## 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 1.7704–1 is added to read as follows:

## §1.7704-1 Publicly traded partnerships.

- (a) In general—(1) Publicly traded partnership. A domestic or foreign partnership is a publicly traded partnership for purposes of section 7704(b) and this section if—
- (i) Interests in the partnership are traded on an established securities market; or
- (ii) Interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof.
- (2) Partnership interest—(i) In general. For purposes of section 7704(b) and this section, an interest in a partnership includes—
- (A) Any interest in the capital or profits of the partnership (including the right to partnership distributions); and
- (B) Any financial instrument or contract the value of which is determined in whole or in part by reference to the partnership (including the amount of partnership distributions, the value of partnership assets, or the results of partnership operations).
- (ii) Exception for non-convertible debt. For purposes of section 7704(b) and this section, an interest in a partnership does not include any financial instrument or contract that—
- (A) Is treated as debt for federal tax purposes; and
- (B) Is not convertible into or exchangeable for an interest in the capital or profits of the partnership and does not provide for a payment of equivalent value.
- (iii) Exception for tiered entities. For purposes of section 7704(b) and this section, an interest in a partnership or a corporation (including a regulated investment company as defined in section 851 or a real estate investment trust as defined in section 856) that holds an interest in a partnership (lower-tier partnership) is not considered an interest in the lower-tier partnership.
- (3) *Definition of transfer.* For purposes of section 7704(b) and this section, a transfer of an interest in a partnership means a transfer in any form, including a redemption by the partnership or the

- entering into of a financial instrument or contract described in paragraph (a)(2)(i)(B) of this section.
- (4) Transfers taken into account. For purposes of section 7704(b) and this section, a transfer of an interest in a partnership is taken into account only if—
- (i) The transferee is admitted as a partner;
- (ii) The partnership otherwise recognizes any rights of the transferee, such as a right of the transferee to partnership distributions (directly or indirectly) or the right of the transferee to acquire an interest in the capital or profits of the partnership; or
- (iii) The partnership redeems or repurchases the interest.
- (b) Established securities market. For purposes of section 7704(b) and this section, an established securities market includes—
- (1) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f):
- (2) A national securities exchange exempt from registration under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) because of the limited volume of transactions;
- (3) A foreign securities exchange that, under the law of the jurisdiction where it is organized, satisfies regulatory requirements that are analogous to the regulatory requirements under the Securities Exchange Act of 1934 described in paragraph (b)(1) or (2) of this section (such as the London International Financial Futures Exchange; the Marche a Terme International de France; the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited; the Frankfurt Stock Exchange; and the Tokyo Stock Exchange);
  - (4) A regional or local exchange; and
- (5) An interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise.
- (c) Readily tradable on a secondary market or the substantial equivalent thereof—(1) In general. For purposes of section 7704(b) and this section, interests in a partnership that are not traded on an established securities market (within the meaning of section 7704(b) and paragraph (b) of this section) are readily tradable on a secondary market or the substantial equivalent thereof if the partners are readily able to buy, sell, or exchange their partnership interests in a manner that is comparable, economically, to

- trading on an established securities market.
- (2) Secondary market. For purposes of paragraph (c)(1) of this section, interests in a partnership are readily tradable on a secondary market if-(i) Interests in the partnership are regularly quoted by any person, such as a broker or dealer, making a market in the interests; or
- (ii) Any person regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to interests in the partnership and stands ready to effect buy or sell transactions at the quoted prices for itself or on behalf of others.
- (3) Substantial equivalent of a secondary market. For purposes of paragraph (c)(1) of this section, interests that are not readily tradable on a secondary market are readily tradable on the substantial equivalent of a secondary market if—
- (i) The holder of an interest in the partnership has a readily available, regular, and ongoing opportunity to sell or exchange the interest through a public means of obtaining or providing information of offers to buy, sell, or exchange interests in the partnership; or
- (ii) Prospective buyers and sellers have the opportunity to buy, sell, or exchange interests in the partnership in a time frame and with the regularity and continuity that the existence of a secondary market would provide.
- (d) Transfers not involving trading—
  (1) In general. For purposes of section 7704(b) and this section, the following transfers (private transfers) are disregarded in determining whether interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof—
- (i) Transfers in which the basis of the partnership interest in the hands of the transferee is determined, in whole or in part, by reference to its basis in the hands of the transferor or is determined under section 732:
  - (ii) Transfers at death;
- (iii) Transfers between members of a family (as defined in section 267(c)(4));
- (iv) Transfers involving the issuance of interests by (or on behalf of) the partnership in exchange for cash, property, or services;
- (v) Transfers involving distributions from a retirement plan qualified under section 401(a) or an individual retirement account;
- (vi) Block transfers (as defined in paragraph (d)(2) of this section);
- (vii) Transfers pursuant to a right under a redemption or repurchase agreement (as defined in paragraph (d)(3) of this section) that is exercisable only—