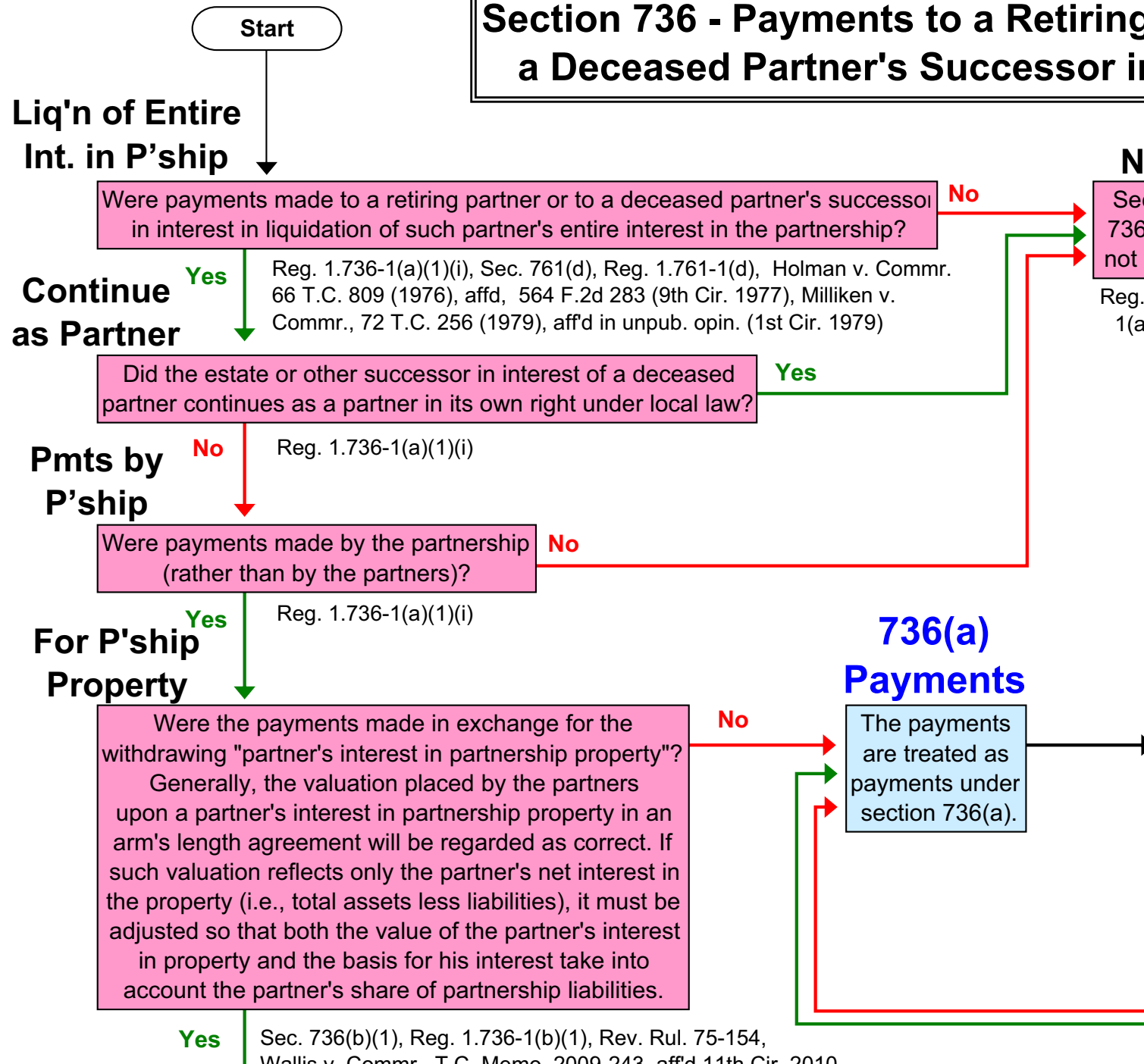


Section 736 - Payments to a Retiring or a Deceased Partner's Successor in Interest



account the partner's share of partnership liabilities.

Yes

Sec. 736(b)(1), Reg. 1.736-1(b)(1), Rev. Rul. 75-154,
Wallis v. Commr., T.C. Memo. 2009-243, aff'd 11th Cir. 2010
Quirk Est. v. Commr., 928 F. 2d 751 (6th Cir. 1991)
Champlin v. Commr., T.C. Memo 1977-196

Gen'l Partner

Was the retiring or deceased partner a general partner in the partnership?

Yes

Capital P'ship

Was capital a material income-producing factor for the partnership?

No

Unrealized Receivables

Were the payments to the withdrawing partner for his/her interest in unrealized receivables of the partnership in excess of their partnership basis, including any special basis adjustment for it to which such partner is entitled?

No

Sec. 736(b)(2)(B), Reg. 1.736-1(b)(3)

Yes

Sec. 736(b)(3)(A)

Sec. 736(b)(3)(B)

Apprec'd Good Will

Were the payments to the withdrawing partner for his/her interest in the partner's share of good will of the partnership in excess of its partnership basis, including any special basis adjustments for it to which such partner is entitled?

Yes

Were the payments to the withdrawing partner for his/her interest in the partner's share of good will of the partnership in excess of its partnership basis, including any special basis adjustments for it to which such partner is entitled?

No

Sec. 736(b)(2)(B), Reg. 1.736-1(b)(3)

736(b) Payments

The payments are considered as made in exchange for such partner's interest in partnership property and are treated as payments under section 736(b).

Reg. 1.736-1(b)(4)

Inventory

Were the payments to the withdrawing partner for his/her interest in inventory?

Yes

Payments for an interest in substantially appreciated inventory under section 751(b) and Reg. 1.751-1(b). The partnership basis in the inventory is reduced as of the death of the partner unless the partnership has a special basis adjustment for it to which such partner is entitled.

751(b)

No

Reg. 1.736-1(b)(4)

Liq'n Distrib'n

The payments are considered as a distribution by the partnership in complete liquidation under section 751. The payments are taken into account by the recipient for his/her taxable year in which they are made. The withdrawing partner is regarded as a partner until the entire interest of the withdrawing partner is distributed.

The payments are considered as a distribution by the partnership in complete liquidation under section 751. The payments are taken into account by the recipient for his/her taxable year in which made. The withdrawing partner is regarded as a partner until the entire interest of the withdrawing partner is liquidated.

Sec. 736(b), Reg. 1.736-1(a)(2), (5) & (6)

Annual Payments

The preceding boxes determined the portion of the total section 736 payments that will be considered section 736(a) payments and 736(b) payments. However, typically section 736 payments are made to the withdrawing partner over multiple years. Consequently, the payments received in each year must be allocated between section 736(a) and section 736(b). The following boxes determine how the annual allocation between section 736(a) and section 736(b) should be made.

Reg. 1.736-1(b)(5)

Agreed Upon Allocation

Have all the remaining partners and the withdrawing partner or his/her successor in interest agreed to an allocation of each annual payment between section 736(a) and (b), provided that the total amount allocated to property under section 736(b) does not exceed the fair market value of such property at the date of death or retirement?

No

Yes

Reg. 1.736-1(b)(5)(iii)

Alloc. As Agreed

Allocate each annual payment between section 736(a) and (b) as agreed.

Reg. 1.736-1(b)(5)(iii)

736(b) Pmts

Fixed Sum

Were the total of section 736(b) payments a fixed sum?

Yes

Reg. 1.736-1(b)(6)

No

Basis First

Gains or Loss with respect to section 736(b) payments are determined under section 731 (generally no gain until distributions exceed basis).

Reg. 1.736-1(b)(6)

Proportionately

Has the retiring partner or a deceased partner (or his/her successor in interest) receives such payments), to report and to pay tax on such distribution under section 736(b) in that year, and to allocate such distribution (i.e., the amount which is allocated to such distribution under section 736(b)) to such distribution (i.e., the amount which is allocated to such distribution under section 736(b))?

No

Alloc. Gain Proportionately

Allocate gain related to section 736(b) payments between the years a

Withdrawing Partner or
Partner in Interest

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N/A

Section
736 does
not apply.

Reg. 1.736-
1(a)(1)(i)

Disclaimer

This flowchart has been extensively reviewed to be as complete and accurate as possible. However, due to the complexity of these rules, this flowchart undoubtedly includes errors and omissions. You should consult a tax professional for individual advice regarding your own situation. This flowchart is not updated for changes in the tax laws and should not be relied upon for any purpose whatsoever.

Treat as Distributive Share

The payments made in liquidation of the interest of the withdrawing partner are considered as a distributive share to the recipient of partnership income. These payments are taken into account under section 702 in the income of the withdrawing partner and thus reduce the amount of the distributive shares of the remaining partners. The payments are included in the income of the recipient for his taxable year with or within which ends the partnership taxable year for which the payment is a distributive share. The withdrawing partner is regarded as a partner until the entire interest of the withdrawing partner is liquidated.

Sec. 736(a)(1), Reg. 1.736-1(a)(1)(ii), (a)(3), (4), (5), & (6)
Rev. Rul. 75-154, Rev. Rul. 83-155

With Regard to Inc. of the P'ship

Were the payments to the withdrawing partner determined with regard to the income of the partnership?

Yes

No

Sec. 736(a)(1) & (2)
Reg. 1.736-1(a)(3)

Treat as Guaranteed Payments

The payments made in liquidation of the interest

Treat as Guaranteed Payments

Receivables

the withdrawing partner's interest in unrealized receivables in excess of the partner's basis, including any interest for them to which the partner is entitled?

Yes

Sec. 736(b)(2)(A)
Reg. 1.736-1(b)(2)

The payments made in liquidation of the interest of the withdrawing partner are considered as a guaranteed payment described in section 707(c). These payments are deductible by the partnership under section 162(a) and are taxable as ordinary income to the recipient under section 61(a). The payments are included in the income of the recipient for his taxable year in which the partnership is entitled to deduct such amount as a guaranteed payment. The withdrawing partner is regarded as a partner until the entire interest of the withdrawing partner is liquidated.

Sec. 736(a)(2), Reg. 1.736-1(a)(1)(ii), (a)(3), (4), (5), & (6)
Rev. Rul. 75-154, Rev. Rul. 83-155

Stated Good Will No

Did the partnership agreement provide for a reasonable payment with respect to good will ("stated good will")? Generally, the valuation placed upon good will by an arm's length agreement of the partners, whether specific in amount or determined by a formula, is regarded as correct.

Yes

Sec. 736(b)(2)(B), Reg. 1.736-1(b)(3),
Smith v. Commr., 37 T.C. 1033 (1962), aff'd, 313 F.2d 16 (10th Cir. 1962)
Commr. v. Jackson Investment Co., 346 F.2d 187 (9th Cir. 1965)
Spector v. Commr., 641 F.2d 376 (5th Cir. 1981)
Jacobs v. Commr., T.C. Memo 1974-196

Section 751(b) May Apply

Appreciated inventory items, as defined in section 751(d), are subject to the rules provided in section 751(b) if the partnership has elected the optional basis adjustment under section 754. But see Reg. 1.751-1(b)(3)(iii).

Reg. 1.736-1(b)(4)

Under sections 731, 732, and when the withdrawing partner is liquidated.

