of the nonrecourse liability to match their shares of partnership minimum gain. The remaining \$800 of the nonrecourse liability will be allocated equally between A and B (\$400 each).

Example 2. Excess nonrecourse liabilities allocated consistently with reasonably expected deductions. The facts are the same as in *Example 1* except that the partnership agreement provides that depreciation deductions will be allocated to A. The partners agree to allocate excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Assuming that the allocation of all of the depreciation deductions to A is valid under section 704(b), immediately after purchasing the depreciable property, A's share of the nonrecourse liability is \$1,000. Accordingly, A is treated as if A contributed \$1,000 to the partnership.

§ 1.752-4 Special rules.

(a) *Tiered partnerships.* An upper-tier partnership's share of the liabilities of a lower-tier partnership (other than any liability of the lower-tier partnership that is owed to the upper-tier partnership) is treated as a liability of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

(b) *Related person definition.*—(1) *In general.* A person is related to a partner if the person and the partner bear a relationship to each other that is specified in section 267(b) or 707(b)(1), subject to the following modifications:

(i) Substitute "80 percent or more" for "more than 50 percent" each place it appears in those sections;

(ii) A person's family is determined by excluding brothers and sisters; and

(iii) Disregard sections 267(e)(1) and 267(f)(1)(A).

(2) *Person related to more than one partner.*—(i) *In general.* If, in applying the related person rules in paragraph (b)(1) of this section, a person is related to more than one partner, paragraph (b)(1) of this section is applied by

treating the person as related only to the partner with whom there is the highest percentage of related ownership. If two or more partners have the same percentage of related ownership and no other partner has a greater percentage, the liability is allocated equally among the partners having the equal percentages of related ownership.

(ii) *Natural persons.* For purposes of determining the percentage of related ownership between a person and a partner, natural persons who are related by virtue of being members of the same family are treated as having a percentage relationship of 100 percent with respect to each other.

(iii) *Related partner exception.* Notwithstanding paragraph (b)(1) of this section (which defines related person), persons owning interests directly or indirectly in the same partnership are not treated as related persons for purposes of determining the economic risk of loss borne by each of them for the liabilities of the partnership. This paragraph (iii) does not apply when determining a partner's interest under the de minimis rules in §§ 1.752-2 (d) and (e).

(iv) *Special rule where entity structured to avoid related person status.*—(A) *In general.* If—

(1) A partnership liability is owed to or guaranteed by another entity that is a partnership, an S corporation, a C corporation, or a trust;

(2) A partner or related person owns (directly or indirectly) a 20 percent or more ownership interest in the other entity; and

(3) A principal purpose of having the other entity act as a lender or guarantor of the liability was to avoid the determination that the partner that owns the interest bears the economic risk of loss for federal income tax purposes for all or part of the liability; then the partner is treated as holding the other entity's interest as a creditor or guarantor to the extent of the partner's or related person's ownership interest in the entity.

(B) *Ownership interest.* For purposes of paragraph (b)(2)(iv)(A) of this section, a person's ownership interest in:

(1) A partnership equals the partner's highest percentage interest in any item of partnership loss or deduction for any taxable year;

(2) An S corporation equals the percentage of the outstanding stock in the S corporation owned by the shareholder;

(3) A C corporation equals the percentage of the fair market value of the issued and outstanding stock owned by the shareholder; and

(4) A trust equals the percentage of the actuarial interests owned by the beneficial owner of the trust.

(C) *Example. Entity structured to avoid related person status.* A, B, and C form a general partnership, ABC. A, B, and C are equal partners, each contributing \$1,000 to the partnership. A and B want to loan money to ABC and have the loan treated as nonrecourse for purposes of section 752. A and B form partnership AB to which each contributes \$50,000. A and B share losses equally in partnership AB. Partnership AB loans partnership ABC \$100,000 on a nonrecourse basis secured by the property ABC buys with the loan. Under these facts and circumstances, A and B bear the economic risk of loss with respect to the partnership liability equally based on their percentage interest in losses of partnership AB.

(c) *Limitation.* The amount of an indebtedness is taken into account only once, even though a partner (in addition to the partner's liability for the indebtedness as a partner) may be separately liable therefor in a capacity other than as a partner.

(d) *Time of determination.* A partner's share of partnership liabilities must be determined whenever the determination is necessary in order to determine the tax liability of the partner or any other person. See § 1.705-1(a) for rules regarding when the adjusted basis of a partner's interest in the partnership must be determined.

§ 1.752-5 Effective dates and transition rules.

(a) *In general.* Unless a partnership makes an election under paragraph (b)(1) of this section to apply the provisions of §§ 1.752-1 through 1.752-4 earlier, §§ 1.752-1 through 1.752-4 apply to any liability incurred or assumed by a partnership on or after December 28, 1991, other than a liability incurred or assumed by the partnership pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter. For liabilities incurred or assumed by a partnership prior to December 28, 1991 (or pursuant to a written binding contract in effect prior to December 28, 1991 and at all times thereafter), unless an election to apply these regulations has been made, see §§ 1.752-0T to 1.752-4T, set forth in 26 CFR 1.752-0T through 1.752-4T as contained in 26 CFR edition revised April 1, 1991, (TD 8237, TD 8274, and TD 8355) and § 1.752-1, set forth in 26 CFR 1.752-1 as contained in 26 CFR edition revised April 1, 1983 (TD 8175 and TD 6500).

(b) *Election.*—(1) *In general.* A partnership may elect to apply the provisions of §§ 1.752-1 through 1.752-4

to all of its liabilities to which the provisions of those sections do not otherwise apply as of the beginning of the first taxable year of the partnership ending on or after December 28, 1991.

(2) *Time and manner of election.* An election under this paragraph (b) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and contain a declaration that an election is being made under this paragraph (b).

(c) *Effect of section 708(b)(1)(B) termination on determining date liabilities are incurred or assumed.* For purposes of applying this section, a termination of the partnership under section 708(b)(1)(B) will not cause partnership liabilities incurred or assumed prior to the termination to be treated as incurred or assumed on the date of the termination.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing the citation "1.752-4T . . . 1545-1090" and adding the following citation to read as follows: "1.752-5 . . . 1545-1090."

Fred T. Goldberg, Jr.,
Commissioner of Internal Revenue.

Approved: December 5, 1991.

Kenneth W. Gideon,
Assistant Secretary of the Treasury.
[FR Doc. 91-30596 Filed 12-20-91; 8:45 am]
BILLING CODE 4930-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2603

Freedom of Information Act; Exemption (4)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: On October 30, 1991, the Pension Benefit Guaranty Corporation ("PBGC") published an interim final rule amending its Freedom of Information Act ("FOIA") regulations to include designation and notification procedures for records containing information that, pursuant to exemption (4), the PBGC

may not be required to make available to the public. These supplementary provisions assure that submitters of trade secrets and privileged or confidential business information have an opportunity to explain to the PBGC why the information should not be made available in response to a request under the FOIA. The PBGC invited the public to submit comments on its designation and notification procedures until November 29, 1991, the effective date of the interim final rule. The agency received no comments during this period, and it now is republishing the amendments as a final rule.

EFFECTIVE DATE: December 23, 1991.

FOR FURTHER INFORMATION CONTACT: Judith Neibrief, Attorney, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850, or E. William FitzGerald, PBGC Disclosure Officer, Communication and Public Affairs Department (Code 3800), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8839 (202-778-8859 for TTY and TTD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* As a Government corporation, the PBGC is subject to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, which, among other things, establishes requirements for making agency records available to the public. Part 2603 of the PBGC's regulations (29 CFR part 2603), Examination and Copying of Pension Benefit Guaranty Corporation Records, implements the FOIA and the agency's policy to disseminate information to the public and, insofar as is compatible with the discharge of its responsibilities and consistent with law, to disclose information in its records upon request to members of the public.

These regulations set forth, in § 2603.8, the PBGC's policy of disclosure and, in §§ 2603.15 through 2603.23, restrictions on the disclosure of various records. The restrictions implement paragraphs (1) through (9) of section 552(b), which specify matters to which the FOIA does not apply. (Paragraphs (1) through (9) of section 552(b) are referred to, here and in the regulations, as exemptions (1) through (9), in that order.)

Where requests involve records to which access may be refused under a FOIA exemption and § 2603.15 of the

regulations does not prohibit making the information available, the PBGC's policy is to disclose information, but only to the extent that an authorized agency officer determines disclosure will further the public interest and will not impede the discharge of any PBGC function. Under § 2603.16(b) of the regulations, the factors that must be considered in making such a determination include the public interest in protecting citizens against the dissemination of information concerning them which is privileged or has been submitted by them on a confidential basis and in preventing the disclosure of information which would handicap, obstruct, or jeopardize effective performance of the PBGC's functions.

The regulations for particular FOIA exemptions include § 2603.18, which addresses exemption (4): Matters that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential * * *." Insofar as denial of access is not mandatory under the Trade Secrets Act or other restrictions set forth in § 2603.15, paragraph (a) of § 2603.18 requires that, in applying the policy expressed in §§ 2603.8 and 2603.16, there be a balancing of the right of the public to know how the Government operates against the Government's need to keep information in confidence and the right of a person from which information was obtained to have privileges and confidences respected.

On October 29, 1991 (56 FR 55817), the PBGC published an interim final rule (effective November 29, 1991) that expanded the guidance previously provided in § 2603.18. Paragraph (f) of that section now further explains the considerations that pertain to information protected by exemption (4) and describes the practices PBGC employs when requests for records may involve such information. In particular, the amended regulations specify procedures by which persons and entities can assert that they are "submitter(s)" of "confidential commercial information" (as defined in § 2603.2 (d) and (e) of the regulations) and can object to PBGC disclosure of arguably protected information in response to an FOIA request (§ 2603.18(f) (2) and (3), respectively).

As the PBGC stated when it issued the interim final rule (56 FR 55817-18), the PBGC's practices in this area have evolved over time. In 1982, the PBGC adopted guidance issued by the Office of Information and Privacy of the U.S. Department of Justice as a matter of policy. Since then it has assured that whenever the agency may be required to