2023 Update Memorandum for **FEDERAL INCOME TAXATION OF PARTNERSHIPS AND S CORPORATIONS**

SIXTH EDITION

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PREFACE

This 2023 Update to Federal Income Taxation of Partnerships and S Corporations provides users of the text with materials reflecting developments in federal income taxation of partnerships and S Corporations since May 2020 (the date as of which the materials in the text are current). This update is current as of July 1, 2023.

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2023 Update Memorandum

FEDERAL INCOME TAXATION OF PARTNERSHIPS AND S CORPORATIONS

PART I

TAXATION OF PARTNERS AND PARTNERSHIPS

CHAPTER 1

INTRODUCTION TO PARTNERSHIP TAXATION

SECTION 3. ANTI-ABUSE REGULATIONS

Page 42:

Add to the end of the third sentence of the first complete paragraph:

In Tribune Media Company v. Commissioner, T.C. Memo. 2021-122, the court interpreted the "business purpose" language of Treas.Reg. § 1.701–2(a) as a "broad provision applying to the function of the partnership as a whole. It is not intended to apply to every agreement into which the partnership or its partners enter. That level of minutiae was not contemplated by the general anti-abuse rule." In that case, the IRS argued that a guaranty of a nonrecourse debt lacked a substantial business purpose and was instead motivated by tax considerations.

CHAPTER 2

TAXATION OF PARTNERSHIP TAXABLE INCOME TO THE PARTNERS

SECTION 1. PASS-THROUGH OF PARTNERSHIP INCOME AND LOSS

Page 57:

Delete the final sentence of Detailed Analysis 2.3 and insert:

This new rule and recently finalized Regulations are discussed primarily in Chapters 4 and 8.

Pages 61–63:

Substitute the below for the material contained in Detailed Analysis 4.2.2:

Section 163(j) contains specific rules for partnerships, and Regulations finalized in 2020 and 2021 provide additional guidance. Application of the § 163(j) limitation to a partnership's business interest expense is determined at the partnership level. In some situations, this will be simpler than applying the limitation at the partner level. For example, the final Regulations clarified that if a partnership qualifies for the "small business" exemption of § 163(j)(3), then the partnership's business interest expense is not limited and is not re-tested under § 163(j) at the partner level. Treas.Reg. § 1.163(j)–6(m)(1) & (o)(11), Ex. 11.

If the partnership does not qualify as a small business (or for any other exception), the partnership applies the limitation provided in § 163(j)(1) to determine the amount of the deductible business interest expense, which will be treated as a nonseparately stated item. Treas.Reg. § 1.163(j)–6(a). It will be rare that the partnership's business interest expense precisely matches the sum of 30% of the partnership's adjusted taxable income plus its business interest income. As the preamble to the final regulations emphasized, the partnership may have either, but not both in the same taxable year, (1) excess business interest expense or (2) excess taxable income and/or excess business interest income. T.D. 9905, 2020–40 I.R.B. 614. For example, if a partnership has $0 business interest income, $150x of adjusted taxable income, and

$30x of business interest expense, there will be $50x of "excess taxable income," because 30% of $100x adjusted taxable income will allow deduction of the $30x of business interest expense, leaving $50x adjusted taxable income as "excess taxable income," up to 30% of which could be used to permit deduction of a partner's business interest expenses from another business (e.g., a sole proprietorship). There is, however, no carryforward of excess taxable income or excess business interest income.

If a partnership lacks sufficient adjusted taxable income and business interest income, then there will be "excess business interest expense." Instead of being carried forward at the partnership level, excess business interest expense is allocated among the partners, and the allocation will reduce a partner's basis in the partnership interest, but not below zero. I.R.C. § 163(j)(4)(B)(iii). Even though an allocation of excess business interest expense reduces basis, it is not treated as paid or accrued until the partner is allocated a share of excess adjusted taxable income. At that point, the *partner* is treated as paying a portion of the carried over excess business interest expense equal to the amount of excess taxable income allocated to that partner. I.R.C. § 163(j)(4)(B)(ii). This does not necessarily mean the carried forward excess business interest expense is deductible; instead, the carryforward is treated as paid and thereby becomes subject to the § 163(j) limitation, determined at the partner level for that year. For example, if a partner has a $30x excess business interest expense from a prior year and is allocated $50x of excess taxable income in the current year, all $30x excess business interest expense is treated as *paid*, but if the partner's only source of adjusted taxable income is the $50x of excess taxable income and the partner has no business interest income, then only $15x of the $30x excess business interest expense will be deductible (30% of $50x); the remaining portion would be carried forward again. Treas.Reg. § 1.163(j)–6(o)(2), (7) & (8), Exs. 2, 7–8.

If a partner is allocated excess business interest expense but has insufficient basis, the final Regulations clarify that the allocation is treated as a § 704(d) suspended loss (discussed in Section 2 of this Chapter) and is labelled as a "negative § 163(j) expense." Treas.Reg. § 1.163–6(h). Once the negative § 163(j) amount is no longer suspended (by operation of the general rules applicable to § 704(d) suspended losses), it becomes excess business interest expense, reduces basis (again not below zero), and is treated as paid only to the extent the partner is allocated excess taxable income. Treas.Reg. § 1.163(j)–6(h)(2) & (o)(7)–(8), Exs. 7–8.

If the partner has been allocated excess business interest expense that reduced basis and then sells all or part of the partner's partnership interest before that excess business interest expense is treated as paid, the final Regulations provide that a proportionate share (by relative fair market value) of the excess business interest expense is added to the basis of the sold interest (and removed from the remaining

excess business interest expense associated with the retained partnership interest). For purposes of this rule, if a partner's interest is completely terminated through liquidation, this is also treated as a disposition of the partnership interest. The basis increase is in lieu of deducting the implicated portion of excess business interest expense. Treas.Reg. § 1.163(j)–6(h)(3) & (o)(9)–(10), Exs. 9–10. Note that this basis increase at disposition is not available with respect to suspended, negative § 163(j) expense because that portion would not yet have reduced basis in the partnership interest.

If there is excess business interest income or excess taxable income, these items are allocated to the partners and are used to compute a partner's § 163(j) limitation with respect to business interest expense at the partner level (which, as previously noted, may include excess business interest expense from a prior year treated as paid by the partner because of the allocation of excess taxable income.

These rules require an allocation of the (1) excess business interest expense or (2) excess taxable income and/or excess business interest income. The final Regulations adopted a complex, 11-step process for assigning these items. This lengthy process is not required if a partnership makes use of pro rata allocations. The preamble explains such a process is necessary because "the 11-step calculation preserves the entity-level calculation required in section 163(j)(4) while also preserving the economics of the partnership, including respecting any special allocations made in accordance with section 704 and the regulations . . . . Stated otherwise, the allocations of section 163(j) excess items prescribed by the 11-step calculation attempt to reflect the aggregate nature of partnerships under subchapter K of the Code while remaining consistent with the application of section 163(j) at the partnership level." T.D. 9905. See Treas.Reg. § 1.163(j)–6(o)(17) through (o)(22), Ex. 17–22.

Because a partner may have a business separate from the partnership (e.g., a sole proprietorship), rules are also required to prevent a partner from using a partnership's taxable income twice—once when the partnership determines the limitation for its business and once when the partner determines the § 163(j) limitation as to any other businesses the partner may have. In applying § 163(j) at the individual partner level, the statute provides that a partner must initially disregard all of the partner's partnership tax items and then add back in the partner's share, if any of the partnership's excess taxable income. I.R.C. § 163(j)(4)(A). The final Regulations make clear that this is the same "excess taxable income" allocated in the 11-step process. See Treas.Reg. § 1.163(j)–6(o)(1) through (o)(8) & (o)(17) through (o)(22), Exs. 1–8 & 17–22.

The Regulations contain many additional rules. For example, a special rule applies if a partner lends to the partnership; that rule deems excess business interest income to the lending partner determined with reference to the lesser of the lending partner's interest from the loan or the partner's excess business interest expense. Treas.Reg.

§ 1.163(j)–6(n). The final Regulations also contain rules for how to handle interest that would be treated as investment interest by certain partners (e.g., non-materially participating partners in certain trading partnerships) and how to handle interest allocated to a "C" corporation partner, as such interest is deemed to be business interest. Treas.Reg. §§ 1.163(j)–4(b)(3), –6(c). Regulations proposed in September 2020 contain additional rules for determining how to assign interest paid by a partnership among its businesses and investments. Prop.Reg. § 1.163–14, 85 Fed. Reg. 56,846 (Sept. 14, 2020). Suffice it to say, the complexity added by the § 163(j) limitation on deductibility of business interest is high.

Page 63:

Delete Detailed Analysis 4.2.3 [CARES Act Modifications to § 163(j) have not been extended past 2020.]

Page 66:

Add to the end of the third full paragraph the following:

The BBA continues to evolve. New final regulations added in December 2022 provide rules excepting certain partnership-related items from the BBA regime. T.D. 9969, 87 Fed. Reg. 75473 (Dec. 9, 2022). The Regulations describe § 6241(11) "special enforcement matters" as to which the centralized regime does not apply and set forth alternative examination rules for such matters. The 2022 Regulations also amend prior BBA Regulations to account for changes made to the Code.

CHAPTER 3

FORMATION OF THE PARTNERSHIP

SECTION 3. CONTRIBUTION OF PROPERTY VERSUS CONTRIBUTION OF SERVICES

Page 106:

At the end of the second full paragraph on the page, at the following:

In a recent opinion, the Tax Court rejected as "unreasonably narrow" the IRS's argument that Rev. Proc. 93-27 only applies when the recipient of a partnership interest provides the service directly to that partnership. In ES NPA Holding, LLC v. Commissioner, T.C. Memo 2023-55, a corporation, NPA Inc., created two LLCs, IDS LLC and NPA LLC. The corporation placed substantially all its business assets into NPA LLC and then contributed ownership of NPA LLC to IDS LLC, which thereby became a holding LLC. Both LLCs had three classes of membership units, and each LLC became taxed as a partnership as a result of transfers in ownership of membership units. The Tax Court addressed whether Rev. Proc. 93-27 applied to the receipt by ES NPA Holding of Class C units in IDS LLC for services ES NPA Holding provided to NPA Inc., the corporation that formed the two LLCs. The Class C units in IDS LLC tracked and were identical to the NPA LLC Class C units. The IRS argued that because ES NPA Holding did not provide the services to IDS LLC, Rev. Prov. 93-27 was inapplicable to the receipt of the IDS LLC interest. The Tax Court disagreed and stated that Rev. Proc. 93-27 should not be viewed as "a safe harbor with limited application" but rather "as administrative guidance on the treatment of the receipt of a partnership profits interest for services." The Tax Court found that the "material assets of this partnership are held in NPA LLC, and the activities performed . . were to and for the benefit of the future partnership," and that IDS LLC was a "mere conduit." Thus, Rev Proc. 93-27 applied. The Tax Court then further found that the interest had zero liquidation valuation and thus was a profits interest.

Page 110:

Substitute the following for the last sentence of the carryover paragraph from page 109:

Section 1061 is discussed in greater detail in Chapter 4 (for its application to distributive share allocations) and in Chapter 8 (for its application to partnership interest dispositions).

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CHAPTER 4

DETERMINING PARTNERS' DISTRIBUTIVE SHARES

SECTION 2. THE SECTION 704(B) REGULATIONS

A. ALLOCATIONS OF ITEMS UNRELATED TO NONRECOURSE DEBT

(1) ECONOMIC EFFECT

Page 156:

Add after the first full paragraph, the following:

In Clark Raymond & Co. PLLC v. Commissioner, T.C. Memo 2022-105, the Tax Court effectively gave determinative weight to a qualified income offset (QIO) provision in applying the facts and circumstances test. The case involved an accounting firm, Clark Raymond & Co. PLLC (CRC). Two of the partners withdrew from CRC, and multiple clients left with them. CRC reduced the capital accounts of the departing partners by the value of the departing clients' book of business, which caused negative capital accounts. CRC then allocated all of its ordinary income for the year to the departed partners pursuant to the QIO. The partners who had withdrawn contested both that there was an in-kind distribution of client intangibles and the ordinary income allocation. The IRS largely sided with withdrawing partners, which precipitated a response from CRC, ultimately resulting in the Tax Court decision. The Tax Court determined as a factual matter that CRC did own client-based intangibles and that there was a distribution of such intangibles (even though the clients were never bound to stay with CRC) and they were valuable. Further, the Tax Court found that there was substantial unrealized book gain in the client-based intangibles, which should have been revalued and the book gain allocated at the time of the distribution under Treas. Reg. § 1.704-1(v)(2)(iv)(*e*) (revaluation provision applicable to distributions and discussed on page 398). The Tax Court held that failure to revalue the distributed intangibles caused CRC to fail to maintain capital accounts, which in turn caused the allocation of ordinary income to lack economic effect. The Tax Court then turned to the partner's interest in the partnership test, but it looked primarily to the partnership

agreement terms governing current income allocations, including the QIO, while giving less weight to factors such as relative contributions and liquidation rights. The Tax Court used the partnership agreement's income allocation provisions to assign the unrealized book gain in the client-based intangibles not just to the departing partners (which would have resulted in a wash to the departing partners and was the position of the IRS) but to all the CRC partners. (A curious note: the opinion only references one remaining partner in CRC but does not address how/whether CRC continued as a partnership nor does it reference § 736 (discussed in Chapter 9).) This caused the departing partners to have negative capital accounts, and the Tax Court determined that the QIO required that current income be allocated so as to bring the partners' capital accounts to zero. This had the effect of moving the allocation of current income completely away from the remaining partner in CRC.

(2) SUBSTANTIALITY

Page 177–78:

Replace the material in Detailed Analysis 4 with the following:

Section 1061, added in 2017, applicable to the exchange of services for a profits interest in certain investment-focused partnerships such as private equity partnerships, requires that the service partner treat as short-term capital gain the excess (if any) of the partner's net long-term capital "with respect to the interest" calculated using the general § 1222 rules over the partner's net long-term capital gain computed as though § 1222 said "3 years" instead of "1 year."

Regulations finalized in January 2021 clarify that § 1061 may affect not only the character of gain on the disposition of a partnership interest but also the character of distributive share allocations of capital gain. The Regulations apply only to long-term capital gain triggered through application of § 1222 and not, for example, to gain treated as long-term capital gain through § 1231 or any other provision. Treas.Reg. § 1.1061–4(b)(7). The relevant holding period is determined by looking at the direct owner of the asset, except that a special rule applies to prevent using distributions by a partnership to circumvent this rule. Treas.Reg. §§ 1.1061–1(a), –4(b)(8), (c)(1)(ii). Thus, for example, if a partnership is subject to § 1061, holds a capital asset for 2 years, and sells the asset at a gain, the distributive share allocation of that capital gain to a partner subject to § 1061 would be subject to the recharacterization rule of § 1061, even if the partner had held the partner's partnership interest for more than 3 years. The same result would apply if the partnership distributed the capital asset and the

partner sold it at a gain shortly after the distribution. Treas.Reg. § 1.1061–4(c)(1)(i) through (ii), Exs. 1–2.

The Regulations contain rules providing that allocations made with respect to contributed capital are not subject to recharacterization if the allocation "is determined and calculated in a similar manner as the allocations with respect to capital interests held by similarly situated "Unrelated Non-Service Partners" who have made significant aggregate capital contributions." Treas.Reg. § 1.1061–3(c)(3). "Significant" contributions by such unrelated non-service partners require that they own at least 5% or more of the aggregate capital contributed to the partnership when the allocations are made. Id. "Related Person" means a person or entity treated as related through § 707(b) or § 267(b), and an "Unrelated Non-Service Partner" means partners who do not provide services to the partnership and who are not related to *any* person who provides services to the partnership or to any holder of an applicable partnership interest. Treas.Reg. § 1.1061–1(a)(ii).

The Regulations specify that the analysis includes not simply looking to allocations but also to distribution rights, and they contain a list of factors that are relevant in determining whether the "allocation and distribution rights with respect to capital contributed . . . are reasonably consistent with allocation and distribution rights" of the unrelated non-service partners. Treas.Reg. § 1.1061–3(c)(3). The Regulations allow capital contributions through reinvestment but limit the extent to which a partner will be treated as making a capital contribution when using borrowed funds. Id.

Special allocations intended to reduce the impact of § 1061 will require careful evaluation under the substantiality requirement.

B. ALLOCATIONS ATTRIBUTABLE TO NONRECOURSE DEBT

Page 186:

Substitute the following for the text of the first sentence of the second full paragraph (keep footnote 8):

If a partnership's depreciation is funded solely through nonrecourse debt (e.g., the partnership owns one depreciable asset purchased solely with nonrecourse debt and no equity), then a special allocation of depreciation alone, with all other items of the partnership being allocated according to a different consistent fraction, will not meet the regulatory safe harbor.

CHAPTER 5

ALLOCATION OF PARTNERSHIP LIABILITIES

Page 231:

Add to the end of the second full paragraph:

It is important to remember that general principles may be invoked to recharacterize debt as equity, thereby taking a transaction outside of § 752's purview. See Tribune Media Company v. Commissioner, T.C. Memo. 2021-122 (using 13-factor test to determine that subordinated financing was equity, not debt, and thus did not increase a partner's allocable share of recourse debt).

SECTION 2. ALLOCATION OF NONRECOURSE DEBT

Pages 255–56:

Delete the second full paragraph on page 255 through the first table on page 256 and insert:

First, pursuant to § 704(c) and Treas.Reg. § 1.704–3, D would be allocated $1,500 of the $4,500 of taxable gain (the excess of tax gain over book gain). Second, because under Treas.Reg. § 1.704–2(d)(3) partnership minimum gain is computed with reference to the excess of the nonrecourse debt over book value, the amount of the partnership's minimum gain is $3,000. That gain would be allocated between the partners in the ratio they claimed the nonrecourse depreciation deductions, which are also determined with reference to the excess of nonrecourse debt over book value—$1,000 to each of D, E, and F. (That is, each partner's allocation of $1,500 of book depreciation included $1,000 of nonrecourse deductions; the *tax* allocation required by § 704(c) of $1,500 to E and F are not relevant to the first component.) Thus, under the first component of the formula in Treas.Reg. § 1.752–3, $1,000 of the nonrecourse debt is allocated to each of D, E, and F. Under the second component of the formula, $1,500 is allocated to D (notice that this component is tied to "taxable gain" allocated under § 704(c) on a disposition of the property). And under the third component of the formula, the remaining $3,000 of

the debt is allocated equally among the partners, $1,000 to each. D's total share of the indebtedness is $3,500, and the total share of each of E and F is $2,000. As a result, even though the individual components of each partner's share of the debt shifted, none of the partners experienced an overall change in debt share (that is, D's debt share remained $3,500, while E and F's share each remained $2,000). At the end of the year, the partnership balance sheet would be as follows:

	Assets			**Indebtedness and Partners' Capital Accounts**	
	Book	**Tax Basis**		**Book**	**Tax Basis**
Cash	$3,000	$3,000	Debt	$7,500	
Property	$4,500	$3,000	D	$ 0	$2,000
			E	$ 0	$2,000
			F	$ 0	$2,000
	$7,500	$6,000		$7,500	$6,000

CHAPTER 6

TRANSACTIONS BETWEEN PARTNERS AND THE PARTNERSHIP

SECTION 2. SALES OF PROPERTY

Page 299:

After the end of the first full paragraph on page 299 before *Detailed Analysis* 3.3.3, add:

Treas.Reg. § 1.707–5 may trigger a disguised sale not only when a partnership assumes the debt of a contributing partner but also when the partnership incurs new debt following a contribution. Treas.Reg. § 1.707–5(b) provides, however, that if the new debt is used to fund a transfer to the contributing partner within 90 days of the partnership incurring the debt, then the transfer is treated as part of a disguised sale only to the extent the amount of the transfer exceeds the contributing partner's allocable share of the new partnership debt.

In Tribune Media Company v. Commissioner, T.C. Memo. 2021-122, the Chicago Tribune and its affiliates (Tribune) attempted, with partial success, to use this "debt-financed distribution exception" to reduce tax gain on the sale of the Chicago Cubs. Tribune contributed the Cubs to a newly formed LLC in a § 721 transaction; cash contributions to the new LLC were made at the same time by the buyer, a trust controlled by the Ricketts family. On the same date, the LLC borrowed money through two different arrangements and distributed the proceeds to Tribune. One financing arrangement was through commercial banks—the "Senior Debt." Tribune guaranteed the Senior Debt and argued this guaranty made the debt recourse with respect to Tribune, thereby increasing its basis and reducing the portion of the cash transfer that would be characterized as a disguised sale. The IRS argued that the guaranty was invalid under the Regulations, including both the § 752 Regulations and the general anti-abuse partnership Regulations, as well as under general substance-over-form principles. The Tax Court held for the Tribune as to this issue. (The LLC formation took place in 2009, so recent amendments strengthening the anti-abuse rules of the § 752 Regulations were not addressed by the Tax Court, but given the Tax Court's view that Tribune had the financial wherewithal to make good on the guaranty (notwithstanding that

Tribune was in bankruptcy proceedings) and its finding that there were no other guarantees or indemnification agreements, it seems likely the outcome would have been the same under the current § 752 Regulations.)

The second "loan" arrangement was financed by entities affiliated with the Ricketts family and was subordinated to the Senior Debt. The IRS argued that this arrangement constituted equity, instead of a loan, and thus could not give rise to additional recourse debt share for the Tribune and would increase the amount of gain on the disguised sale. The IRS prevailed on this argument with the Tax Court applying a 13-factor test to determine that the arrangement constituted equity. The Tax Court emphasized that the enforcement rights were meaningless and that only through treating the arrangement as equity would the equity ownership percentages match the operating agreement percentages. The Tax Court also noted the relatedness of the Ricketts family entities as well as the failed attempts to market the subordinated debt to other parties, including through offering owner-type privileges such as box seats and priority parking.

CHAPTER 8

SALES OF PARTNERSHIP INTERESTS BY PARTNERS

SECTION 1. THE SELLER'S SIDE OF THE TRANSACTION

B. CAPITAL GAIN VERSUS ORDINARY INCOME: SECTION 751

Page 346:

After the first sentence of the third full paragraph on the page, add the following:

But see CCA 202309015 (Mar. 2, 2023) (concluding that § 1221(a)(1) applies instead of § 741 when a taxpayer holds partnership interests primarily for sale to customers in the ordinary course of business).

Page 363:

Substitute the following for the last two sentences of the carryover paragraph from page 362 and the first sentence of the first full paragraph on page 363:

Final Regulations provide that the term "corporation" for purposes of § 1061(c)(4)(A) does not include "S" corporations or any pass-through entity. Treas.Reg. § 1.1061–3(b).

The statutory language of § 1061 seems to require recognition of short-term capital gain on the direct or indirect transfer of a covered interest to certain related parties. I.R.C. § 1061(d)(1). Regulations finalized in January 2021 define "transfer" to mean "a sale or exchange in which gain is recognized by the Owner Taxpayer," thereby taking a narrow approach to the statute and not, for example, requiring acceleration of gain recognition on gratuitous transfers. Treas.Reg. § 1.1061–5(b).

PART II

ELECTIVE PASSTHROUGH TAX TREATMENT

CHAPTER 10

S CORPORATIONS

SECTION 1. INTRODUCTION

C. S CORPORATION ELECTION PROCEDURES

Page 522:

After the third full paragraph add the following:

Rev. Proc. 2022-19, 2022-41 I.R.B. 282 (Oct. 11, 2022), amplifies Rev. Proc. 2013-30 by allowing "S corporations and their shareholders to resolve frequently encountered issues with certainty and without requesting a private letter ruling." The Revenue Procedure contains guidance relating to six areas. As one example, it distinguishes between "governing provisions" (e.g., bylaws and articles of incorporation) and "other agreements and arrangements" (e.g., buy-sell agreements and short-term unwritten advances), and provides that such other agreements and arrangements will not be treated as a second class of stock "so long as there was no principal purpose to use the agreement" to circumvent the requirement. The IRS further explains, "Because entering into these specific agreements will not result in

termination of S corporation status, taxpayers do not need to seek relief . . . and because the existence of a principal purpose is inherently factual in nature, the IRS will not rule in these situations."

SECTION 3. EFFECT OF THE SUBCHAPTER S ELECTION BY A CORPORATION WITH NO C CORPORATION HISTORY

A. PASSTHROUGH OF INCOME AND LOSS

Page 542:

Replace the last sentence immediately following the block quotation carried over from page 541 with the following:

The Regulations incorporate this approach, and those Regulations, along with further Proposed Regulations issued in that same year, expand on the manner of application of § 163(j) to S corporations. Treas.Reg. § 1.163–6, REG-107911-18, 85 Fed. Reg. 56,846 (Sept. 14, 2020); see also T.D. 9943, 86 Fed. Reg. 5496 (Jan. 19, 2021).

Page 542:

Replace the last sentence of the first full paragraph with the following:

The Regulations apply to S corporations the same carryover rules applicable to a C corporation that is not a member of a consolidated group. Treas.Reg. § 1.163(j)–6(*l*)(5).