



Nonresident Partner's Treatment of Gain or Loss on Certain Sales or Transfers of a Partnership or Membership Interest

Chapter 59 of the Laws of 2017 (Part AA) expanded Tax Law § 632(a)(1) to provide that any gain or loss recognized for federal income tax purposes by a nonresident partner on the sale or transfer of a partnership interest must be allocated to New York, in a manner consistent with the applicable methods and rules for allocation under Article 22, if the sale or transfer:

- is subject to the provisions of Internal Revenue Code (IRC) § 1060, **and**
- occurs on or after April 10, 2017.

The amount of such gain or loss sourced to New York is computed as outlined on page 2 under *Computing the amount of gain or loss derived from New York sources*. The same treatment applies for:

- a part-year resident partner when the gain or loss on such sale or transfer is reportable in the New York State nonresident portion of the tax year; and
- a partner that is a partnership, or an LLC classified as a partnership, for purposes of determining whether it has any New York source income relating to such sale or transfer for personal income tax purposes under Article 22.

The term *partner*, as used in this memorandum, also includes a member in the case of an LLC classified as a partnership for income tax purposes. The term *partnership interest*, as used in this memorandum, also includes a membership interest in the case of an LLC classified as a partnership for income tax purposes.

Transactions considered subject to the provisions of IRC § 1060

For purposes of applying Tax Law § 632(a)(1), a sale or transfer of a partnership interest is considered a transaction subject to the provisions of IRC § 1060 when:

- the transferor recognizes a gain or loss on the sale of the partnership interest for federal income tax purposes;
- the transferee treats the purchase of the partnership interest as a purchase of partnership assets;
- the assets acquired by the transferee constitute a trade or business; and
- the transferee's basis in the transferred assets is determined wholly by reference to the transferee's consideration.¹

¹ However, a transfer is not treated as failing to be considered a transaction subject to IRC § 1060 merely because IRC § 1031 applies to a portion of the assets transferred (see Treas. Reg. 1.1060-1(b)(8)).

A sale or transfer of a partnership interest that causes the partnership's status as a partnership to terminate under IRC § 708(b)(1)(A), or that causes the LLC's status as a partnership to terminate under IRC § 708(b)(1)(A) (when, after the sale or transfer, the LLC is treated as a single-member disregarded entity for federal tax purposes) is considered a transaction subject to the provisions of IRC § 1060.²

A sale or transfer of a partnership interest to which IRC § 1060(d) applies is **not** considered a transaction subject to the provisions of IRC § 1060 for purposes of applying Tax Law § 632(a)(1).

Computing the amount of gain or loss derived from New York sources

If a transferor (a nonresident partner, a part-year resident partner, or a partner that is a partnership or an LLC classified as a partnership) has a gain or loss on the sale or transfer of a partnership interest for federal income tax purposes, and the sale or transfer is subject to the provisions of IRC § 1060 and occurs on or after April 10, 2017, then the amount of such gain or loss derived from New York sources is determined by multiplying the gain or loss by the partnership's Business Allocation Percentage (BAP) for the taxable year in which the partnership interest was sold or transferred.

However, if such gain or loss is from the sale or transfer of an interest in a partnership that is subject to the provisions of Tax Law § 631(b)(1)(A)(1), the amount of the gain or loss derived from New York sources must instead be determined by applying Tax Law § 631(b)(1)(A)(1).³

Example 1: *Individual A, a nonresident of New York State, and Individual B were the only two partners in Partnership AB, a calendar-year filer. Partnership AB was not subject to the provisions of Tax Law § 631(b)(1)(A)(1). On May 15, 2017, Partnership AB terminated under IRC § 708(b)(1)(A) due to Individual A (the transferor) selling his entire partnership interest in Partnership AB to Individual B (the transferee). Individual A recognized a \$50,000 gain for federal income tax purposes on the sale of his partnership interest. Partnership AB's BAP for the taxable year in which the partnership interest was sold was 75%.*

The total amount of Individual A's gain on the sale of his partnership interest that is derived from New York Sources is \$37,500, determined as follows:

$$\$50,000 \times 75\% = \mathbf{\$37,500}.$$

Example 2: *Individual C, a nonresident of New York State, and Individual D, a resident of New York State, were the only two partners in Partnership CD, a calendar-year filer. Partnership CD was not subject to the provisions of Tax Law § 631(b)(1)(A)(1). On May 15, 2017, Partnership CD terminated under IRC § 708(b)(1)(A) when Individual C and Individual D (the transferors) sold their entire respective partnership interests in Partnership CD to a third party, E (the transferee). Individual C recognized a \$50,000 gain for federal income tax purposes on the sale of his partnership interest. Individual D*

² See Rev. Rul. 99-6, 1999-1 C.B. 432.

³ See [TSB-M-18\(1\)I](#), Definition of New York Source Income of a Nonresident Individual Expanded.

recognized a \$60,000 gain for federal income tax purposes on the sale of his partnership interest. Partnership CD's BAP for the taxable year in which the partnership interests were sold was 30%.

The total amount of Individual C's gain on the sale of his partnership interest that is derived from New York Sources is \$15,000, determined as follows:

$$\$50,000 \times 30\% = \mathbf{\$15,000}.$$

Since Individual D is a resident of New York State, Individual D's entire gain on the sale of his partnership interest recognized for federal income tax purposes, \$60,000, is included in his New York adjusted gross income.

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.