THE PARTNERSHIP TAX REPORT

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Transfer of the Use of Property: Time for Clarification

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In this article, the authors review the current law for transfers of the use of property under section 721 and discuss a proposal to treat a transfer of all substantial rights in intangible property as a transfer of property for this purpose.

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Introduction

Over the years, there have been many proposals and commissions on tax reform.[1] Also, each year the president submits a proposed budget to Congress and includes tax proposals as part of that budget. In both his 2000 and 2001 budgets,[2] then-President Clinton proposed an amendment to sections 351 and 721, which would treat a transfer of less than all of the substantial rights in intangible property as a transfer of property. The purpose of this article is to discuss the 2000 budget proposal, the problem it sought to address, and relevant law dealing with this and similar issues. It is our hope that when Congress next revisits the issue of tax reform it will give this proposal serious consideration.

Background

Under section 721(a), no gain or loss is recognized to a partnership or any of its partners in the case of a contribution of property to the partnership in exchange for an interest in the partnership. However, the term "property" for purposes of section 721 is not defined anywhere in the code or regulations. The administratively and judicially developed definitions of property that are used for purposes of section 351 often are applied by taxpayers, courts, and the IRS to determine whether contributions of intangibles or other assets should be treated as property for purposes of section 721. Yet it is not clear that the definition of property used for purposes of section 351 is the appropriate definition to be applied to partnership contributions.[3]

Although sections 351 and 721 are analogous, they are not identical. In contrast to section 351, the regulations under section 721[4] specifically state that section 721 does not apply to a transaction between a partnership and a partner not acting in his capacity as a partner because such a transaction is governed by section 707(a). The regulations further state that if the partner retains the ownership of property but allows the partnership to use such separately owned property for partnership purposes, section 721 does not apply.[5] Section 351 and the regulations thereunder do not include similar language. Therefore, there has long been an open question whether section 721 applies to the contribution of carveouts of property — such as leases, licenses, and know-how — to a partnership. In many circumstances, the IRS and courts have followed the case law and administrative guidance under section 351 and permitted taxpayers to contribute the use of property to a partnership as a section 721 contribution. Therefore, to fully understand the potential application of section 721 to such property contributions, it is also necessary to

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[1]*See* the President's Economic Recovery Advisory Board final report (Aug. 2010), *Doc 2010-19068, 2010 TNT 167-50*; Treasury Department, "Approaches to Improve the Competitiveness of the U.S. Business Tax System for the 21st Century" (Dec. 2007), *Doc 2007-27866, 2007 TNT 246-31*; Government Accountability Office, "Business Tax Reform: Simplification and Increased Uniformity of Taxation Would Yield Tax Benefits" (Sept. 2006), *Doc 2006-19731, 2006 TNT 183-49*; and President's Advisory Panel on Federal Tax Reform, "Simple, Fair, and Pro-Growth Proposals to Fix America's Tax System" (Nov. 2005), *Doc 2005-22112, 2005 TNT 211-14*.

[2]*See* President's Fiscal Year 2000 Budget; President's Fiscal Year 2001 Budget Proposal. *See also* Joint Committee on Taxation, "Description of Tax Provisions in the President's Fiscal Year 2001 Budget Proposal," JCS-2-00 (Mar. 6, 2000), part 1 of 4, *Doc 2000-6691*, *2000 TNT 46-14*; 2 of 4, *Doc 2000-6691*, *2000 TNT 46-15*; 3 of 4, *Doc 2000-6730*, *2000 TNT 46-16*; 4 of 4, *Doc 2000-6730*, *2000 TNT 46-17*. *See also* Taxpayer Refund and Relief Act of 1999 (H.R. 2488) (vetoed Sept. 23, 1999).

[3]For a full discussion of transfers of intangibles under section 351, see J. Clifton Fleming Jr., "Domestic 351 Transfers of Intellectual Property: The Law as It Is vs. the Law as the Commissioner Would Prefer It to Be," 16 *J. Corp. Tax'n* 99 (1989).

[4]Reg. section 1.721-1(a).

[5]*Id.*

review the applicable guidance addressing the definition of property under section 351.

License or Contribution

For purposes of sections 351 and 721, the term "property" can include patents, patent applications, trade secrets, know-how, and services that are merely ancillary and subsidiary to the property transfer.[6] Services are excluded from the definition of property that can be contributed without recognizing gain under section 721.[7] Nonetheless, contractual rights, know-how, and assets developed by the personal efforts of a shareholder or partner have been treated as property under sections 351 and 721.[8] For example, in *United States v. Frazell*,[9] the transfer of maps to a partnership that were created through the taxpayer's efforts and services qualified as a nontaxable contribution under section 721. And in *Stafford v. United States*,[10] the court held that contribution of a letter of intent between a developer and an insurance company constituted property under section 721.

The treatment of the transfer of licenses to corporations and partnerships has been considered in several cases and revenue rulings. These cases and revenue rulings generally have divided the transfer of licenses into two categories: the transfer of exclusive rights and the transfer of nonexclusive rights.[11]

The IRS generally has respected the transfer of exclusive licensing rights as property for purposes of section 721 or 351; in contrast, the IRS generally has not treated the transfer of nonexclusive rights to a license as property for purposes of section 721 or 351. Although the transfer of nonexclusive rights can make it difficult to determine the basis of the component of the larger property,[12] that fact alone should not determine whether the transfer can qualify as a property contribution under section 351 or 721. However, if a nonexclusive license looks more like a right to receive licensing fees, the transfer generally will not be respected as a property contribution, but instead treated as an assignment of income.[13]

In Rev. Rul. 64-56,[14] the IRS treated a transfer of know-how as property exchanged for stock under section 351. In the ruling, the IRS held that the transfer was an exchange under section 351 because all of the "substantial rights" in the know-how were transferred to the corporation in exchange for stock. The substantial rights consisted of the right to use manufacturing processes in all of the territory of one or more countries. The IRS applied the same substantial rights standard in both Rev. Rul. 71-564[15] and Rev. Rul. 69-156.[16]

In Rev. Rul. 71-564, the IRS treated the transfer of the right to use a trade secret as an exchange under section 351. The property right in the secret formula transferred consisted of both the composition and the method of making it. The transferor transferred the exclusive right to use the formula, including the right to use and sell the products made from and representing the formula, within all the territory of a country. In Rev. Rul. 71-564, the IRS applied Rev. Rul. 64-56 and *Pickren v. United States*,[17] by analogy, to determine that all of the substantial rights in the trade secrets were transferred. The IRS indicated that one substantial right in a patent that must be transferred to qualify as property for section 351 is the ability to use the patent over the statutory length of the patent. Likewise, under the ruling, one substantial right in a trade secret that must be transferred is the ability to use the trade secret until it becomes public knowledge. The IRS determined that the substantial rights in the trade secret had been transferred because the transferee had unlimited use of the trade secret under the applicable law of the country in which the transferee operated.

By contrast, in Rev. Rul. 69-156, the IRS treated the transfer of a patent right in a chemical compound as a nonexclusive license rather than as property for purposes of section 351 because not all the substantial rights in the patents were transferred. The IRS said that since the transfer would not be treated as an exchange under section 1235, it should not be treated as an exchange under section 351. The ruling specifically states that because the transferor retained "the substantial rights to import, use, and sell the chemical compound in the country

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[6]FSA 1998 WL 1984760; Rev. Rul. 64-56, 1964-1 C.B. 133; Rev. Rul. 69-156, 1969-1 C.B. 101; Rev. Rul. 71-564, 1971-2 C.B. 179; and Rev. Rul. 83-59, 1983-2 C.B. 575, 578.

[7]Reg. section 1.721-1(b)(1) provides that to the extent that any of the partners gives up any part of his rights to be repaid his contributions (as distinguished from a share in partnership profits) in favor of another partner as compensation for services (or in satisfaction of an obligation), section 721 does not apply.

[8]*Stafford v. United States*, 727 F.2d 1043 (11th Cir. 1984); *United States v. Frazell*, 335 F.2d 487 (5th Cir. 1964); *Dillon v. United States*, 84-2 USTC 9921 (S.D. Tex. 1981).

[9]*Frazell*, 335 F.2d 487.

[10]*Stafford*, 727 F.2d 1043.

[11]The transfer of exclusive rights generally means that the taxpayer transfers all of the rights to use the license to one entity, while the transfer of nonexclusive rights means that the taxpayer could transfer the same rights to more than one entity.

[12]This is because of the requirement, or supposed requirement, to apportion the tax basis of the entire bundle of rights between the portion of the interest transferred and the portion of the interest retained.

[13]FSA 200149019, *Doc 2001-30269, 2001 TNT 237-20*.

[14]1964-1 C.B. 133.

[15]1969-1 C.B. 101.

[16]1971-2 C.B. 179.

[17]378 F.2d 595 (1967).

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in which [the transferee] operated,'' not all the rights were transferred. Thus, in determining whether exchange treatment should apply, the IRS looked to the substantial rights standard in section 1235. The ruling states that the regulations under section 1235 indicate that the substantial rights in a patent are not transferred if ''less than all of the rights covered by the patent'' are transferred.[18] Also, the regulations provide that the term ''all substantial rights to a patent'' does not include a grant of rights to a patent that is limited geographically within the country of issuance or limited in duration by the terms of the agreement to a period less than the remaining life of the patent.[19]

In *E.I. du Pont de Nemours v. United States*,[20] the U.S. Court of Claims rejected the notion that the transfer of nonexclusive rights cannot be property for purposes of section 351. The court said that the substantial rights standard asserted by the IRS as the governing standard in determining whether a transfer of property has occurred was an extension of the ''sale or exchange'' requirement of section 1001. The court, however, concluded that it is not the appropriate standard for determining whether the license of the nonexclusive use of patent rights should be treated as property for purposes of section 351.

Under the facts of the *du Pont* case, the taxpayer, du Pont, was engaged in the domestic sale and exportation of urea herbicides. Although conducting the manufacturing of the product in the United States, the company owned French patents for the product. French law provided that French-patented items must be manufactured in France within three years of the issuance of the patent. If this were not done, the owner had to grant, on request, a license to a French producer.

To forestall that result, du Pont in October 1959 organized a wholly owned French subsidiary, du Pont de Nemours (France) SA, to manufacture the herbicide in France. By agreement in December 1959, du Pont granted to a wholly owned subsidiary a royalty-free, nonexclusive license to make, use, and sell urea herbicides under the French patents; therefore, du Pont gave up its right to assert patent infringement against the subsidiary's products for the duration of the license, which was for the remaining life of the patents. The subsidiary had the right to sublicense manufacturing for its own needs, but any other sublicensing could be done only with the parent's consent. In exchange for this grant, and in lieu of royalties, du Pont received stock in the subsidiary. After the award of the license, the subsidiary proceeded to arrange for manufacture of the herbicides for its own account by an unrelated French firm.

The court in *du Pont* held that a nonexclusive license qualifies as property for purposes of section 351, and treated du Pont as transferring the license in exchange for stock under section 351 — a holding not in step with Rev. Rul. 69-156. The court noted that in the legislative history to section 351 it was clear that Congress intended to free taxpayers from tax in a situation in which the taxpayer remains in control of the transferred property, even though the form of ownership has changed. The court said that ''this emphasis on the taxpayer's continuous interest and continuous control, as the essence of section 351, is convincing to us, and persuades strongly against the defendant's point that the requirement of full disposition as a precondition to a 'sale or exchange' for capital gains purposes should be imported into 351.'' Thus, the court concluded that the transfer does not need to meet the standard of sale or exchange of assets under section 1001 to be treated as property under section 351.

Following *du Pont*, the IRS provided field service advice to one of its field offices on the application of *du Pont* to a partnership. In FSA 1984760,[21] the IRS indicated that a transfer to a partnership of the exclusive right to use and have access to manufacturing technology should qualify as ''property exchanged'' under section 721 if the transferor contributes all substantial rights in the property. Under the facts described in the field service advice, however, the taxpayer also transferred the nonexclusive right to use and have access to some other manufacturing technology, which was granted under an agreement between the transferor and the partnership.[22]

In FSA 1984760, the IRS said that a court very likely would conclude that the transfer of a *nonexclusive* license and related technology would qualify for nonrecognition treatment under section 721, following *du Pont* and *Stafford*.[23] In the field service advice, the IRS said, ''because *du Pont* was decided in the predecessor of the United States Court of Federal Claims, its precedential effect is not confined to a specific geographic area. Further, the

[18]Reg. section 1.1235-2(b)(1)(iii).

[19]Reg. section 1.1235-2(b)(1) and -2(b)(2).

[20]471 F.2d 1211 (Ct. Cl. 1973).

[21]FSA 1998 WL 1984760.

[22]The IRS did not indicate which specific rights were granted.

[23]In *Stafford*, the court held that the transfer of development rights, which included all the contract rights under a letter of intent, was treated as property transferred in exchange for a partnership interest under section 721, regardless of whether the partnership could enforce the contractual rights in the letter of intent.

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Service has not successfully litigated any cases concerning this issue since 1973.'' Therefore, it appears that the IRS acknowledged in the field service advice that although the Service still supports its position that a nonexclusive right is not property, the government faces a significant hazard of litigation if another taxpayer were to challenge its position in court.

Lease or Contribution

In several cases, courts have held that a transfer of a carveout of a lease term to a corporation is a contribution of property under section 351.[24] In *R. & J. Furniture Co. v. Commissioner*,[25] a transfer of a carved out 55-year leasehold interest in real estate to a controlled corporation was treated as a transfer of property within the scope of the predecessor of section 351(a). Also, reg. section 1.1031(a)-1(c) indicates that a long-term leasehold constitutes property that can be exchanged in a like-kind exchange. The regulation states that a leasehold of 30 years is an example of property that can be exchanged as like kind for real estate.

As described above, the language in the section 721 regs suggests that contributing the mere use or carveout of property is not a contribution under section 721. In two private letter rulings, however, the IRS followed case law under section 351 and treated the transfer of a lease to a partnership as a section 721 contribution of property. In LTR 8225069,[26] the IRS ruled that the transfer of a long-term leasehold in property owned by the contributing partner was a contribution of property under section 721 in exchange for a partnership interest. Under the facts in the letter ruling, a partner in a partnership owned land and contributed a 74-year lease on that land to the partnership. The partners planned to build a hotel on the land. At the end of the 74-year term, both the hotel and the land would revert back to the partner. Although the IRS referenced the regulation under section 721, which potentially distinguishes the use of property from the contribution of property, the IRS ruled that the transfer of the leasehold interest was within the statutory requirement of section 721(a) for a contribution of property in exchange for an interest in the partnership. The ruling specifically noted that section 721(a) is similar to section 351(a) while stating that ''the reasons originally advanced for nonrecognition treatment may have been different.'' The ruling also referred to case law under section 351 for its support.

In LTR 199915040,[27] the IRS ruled that a trust's transfer to a partnership of a 40-year ground lease on half of its interest in a mall in exchange for a partnership interest was a contribution of property under section 721. The trust leased the remaining half of its interest in the mall to the partnership. The IRS said in the ruling that the transfer of the long-term leasehold is within the statutory requirement of section 721 but did not include any support for its conclusion. It is not clear from either of the rulings whether the result would be the same if the leasehold was a short-term lease. However, the regulation under section 1031 refers to 30 years or more as an example of a leasehold that is treated as property in a like-kind exchange.[28]

Assignment of Income or Contribution

As part of the question of whether a carveout of property rights constitutes a property contribution under section 721, it is also necessary to consider the potential application of the assignment of income doctrine to partnerships.[29] The purpose of the assignment of income doctrine is to prevent taxpayers from assigning rights to earned income to another taxpayer.

However, following the mandatory imposition of section 704(c) in 1984,[30] it is not clear how broadly the assignment of income doctrine continues to apply to partnerships.[31] Arguably, in most cases section 704(c) will police any attempt to assign to the partnership or another partner rights to receive income by allocating those items to the contributing partner on ultimate disposition by the partnership. Nonetheless, the IRS still may assert the assignment of income doctrine with respect to transfers to a partnership.

[24]*See R. & J. Furniture Co. v. Commissioner*, 20 T.C. 857 (1953), *acq.*, 1954-1 C.B. 6; *but compare Hempt Bros. Inc. v. United States*, 490 F.2d 1172 (3d Cir. 1974), *cert. denied*, 419 U.S. 826 (1974), *with Helvering v. Walbridge*, 70 F.2d 683 (2d Cir. 1934), *cert. denied*, 293 U.S. 594 (1934).

[25]*R. & J. Furniture Co.*, 20 T.C. 857.

[26]Mar. 24, 1982.

[27]*Doc 1999-14060*, *1999 TNT 74-52*.

[28]Reg. section 1.1031(a)-1(c).

[29]*Lucas v. Earl*, 281 U.S. 111 (1930).

[30]Deficit Reduction Act of 1984 (P.L. 98-369).

[31]Section 704(c)(3) was enacted as part of the Tax Reform Act of 1984 and requires the application of section 704(c) principles to accounts payable and other accrued but unpaid obligations assumed from a cash method taxpayer and ''extended'' the principles of section 704(c)(1) to ''contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items.'' Therefore, the implication is that such items also are treated as section 721 contributions. The purpose for the enactment of section 704(c)(3) was to make certain that the deductions attributable to accounts payable of a cash basis partner that were assumed by the partnership are specially allocated by the partnership to that partner. H.R. Conf. Rep. No. 98-861, 856 (1984).

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For example, in Rev. Rul. 84-115,[32] a taxpayer contributed to another partnership a partnership interest in a partnership that had section 751 assets. The IRS ruled that no gain or loss will be recognized when limited partnership interests in a partnership that has section 751 assets are contributed in exchange for limited partnership interests in another partnership as long as the transaction is entered into primarily for business reasons. Although the ruling does not attempt to apply the assignment of income doctrine, it does suggest that the doctrine may continue to apply absent a business reason for the transfer. The ruling does not state what business purpose would be sufficient and does not cite the amendment to section 704(c) in the Tax Reform Act of 1984.[33]

In *Schneer v. Commissioner*,[34] the Tax Court held that the transfer of fees to a partnership was not an assignment of income. In that case, a lawyer received fees from his prior law firm for consulting he continued to provide to that firm after joining his new law firm. Under his agreement with his new law firm, Schneer assigned the fees from his prior law firm to his new one. The Tax Court held that if the income assigned to a partnership can be associated with the partnership's business activity and the income was not earned before its assignment, the income could be reported by the partnership.

In cases involving section 351, courts and the IRS have indicated that the assignment of income doctrine does not apply if a transfer to a corporation is a nonrecognition transaction under section 351. In *Hempt Bros. Inc. v. United States*,[35] the Third Circuit held that a cash basis transferee corporation was taxable on the monies it collected on accounts receivable that had been transferred to it by a cash basis partnership in a transaction described in section 351(a). The corporate taxpayer argued that the transferor partnership should have been taxed on the stock the partnership received under the assignment of income doctrine. The court resolved the conflict between the assignment of income doctrine and the statutory nonrecognition provisions of section 351 by reasoning that if the cash basis transferor were taxed on the transfer of the accounts receivable, then the legislative intent of section 351(a) — that the incorporation of an ongoing business should be facilitated by making the incorporation tax free — would be frustrated.

[32]1984-2 C.B. 118.

[33]The law was enacted July 18, 1984; the ruling was published July 30, 1984.

[34]97 T.C. 643 (1991).

[35]490 F.2d 1172 (3d Cir. 1974), *cert. denied*, 419 U.S. 826 (1974).

In Rev. Rul. 80-198,[36] the IRS followed the holding in *Hempt Bros.* and ruled that the transfer by a taxpayer of the operating assets of the sole proprietorship (including unrealized accounts receivable) to the corporation in exchange solely for the common stock of the corporation and the assumption by the corporation of the proprietorship liabilities (including accounts payable) was an exchange within the meaning of section 351(a). Therefore, no gain or loss was recognized on the property transferred, including the accounts receivable.

In FSA 200149019, the IRS said that the purported transfer of a license to a partnership was not a transfer of the licenses and instead was the transfer of a future right to receive licensing fees. The IRS said that a future right to receive licensing fees is not property under section 721, but even if it constituted a transfer of property, the transfer still was subject to the assignment of income doctrine. In applying the assignment of income doctrine, the IRS has said that for it to determine the income tax effect of a purported transfer, the agency must analyze whether the transfer involved property or merely the income generated by the property. The IRS looked to whether the underlying property could be transferred separately from the right to receive income from the property that already had accrued on the property. Because the transfer was the transfer of the income generated by the property, the IRS applied the assignment of income doctrine in lieu of treating the transfer as a nontaxable contribution under section 721.[37]

The Clinton Proposal

As part of his 1999 and 2001 budget proposals, Clinton proposed a revised definition of property for sections 351 and 721. Congress passed a version of the proposal,[38] which Clinton vetoed. Under the

[36]1980-2 C.B. 113.

[37]*See also* reg. section 1.453-9(c)(2). (The Installment Sales Revision Act of 1980 redesignated section 453(d) as section 453B. The regulations under section 453 specifically provide that the transfer of an installment obligation to a partnership under section 721 is not a "disposition" under section 453(d). However, it is not clear whether the section 704(b) book capital accounts resulting from the transfer of the installment obligation under section 721 should be based on the fair market value of the installment obligation or the face amount of the debt.)

[38]Text of Taxpayer Refund and Relief Act of 1999:

(a) TRANSFERS TO CORPORATIONS. — Section 351 (relating to transfer to corporation controlled by transferor) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

(h) TREATMENT OF TRANSFERS OF INTANGIBLE PROPERTY. —

(1) TRANSFERS OF LESS THAN ALL SUBSTANTIAL RIGHTS.

(Footnote continued on next page.)

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proposed legislation, the transfer of an interest in intangible property that constitutes less than all of the substantial rights of the transferor in the property would be treated as a transfer of property. Therefore, the transfer of the intangible would be eligible for nonrecognition treatment for transfers of property to controlled corporations under section 351 and under section 721 for transfers of property to partnerships. The legislation would have required that the transferor and the transferee report the transaction consistently. Under the proposal, if less than all of the substantial rights in the property were transferred, the transferor would be required to allocate the basis of the intangible between the retained rights and the transferred rights based on their respective fair market values.

The Joint Committee on Taxation's report[39] described the proposal, which the JCT said was directed at the potential whipsaw that could arise under current law. According to the report, the transferor and transferee of the property might take inconsistent positions regarding whether the transfer qualified as a transfer of property under section 351 or 721. The transferor, for example, might take the position that the transfer qualified as a transfer of property (resulting in no gain to the transferor) while the transferee might take the position that the transfer failed to qualify as a transfer of property, resulting in sale treatment and a step-up in basis to the transferee. The JCT noted in its report that some taxpayers might treat the transfer as a transfer of property as a nonrecognition transfer but might fail to allocate basis between the rights transferred and the rights retained.

The proposal would require basis allocation based on relative FMV. This change would clarify how basis is allocated when less than an entire interest in an intangible is transferred. Under current law, this issue is unresolved. However, the JCT noted that determining the FMV of the interests transferred versus those retained may be complicated and likely would require a valuation to be obtained by the taxpayer. The JCT also noted in its report that the proposal would allow some amount of electivity, since taxpayers still might attempt to structure a transfer of less than all rights as a license rather than a contribution of property with basis allocation. However, the proposal would require consistent treatment by transferors and transferees and therefore would be an improvement to current law.

Conclusion

Although language in the section 721 regulations suggests that the definition of property does not include the right to the use of the property, courts and the IRS generally have followed section 351 and have been quite expansive in defining what constitutes a contribution of property under section 721. The definition of property includes transfers of long-term leaseholds and exclusive right licenses and may include other carveouts of property and nonexclusive licenses when those transfers do not represent a mere right to an already accrued income stream. Also, the legislative budget proposal, in our view, would help clarify this area of the law and should be considered in the next round of tax reform legislation.

(A) IN GENERAL. — A transfer of an interest in intangible property (as defined in section 936(h)(3)(B)) shall be treated under this section as a transfer of property even if the transfer is of less than all of the substantial rights of the transferor in the property.

(B) ALLOCATION OF BASIS. — In the case of a transfer of less than all of the substantial rights of the transferor in the intangible property, the transferor's basis immediately before the transfer shall be allocated among the rights retained by the transferor and the rights transferred on the basis of their respective fair market values.

(2) NONRECOGNITION NOT TO APPLY TO INTANGIBLE PROPERTY DEVELOPED FOR TRANSFEREE. — This section shall not apply to a transfer of intangible property developed by the transferor or any related person if such development was pursuant to an arrangement with the transferee.

(b) TRANSFERS TO PARTNERSHIPS. — Subsection (d) of section 721 is amended to read as follows:

"(d) TRANSFERS OF INTANGIBLE PROPERTY. —

(1) IN GENERAL. — Rules similar to the rules of section 351(h) shall apply for purposes of this section.

(2) TRANSFERS TO FOREIGN PARTNERSHIPS. — For regulatory authority to treat intangibles transferred to a partnership as sold, see section 367(d)(3).

(c) EFFECTIVE DATE. — The amendments made by this section shall apply to transfers on or after the date of the enactment of this Act.

[39]JCS-2-00, *supra* note 2.

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