Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100163–00]

RIN 1545–AX73

Applying Section 197 To Partnerships

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the amortization of certain intangible property to partnership transactions involving sections 732(b) and 734(b). The proposed regulations interpret the provisions of section 197(f)(9), reflecting changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and affect taxpayers who acquired intangible property after August 10, 1993, or made a retroactive election to apply OBRA '93 to intangibles acquired after July 25, 1991. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by April 24, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 24, 2000, at 10 a.m. must be received by May 3, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–100163–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100163–00), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/regslist.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert G. Honigman, (202) 622–3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document proposes to amend section 197 of the Income Tax Regulations (26 CFR Part 1) to provide additional rules regarding the application of section 197(f)(9) to partnership transactions under sections 732(b) and 734(b).

Background

On January 16, 1997, the IRS published proposed regulations (REG–209709–94) in the **Federal Register** (62 FR 2336) inviting comments under sections 167(f) and 197, including the anti-churning rules in section 197(f)(9). Commentators requested that the final regulations provide additional guidance on how the special anti-churning rule of section 197(f)(9)(E) applies to increases in the basis of partnership property under sections 732, 734, and 743. In accordance with these comments, these proposed regulations provide rules for determining the amount of a basis adjustment under sections 732(b) and 734(b) that will be subject to the anti-churning rules. Final regulations being issued at the same time as these proposed regulations provide rules for determining the amount of a basis adjustment under sections 732(d) and 743(b) that will be subject to the anti-churning rules.

Explanation of Provisions

A. In General

Section 197(f)(9)(E) provides that, in applying the anti-churning rules for basis adjustments under sections 732, 734, and 743, determinations are made at the partner level, and each partner is treated as having owned and used such partner's proportionate share of the partnership's assets. With respect to basis adjustments under sections 732(b) and 734(b), this rule requires taxpayers and the IRS to analyze transactions that actually involve a distribution of property from the partnership to a partner as deemed transactions involving transfers of property directly among the partners.

B. Two-Step Analysis

The proposed regulations embody a two-step analysis in determining whether the anti-churning rules apply to the deemed transfer of intangibles in transactions giving rise to basis adjustments under sections 732(b) and 734(b). First, it is necessary to determine whether the portion of an intangible that a partner is deemed to transfer is treated, immediately prior to the deemed transfer, as being subject to the anti-churning rules for purposes of applying these provisions. Second, if the partner's share of the intangible is treated, immediately prior to the deemed transfer, as being subject to the anti-churning rules for purposes of applying these provisions, it is necessary to determine whether the deemed transferor and transferee are related so that the anti-churning rules will continue to apply to the intangible after the deemed transfer.

For purposes of applying the first prong of the analysis, when a partner acquires an interest in a partnership, the proposed regulations treat the partner as acquiring an undivided interest in all section 197(f)(9) intangibles held by a partnership at the time that the partner acquires an interest in the partnership. If a partner acquires an interest in a partnership from an unrelated person after August 10, 1993 (or, in certain cases, after July 25, 1991), the partner's share of any intangible held by the partnership as of August 10, 1993 (or, in certain cases, after July 25, 1991) is treated as no longer subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers of intangibles in transactions that give rise to the basis adjustments under sections 732(b) and 734(b). With respect to intangibles acquired by the partnership after August 10, 1993, that are subject to the anti-churning rules in the hands of the partnership, a partner's share of the intangible is treated as not subject to the anti-churning rules for purposes of analyzing these basis adjustments if the partner acquired the interest in the partnership from an unrelated person after the partnership acquired the tainted intangible. Once a partner's

share of an intangible is treated as no longer subject to the anti-churning rules for purposes of analyzing subsequent deemed transfers, that share of the intangible will remain untainted even if the partner transfers the interest to the original transferor or a person who is related to the original transferor, so long as the transfers are not part of the same transaction or series of related transactions. Special rules are provided where a partner acquires a partnership interest in exchange for property contributed to a partnership.

For purposes of applying the anti-churning rules to basis adjustments under section 732(b), the distributee partner is deemed to acquire the distributed intangible directly from the continuing partners of the distributing partnership. The proposed regulations contain a favorable stacking rule that treats the distributee partner as acquiring the intangible first from the continuing partners for whom transfers would not be subject to the anti-churning rules (either because the continuing partner's share of the intangible is treated, for purposes of this rule, as not being subject to the anti-churning rules or the distributee partner is not related to the continuing partner) to the extent of such partners' share of appreciation in the intangible.

The proposed regulations contain a special rule to ensure that, in analyzing subsequent transfers, a partner cannot treat the entire intangible as no longer subject to the anti-churning rules simply because the full basis of the intangible (which may be significantly less than the intangible's fair market value) becomes amortizable as a result of the favorable stacking rule that applies to section 732(b) basis adjustments.

For purposes of applying the anti-churning rules to basis adjustments under section 734(b), the continuing partners are deemed to acquire interests in the intangible that remains in the partnership from the partner who received a distribution (giving rise to the section 734(b) basis adjustment) of property other than the intangible. To the extent that the distributee partner could transfer the intangible directly to a continuing partner (who may be the distributee partner) and the transfer would not be subject to the anti-churning rules (either because the distributee partner's share of the intangible is treated (for purposes of this rule) as not being subject to the anti-churning rules or the continuing partner is not related to the distributee (except in certain circumstances)), the basis adjustment will be amortizable with respect to the continuing partner.

The proposed regulations contain a special rule which provides that if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner to the extent that the continuing partner's partnership interest was received in exchange for the intangible.

In addition to issues relating to determining the amount of a basis adjustment that is subject to the anti-churning rules, the Treasury Department and the IRS also recognize that certain problems may arise in maintaining capital accounts where a portion of a section 734(b) adjustment is allocated to an intangible that is subject to the anti-churning rules with respect to one or more partners. In some situations, the failure to allocate deductions for amortization to any partner whose allocable share of a section 734(b) adjustment is subject to the anti-churning rules will distort the partners' economic agreement. For example, where partners agree to share depreciation and amortization deductions equally, if one partner's share of a section 734(b) adjustment allocable to an intangible asset is subject to the anti-churning rules, the capital accounts of the partners will not reflect an equivalent sharing of the economic amortization from the asset absent special adjustments to account for the disparity between the allocation of tax amortization and the intended allocation of economic amortization. Furthermore, divergence of book and tax accounts with respect to an intangible that may result from such special adjustments can cause problems in allocating the correct amount of taxable gain or loss to the appropriate parties upon disposition of the intangible. Similar problems may arise as a result of allowing remedial allocations for intangibles that otherwise are subject to the anti-churning rules and are addressed in § 1.197–2(h)(12)(vii)(B). These regulations are not intended to create such distortions. Nevertheless, a general rule that resolves these distortions in all situations (including different allocations of gain and depreciation or amortization) would be extremely complicated and, perhaps, unduly narrow.

Therefore, the proposed regulations provide that taxpayers may use any reasonable method to determine amortization for book purposes in these situations, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 (i.e., the effect of the book adjustments will not be such that a partner who is subject to the anti-churning rules will receive, directly or indirectly, deductions for amortization, for Federal income tax purposes, attributable to the section 734(b) adjustment). The Treasury Department and IRS may consider providing guidance with respect to this issue in the future and request comments relating thereto.

C. Effective Date

These regulations are proposed to apply to distributions occurring on or after the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The Treasury Department and IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for May 24, 2000, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For

information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by April 24, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.197–2 is amended by:

1. Revising paragraphs (h)(12)(ii), (h)(12)(iv), and (h)(12)(vi).

2. Adding *Examples 28, 29,* and *30* to paragraph (k).

3. Adding a sentence at the end of paragraph (l)(1).

The additions and revisions read as follows:

§ 1.197–2 Amortization of goodwill and other intangibles.

* * * * *

(h) * * *

(12) * * *

(ii) *Section 732(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) apply to any increase in the adjusted basis of a section 197(f)(9) intangible under section 732(b) to the extent that the basis increase exceeds the total unrealized appreciation from the intangible allocable to—

(*1*) Partners other than the distributee partner or persons related to the distributee partner;

(*2*) If the distributed intangible is a section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, the distributee partner and persons related to the distributee partner to the extent that—

(*i*) They acquired an interest or interests in the partnership after August 10, 1993; and

(*ii*) Such interest or interests were held after August 10, 1993, by a person or persons other than the distributee partner or persons who were related to the distributee partner, and the acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest or interests; and

(*3*) If the distributed intangible is a section 197(f)(9) intangible that is acquired by the partnership after August 10, 1993, and that is not amortizable with respect to the partnership, the distributee partner and persons related to the distributee partner to the extent that—

(*i*) They acquired an interest or interests in the partnership after the partnership acquired the distributed intangible; and

(*ii*) Such interest or interests were held after the partnership acquired the distributed intangible, by a person or persons other than the distributee partner or persons who were related to the distributee partner, and the acquisition of such interest or interests by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest or interests.

(B) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(ii)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the relevant party made a valid retroactive election under § 1.197–1T.

(C) *Intangible still subject to anti-churning rules.* Notwithstanding paragraph (h)(12)(ii) of this section, in applying the provisions of this paragraph (h) with respect to subsequent transfers, the distributed intangible remains subject to the provisions of this paragraph (h) in a percentage (determined at the time of the distribution) equal to—

(*1*) The sum of—

(*i*) The amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section; and

(*ii*) The total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply; over—

(*2*) The fair market value of such intangible.

(D) *Partner's allocable share of unrealized appreciation from the intangible.* The amount of unrealized appreciation from an intangible that is allocable to a partner is the amount of taxable gain that would have been allocated to that partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Acquisition of partnership interest by contribution.* Solely for purposes of paragraphs (h)(12)(ii)(A)(*2*) and (*3*) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership. However, if the partner contributed the distributed section 197(f)(9) intangible to the partnership, the interest acquired by such partner in exchange for the intangible is treated as not being described in paragraphs (h)(12)(ii)(A)(*2*) or (*3*) of this section.

* * * * *

(iv) *Section 734(b) adjustments*—(A) *In general.* The anti-churning rules of this paragraph (h) do not apply to a continuing partner's share of an increase in the basis of a section 197(f)(9) intangible held by a partnership under section 734(b) to the extent that the continuing partner is an eligible partner.

(B) *Eligible partner.* For purposes of this paragraph (h)(12)(iv), eligible partner means—

(*1*) A continuing partner that is not the distributee partner or a person related to the distributee partner;

(*2*) With respect to any section 197(f)(9) intangible acquired by the partnership on or before August 10, 1993, a continuing partner that is the distributee partner or a person related to the distributee partner to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after August 10, 1993; and

(*ii*) Such interest was held after August 10, 1993 by a person or persons who were not related to the distributee partner, and the acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest; or

(*3*) With respect to any section 197(f)(9) intangible acquired by the partnership after August 10, 1993, that is not amortizable with respect to the partnership, a continuing partner that is the distributee partner or a person related to the distributee partner to the extent that—

(*i*) The distributee partner's interest in the partnership was acquired after the partnership acquired the relevant intangible; and

(*ii*) Such interest was held after the partnership acquired the relevant intangible by a person or persons who were not related to the distributee partner, and the acquisition of such interest by such person or persons was not part of a transaction or series of related transactions in which the distributee partner or persons related to the distributee partner subsequently acquired such interest.

(C) *Effect of retroactive elections.* For purposes of paragraph (h)(12)(iv)(A) of this section, references to August 10, 1993, are treated as references to July 25, 1991, if the distributee partner made a valid retroactive election under § 1.197–1T.

(D) *Partner's share of basis increase.* For purposes of this paragraph (h)(12)(iv), a continuing partner's share of a basis increase is equal to—

(*1*) The total basis increase allocable to the intangible; multiplied by

(*2*) A fraction equal to—

(*i*) The unrealized appreciation from the intangible that would have been allocated to the continuing partner if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction; over

(*ii*) The total unrealized appreciation from the intangible that would have been realized by the partnership if the partnership had sold the intangible immediately before the distribution for its fair market value in a fully taxable transaction.

(E) *Interests acquired by contribution*—(1) *Application of paragraphs (h)(12)(iv)(B)(2) and (3) of this section.* Solely for purposes of paragraphs (h)(12)(iv)(B)(2) and (3) of this section, a partner who acquires an interest in a partnership in exchange for a contribution of property to the partnership is deemed to acquire a pro rata portion of that interest in the partnership from each person who is a partner in the partnership at the time of the contribution based on each such partner's proportionate interest in the partnership. However, if the partner contributed the distributed section 197(f)(9) intangible to the partnership, the interest acquired by such partner in exchange for the intangible is treated as not being described in paragraphs (h)(12)(iv)(B)(*2*) or (*3*) of this section.

(*2*) *Special rule with respect to paragraph* (h)(12)(iv)(B)(*1*) of this section. Solely for purposes of paragraph (h)(12)(iv)(B)(1) of this section, if a distribution that gives rise to an increase in the basis under section 734(b) of a section 197(f)(9) intangible held by the partnership is undertaken as part of a series of related transactions that include a contribution of the intangible to the partnership by a continuing partner, the continuing partner is treated as related to the distributee partner to the extent that the continuing partner's partnership interest was received in exchange for the intangible.

(F) *Effect of section 734(b) adjustment on partners' capital accounts.* If one or more partners are subject to the anti-churning rules under this paragraph (h) with respect to a section 734(b) adjustment allocable to an intangible asset, taxpayers may use any reasonable method to determine amortization of the asset for book purposes, provided that the method used does not contravene the purposes of the anti-churning rules under section 197 and this paragraph (h). A method will be considered to contravene the purposes of the anti-churning rules if the effect of the book adjustments resulting from the method is such that any portion of the tax deduction for amortization attributable to the section 734 adjustment is allocated, directly or indirectly, to a partner who is subject to the anti-churning rules with respect to such adjustment.

* * * * *

(vi) *Partner is or becomes a user of partnership intangible*— (A) *General rule.* If, as part of a series of related transactions that includes a transaction described in paragraph (h)(12)(ii), (iii), (iv), or (v) of this section, an anti-churning partner becomes (or remains) a user of an intangible that is treated as transferred in the transaction (as a result of the partners being treated as having owned their proportionate share of partnership assets), the anti-churning rules shall apply to the proportionate share of such intangible that is treated as transferred by the anti-churning partner, notwithstanding the application of paragraph (h)(12)(ii), (iii), (iv), or (v) of this section.

* * * * *

(k) * * *

Example 28. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest prior to the effective date.

(i) In 1990, A, B, and C each contribute $150 cash to form general partnership ABC for the purpose of engaging in a consulting business and a software manufacturing business. The partners agree to share partnership profits and losses equally. In 2000, the partnership distributes the consulting business to A in liquidation of A's entire interest in ABC. The only asset of the consulting business is a nonamortizable intangible, which has a fair market value of $180 and a basis of $0. At the time of the distribution, the adjusted basis of A's interest in ABC is $150. A is not related to B or C.

(ii) Under section 732(b), A's adjusted basis in the intangible distributed by ABC is $150, a $150 increase over the basis of the intangible in ABC's hands. In determining whether the anti-churning rules apply to any portion of the basis increase, A is treated as having owned and used A's proportionate share of partnership property. Thus, A is treated as holding an interest in the intangible during the transition period. Because the intangible was not amortizable prior to the enactment of section 197, the section 732(b) increase in the basis of the intangible may be subject to the anti-churning provisions. Paragraph (h)(12)(ii) of this section provides that the anti-churning provisions apply to the extent that the section 732(b) adjustment exceeds the total unrealized appreciation from the intangible allocable to partners other than A or persons related to A, as well as certain other partners whose purchase of their interests meet certain criteria. Because B and C are not related to A, and A's acquisition of its partnership interest does not satisfy the necessary criteria, the section 732(b) basis increase is subject to the anti-churning provisions to the extent that it exceeds B and C's proportionate share of the unrealized appreciation from the intangible. B and C's proportionate shares of the unrealized appreciation from the intangible is $120 (2/3 of $180). This is the amount of gain that would be allocated to B and C if the partnership sold the intangible immediately before the distribution for its fair market value of $180. Therefore, $120 of the section 732(b) basis increase is not subject to the anti-churning rules. The remaining $30 of the section 732(b) basis increase is subject to the anti-churning rules. Accordingly, A is

treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $120 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $30.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-third of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $120 = $60), over the fair market value of the distributed intangible ($180).

Example 29. Distribution of section 197(f)(9) intangible to partner who acquired partnership interest after the effective date.

(i) The facts are the same as in example 28, except that B and C form ABC in 1990. A does not acquire an interest in ABC until 1995. In 1995, A contributes $150 to ABC in exchange for a one-third interest in ABC. At the time of the distribution, the adjusted basis of A's interest in ABC is $150.

(ii) As in *Example 28*, the anti-churning rules do not apply to the increase in the basis of the intangible distributed to A under section 732(b) to the extent that it does not exceed the unrealized appreciation from the intangible allocable to B and C. Under paragraph (h)(12)(ii) of this section, the anti-churning provisions also do not apply to the section 732(b) basis increase to the extent of A's allocable share of the unrealized appreciation from the intangible because A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by the partnership before A acquired the ABC interest. Under paragraph (h)(12)(ii)(E) of this section, A is deemed to acquire the ABC partnership interest from an unrelated person because A acquired the ABC partnership interest in exchange for a contribution to the partnership of property other than the distributed intangible and, at the time of the contribution, no partner in the partnership was related to A. Consequently, the increase in the basis of the intangible under section 732(b) is not subject to the anti-churning rules to the extent of the total unrealized appreciation from the intangible allocable to A, B, and C. The total unrealized appreciation from the intangible allocable to A, B, and C is $180 (the gain the partnership would have recognized if it had sold the intangible for its fair market value immediately before the distribution). Because this amount exceeds the section 732(b) basis increase of $150, the entire section 732(b) basis increase is amortizable.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-sixth of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($0) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($180 − $150 = $30), over the fair market value of the distributed intangible ($180).

Example 30. Distribution of section 197(f)(9) intangible contributed to the partnership by a partner. (i) The facts are the same as in *Example 29*, except that C purchased the intangible used in the consulting business in 1988 for $60 and contributed the intangible to ABC in 1990. At that time, the intangible had a fair market value of $150 and an adjusted tax basis of $60. When ABC distributes the intangible to A in 2000, the intangible has a fair market value of $180 and a basis of $60.

(ii) As in *Examples 28* and *29*, the adjusted basis of the intangible in A's hands is $150 under section 732(b). However, the increase in the adjusted basis of the intangible under section 732(b) is only $90 ($150 adjusted basis after the distribution compared to $60 basis before the distribution). Pursuant to paragraph (g)(2)(ii)(B) of this section, A steps into the shoes of ABC with respect to the $60 of A's adjusted basis in the intangible that corresponds to ABC's basis in the intangible and this portion of the basis is nonamortizable. B and C are not related to A, A acquired the ABC interest from an unrelated person after August 10, 1993, and the intangible was acquired by ABC before A acquired the ABC interest. Therefore, under paragraph (h)(12)(ii) of this section, the section 732(b) basis increase is amortizable to the extent of A, B, and C's allocable share of the unrealized appreciation from the intangible. The total unrealized appreciation from the intangible that is allocable to A, B, and C is $120. If ABC had sold the intangible immediately before the distribution to A for its fair market value of $180, it would have recognized gain of $120, which would have been allocated $10 to A, $10 to B, and $100 to C under section 704(c). Because A, B, and C's allocable share of the unrealized appreciation from the intangible exceeds the section 732(b) basis increase in the intangible, the entire $90 of basis increase is amortizable by A. Accordingly, after the distribution, A will be treated as having two intangibles, an amortizable section 197 intangible with an adjusted basis of $90 and a new amortization period of 15 years and a nonamortizable intangible with an adjusted basis of $60.

(iii) In applying the anti-churning rules to future transfers of the distributed intangible, under paragraph (h)(12)(ii)(C) of this section, one-half of the intangible will continue to be subject to the anti-churning rules, determined as follows: The sum of the amount of the distributed intangible's basis that is nonamortizable under paragraph (g)(2)(ii)(B) of this section ($60) and the total unrealized appreciation inherent in the intangible reduced by the amount of the increase in the adjusted basis of the distributed intangible under section 732(b) to which the anti-churning rules do not apply ($120 − $90 = $30), over the fair market value of the distributed intangible ($180).

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(l) * * *

(1) *In general.* * * * Paragraphs (h)(12)(ii), (iv) and (vi) of this section apply to partnership distributions occurring on or after the date final regulations are published in the **Federal Register**.

* * * * *

David Mader,

Acting Deputy Commissioner of Internal Revenue Service.

[FR Doc. 00–1381 Filed 1–20–00; 1:19 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6523–8]

RIN 2060–AH74

National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule amendments and notice of public hearing.

SUMMARY: Under the Clean Air Act (Act), EPA issued a final rule (63 FR 18504, April 15, 1998) to reduce hazardous air pollutant (HAP) emissions from the pulp and paper production source category. That rule (known as the Pulp and Paper national emission standard for hazardous air pollutants (NESHAP) or pulp and paper NESHAP) is the air component of the integrated air and water rules for the pulp and paper industry (known as the Pulp and Paper Cluster Rules). In this action, we are proposing to amend certain passages