

Certain securitization partnerships and electing investment partnerships are not treated as having a substantial built-in loss in certain instances, and thus are not required to make basis adjustments to partnership property.<sup>1112</sup> For electing investment partnerships, in lieu of the partnership basis adjustments, a partner-level loss limitation rule applies.<sup>1113</sup>

### **House Bill**

No provision.

### **Senate Amendment**

The provision modifies the definition of a substantial built-in loss for purposes of section 743(d), affecting transfers of partnership interests. Under the provision, in addition to the present-law definition, a substantial built-in loss also exists if the transferee would be allocated a net loss in excess of \$250,000 upon a hypothetical disposition by the partnership of all partnership's assets in a fully taxable transaction for cash equal to the assets' fair market value, immediately after the transfer of the partnership interest.

For example, a partnership of three taxable partners (partners A, B, and C) has not made an election pursuant to section 754. The partnership has two assets, one of which, Asset X, has a built-in gain of \$1 million, while the other asset, Asset Y, has a built-in loss of \$900,000. Pursuant to the partnership agreement, any gain on sale or exchange of Asset X is specially allocated to partner A. The three partners share equally in all other partnership items, including in the built-in loss in Asset Y. In this case, each of partner B and partner C has a net built-in loss of \$300,000 (one third of the loss attributable to asset Y) allocable to his partnership interest. Nevertheless, the partnership does not have an overall built-in loss, but a net built-in gain of \$100,000 (\$1 million minus \$900,000). Partner C sells his partnership interest to another person, D, for \$33,333. Under the provision, the test for a substantial built-in loss applies both at the partnership level and at the transferee partner level. If the partnership were to sell all its assets for cash at their fair market value immediately after the transfer to D, D would be allocated a loss of \$300,000 (one third of the built-in loss of \$900,000 in Asset Y). A substantial built-in loss exists under the partner-level test added by the provision, and the partnership adjusts the basis of its assets accordingly with respect to D.

Effective date.—The provision applies to transfers of partnership interests after December 31, 2017.

### **Conference Agreement**

The conference agreement follows the Senate amendment.

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<sup>1112</sup> See sec. 743(e) (alternative rules for electing investment partnerships) and sec. 743(f) (exception for securitization partnerships).

<sup>1113</sup> Unlike in the case of an electing investment partnership, the partner-level loss limitation rule does not apply for a securitization partnership.