**8762. How does a partner acquire interests in a partnership? Is the allocation of income amongst partners impacted if a partner acquires a partnership interest by gift?**

A person becomes a partner in a partnership through the ownership of a capital interest in a partnership in which capital is a material income-producing factor, whether the interest is acquired by purchase or gift. Generally, such a person will be taxable on his share of partnership profits or losses. If capital is not an income-producing factor in the partnership, the transfer of a partnership interest to a family member may be disregarded as an ineffective assignment of income, rather than an assignment of property from which income is derived.

Generally, the partnership agreement will provide how income and losses will be allocated. However, where an interest is acquired by gift (an interest purchased by one family member from another is considered to have been acquired by gift), the allocation of income, as set forth in the partnership agreement, will not control to the extent that:

(1) it does not allow a reasonable salary for the donor of the interest; or

(2) the income attributable to the capital share of the donee is proportionately greater than the income attributable to the donor’s capital share.[[1]](#footnote-1)

The transfer must be complete and the family member donee must have control over the partnership interest consistent with the status of partner. If the donee is not old enough to serve in the capacity of partner, the interest must be controlled by a fiduciary for his benefit.

1. . IRC Sec. 704(e). [↑](#footnote-ref-1)