

810-3-24-.03 Partner's Distributive Share of Partnership Income (or Loss).

(1) A partner's distributive share of partnership income, gains, losses and deductions shall be determined in accordance with the partner's interest in the partnership (taking into account all facts and circumstances) unless -

(a) the partnership agreement provides otherwise, and

(b) the allocation to a partner in accordance with the partnership agreement is not substantially for the purpose of avoiding or evading taxation under this regulation.

(2) The character of any item of income, gain, loss or deduction included in the partner's distributive share of partnership net income (or loss) shall be determined as if such item were realized directly from the source from which realized by the partnership, or incurred in the same manner as incurred by the partnership.

(3) (a) A partner's distributive share of partnership net income (or loss) includes any "Guaranteed Payments to Partner" as defined in Reg. 810-3-24-.04. The distributive share is included in gross income of the partner as provided in Regs. 810-3-14-.01 (for residents) and 810-3-14-.05 (for nonresidents) or 810-3-34-.01 (for corporations).

(b) A partner is also entitled to a proportionate share of any contributions made by the partnership which would be deductible under § 40-18-15(a)(10). See Reg. 810-3-15-.17.

(4) A partner's distributive share of partnership loss shall be allowed only to the extent of the adjusted basis (before reduction by the current year loss) of such partner's interest in the partnership at the end of the partnership taxable year in which such loss occurred. If a partner's distributive loss exceeds the adjusted basis in the partnership interest -

(a) the amount of the loss that exceeds the partner's adjusted basis will not be allowed as a deduction for that year, and

(b) any loss disallowed in subparagraph (a) above shall be allowed as a deduction at the end of the first succeeding partnership taxable year and subsequent partnership taxable years to the extent that the partner's adjusted basis in his partnership interest at the end of such year exceeds zero.

(5) In any case where it is necessary to determine the gross income of a partner, such amount shall include his distributive share of the gross income of the partnership.

(Adopted: June 17, 1988; Filed with LRS: July 27, 1988)

Authors: Ecta Spicer, Roy Wiggins
and John H. Burgess
Income Tax Division

Auth: § 40-18-24