CCH Expert Treatise Library: Federal Taxation of Partnerships & Partners, Table of Contents

Click to open document in a browser

PART 1
CHAPTER ONE-OVERVIEW AND GENERAL CONCEPTS

1.01 OVERVIEW — THE PARTNERSHIP'S ROLE IN THE MODERN WORLD
   1.01[A] Defining "Partnership" for Purposes of this Treatise
   1.01[B] A Brief (Non-Tax) History of Partnerships
   1.01[C] The History and Structure of Subchapter K

1.02 ENTITY VS. AGGREGATE MODELS
   1.02[A] Aggregate Model
   1.02[B] Entity Model
   1.02[C] Other Provisions
   1.02[D] Tension and Significance of Distinction Between Aggregate and Entity Models

1.03 ROLE OF THE PARTNERSHIP AGREEMENT

1.04 TAX PLANNING WITH PARTNERSHIPS
   1.04[A] Partnership Flexibility
   1.04[B] Special Allocations
   1.04[C] Code Section 736 Payments
   1.04[D] Code Section 743 Basis Adjustments

1.05 LIMITS ON TAX PLANNING WITH PARTNERSHIPS
   1.05[A] Substantial Economic Effect
   1.05[B] Disguised Sales
   1.05[C] Mixing Bowl Transactions
   1.05[D] Family Partnerships
   1.05[E] Partnership Anti-Abuse Rule
      1.05[E][1] General Abuse-of-Subchapter-K-Rule
      1.05[E][2] Abuse-of-Entity-Rule
      1.05[E][3] Scope of Anti-Abuse Regulations
      1.05[E][4] Criticisms of the Anti-Abuse Rule

1.06 GENERAL COMMENTS REGARDING PARTNERSHIP ACCOUNTING
   1.06[A] Importance of Partnership Accounting
   1.06[B] Overview of Partnership Financial Accounting
   1.06[C] Introduction to Tax Accounting for Partnerships

CHAPTER TWO-CHOICE OF ENTITY

2.01 OVERVIEW - CHOICE OF ENTITY

2.02 QUESTION ONE: CAN I USE A PASSTHROUGH ENTITY?
   2.02[A] Restrictions on the Use of Partnerships—the Publicly Traded Partnership Rules
   2.02[B] Restrictions on the Use of S Corporations
      2.02[B][1] Only Domestic Corporations Allowed
      2.02[B][2] Limited Number of Shareholders
      2.02[B][3] Limited Types of Shareholders
      2.02[B][4] Single Class of Stock Only

2.03 QUESTION TWO: IF EITHER AN S CORPORATION OR A PARTNERSHIP IS AVAILABLE, WHICH SHOULD I USE?
   2.03[A] S Corporation
      2.03[A][1] Description of S Corporation
      2.03[A][2] S Corporation Advantages
      2.03[A][3] S Corporation Disadvantages
   2.03[B] Partnership
      2.03[B][1] Description of Partnership
      2.03[B][2] Partnership Advantages
      2.03[B][3] Partnership Disadvantages

2.04 QUESTION THREE: IF THE PARTNERSHIP IS APPROPRIATE, WHAT ARE THE CHOICES FOR THE FORM OF STATE LAW ENTITY?
   2.04[A] General Partnership
   2.04[B] Limited Partnership
   2.04[C] Limited Liability Company

©2012 Wolters Kluwer. All rights reserved.
2.04[C][1] Special Types of LLCs
2.04[D] Limited Liability Partnership
2.04[E] Limited Liability Limited Partnership

2.05 QUESTION FOUR: IF THE S CORPORATION IS APPROPRIATE, WHAT ARE THE CHOICES FOR THE FORM OF STATE LAW ENTITY?

2.06 QUESTION FIVE: IF NEITHER THE S CORPORATION NOR PARTNERSHIP IS AVAILABLE, WHAT ARE THE ASPECTS OF USING A C CORPORATION THAT I SHOULD BE AWARE OF?

2.06[A] C Corporation Advantages
2.06[A][1] Limited Liability
2.06[A][2] Management and Control Flexibility
2.06[A][3] Employment Taxes
2.06[A][4] Sale of C Corporation Stock
2.06[A][5] Flexible Capital Structures Permitted
2.06[A][6] Tax-Free Reorganizations
2.06[A][7] State Tax Considerations
2.06[A][8] Code Section 1202 Reduced Capital Gains Rate on Sale of Qualified Small Business Stock
2.06[A][9] Consolidated Returns with Controlled Subsidiaries Permitted
2.06[A][10] No Shareholder-Level Tax on Undistributed Income
2.06[A][11] Well-Established Body of Law For C Corporations

2.06[B] Disadvantages
2.06[B][1] Double Taxation Regime
2.06[B][2] No Capital Gains Rate Differential
2.06[B][3] Distribution of Appreciated Property Usually Triggers Corporate Level Gain
2.06[B][4] Potential Tax Traps: Accumulated Earnings Tax and Personal Holding Company Tax
2.06[B][5] Method of Accounting

2.07 ENTITY STRUCTURING CONSIDERATIONS
2.07[A] Formation Issues
2.07[A][1] General Partnerships
2.07[A][2] Limited Partnerships
2.07[A][3] Limited Liability Partnerships
2.07[A][4] Limited Liability Companies (LLCs)
2.07[A][5] S Corporations
2.07[A][6] C Corporations

2.07[B] Capital Structure (Debt vs. Equity) Considerations
2.07[B][1] Overview
2.07[B][2] Partnerships
2.07[B][3] S Corporations
2.07[B][4] C Corporations

2.08 CONVERSION FROM ONE ENTITY INTO ANOTHER
2.08[A] C Corporation to Partnership or LLC
2.08[A][1] Tax Consequences to Converting C Corporation
2.08[A][2] Tax Consequences to Shareholders/Owners

2.08[B] S Corporation to Partnership or LLC
2.08[C] Partnership to C Corporation
2.08[C][1] Rev. Rul. 84-111 Method 1
2.08[C][2] Rev. Rul. 84-111 Method 2
2.08[C][3] Rev. Rul. 84-111 Method 3
2.08[C][4] "Formless" Conversion Method

2.08[D] Partnership to LLC
2.08[E] C Corporation to S Corporation
2.08[F] S Corporation to C Corporation

CHAPTER 3—CLASSIFICATION AS A PARTNERSHIP FOR TAX PURPOSES
3.01 OVERVIEW—CLASSIFICATION AS A PARTNERSHIP FOR TAX PURPOSES
3.02 STATUTORY AND CASE LAW DEFINITION OF "PARTNERSHIP" FOR FEDERAL INCOME TAX PURPOSES
3.02[A] Statutory Definition
3.02[B] Case Law
¶3.03 PRE-CHECK THE BOX REGULATIONS

¶3.03[A] Morrissey v. Commissioner and Corporate Resemblance

¶3.03[B] Kintner Regulations

¶3.03[B][1] Continuity of Life
¶3.03[B][2] Centralization of Management
¶3.03[B][3] Limited Liability
¶3.03[B][4] Free Transferability of Interests

¶3.03[C] Withdrawn Proposed Regulations on Limited Liability Company Classification

¶3.04 FIXED INVESTMENT TRUSTS AND THE DEFINITION OF BUSINESS ENTITY

¶3.05 ENTITY CLASSIFICATION UNDER THE CHECK THE BOX REGULATIONS

¶3.05[A] Business Entity Defined for Federal Tax Purposes

¶3.05[A][1] Whether a Separate Entity Exists
¶3.05[A][2] Whether the Entity is a Business Entity for Federal Income Tax Purposes

¶3.05[B] “Member” Defined For Federal Tax Purposes

¶3.05[C] Partnerships Distinguished From Other Business Relationships

¶3.05[C][1] Mere Co-Ownership of Property
¶3.05[C][2] Employer - Employee or Independent Contractor
¶3.05[C][3] Purchaser - Seller
¶3.05[C][4] Lender - Borrower
¶3.05[C][5] Lessor- Lessee

¶3.06 ELIGIBLE ENTITY V. PER SE CORPORATIONS

¶3.06[A] List of Per Se Corporations in Treasury Regulations Section 301.7701-2

¶3.06[B] Elective Classification for Entities

¶3.06[B][1] Eligible Entity

¶3.07 ELECTION TO ADOPT OR CHANGE CLASSIFICATION (IRS FORM 8832)


¶3.07[B] Restrictions on Changes to Classification

¶3.08 STATUS CHANGES UNDER THE CHECK THE BOX REGULATIONS

¶3.08[A] Change in Number of Members

¶3.08[B] Election - Deemed Transactions

¶3.09 PARTNERSHIPS AMONG SHAREHOLDERS AND CORPORATIONS

¶3.09[A] Generally

¶3.09[B] Code Section 482 and Other Principles

¶3.09[B][1] Disregarding Entities

¶3.09[B][2] Code Section 482

¶3.10 ELECTION TO BE EXCLUDED FROM SUBCHAPTER K (761(A))

¶3.10[A] Eligibility to Make and Mechanics of Making Election

¶3.10[A][1] Election for Full Exclusion from Subchapter K

¶3.10[A][2] Request for Partial Exclusion from Subchapter K

¶3.10[B] Effects of Election

¶3.11 ELECTIVE EXCLUSION FROM PARTNERSHIP TREATMENT - CODE SECTION 761(F)

FOR JOINT VENTURE OF SPOUSES

¶3.12 FOREIGN ENTITIES

¶3.12[A] Default Classification Rules

¶3.12[B] List of Foreign Per Se Corporations

Part 2

CHAPTER 4 - CONTRIBUTION OF PROPERTY IN EXCHANGE FOR PARTNERSHIP INTEREST

¶4.01 OVERVIEW - CONTRIBUTION OF PROPERTY IN EXCHANGE FOR PARTNERSHIP INTEREST

¶4.02 GENERAL RULE: NONRECOGNITION OF GAIN OR LOSS

¶4.03 PROPERTY DEFINED

¶4.03[A] General

¶4.03[B] Intellectual Property

¶4.03[C] Cancellation of Indebtedness

¶4.04 BASIS OF PARTNERSHIP INTEREST TO CONTRIBUTING PARTNER

¶4.04[A] General

¶4.04[B] Promissory Notes

¶4.04[C] Corporate Stock

¶4.04[D] Personal Use Property

©2012 Wolters Kluwer. All rights reserved. 3
4.05 BASIS OF CONTRIBUTED PROPERTY TO PARTNERSHIP

4.05[A] General
4.05[B] Promissory Notes
4.05[C] Corporate Stock
4.05[D] Personal Use Property
4.05[E] Contribution of Built-In Loss Property

4.06 HOLDING PERIODS

4.07 CODE SECTION 721(C) - GAIN INCLUDIBLE IN GROSS INCOME OF NON-U.S. PERSON

4.08 CODE SECTION 721(D) - CODE SECTION 367 TRANSFERS OF INTANGIBLES

INTEREST (721(B))

4.09[G] General Gain Recognition Rule of Code Section 721(b)
4.09[B] Definition of Investment Company
4.09[C] Diversification Requirement

CHAPTER FIVE - CONTRIBUTION OF SPECIAL TYPES OF PROPERTY TO A PARTNERSHIP

5.01 OVERVIEW

5.02 CONTRIBUTION OF ENCUMBERED PROPERTY

5.02[A] Overview
5.02[B] Contribution of Property Subject to Liabilities
5.02[B][1] Adjusted Basis of Contributed Property is Greater Than Liability
5.02[B][2] Adjusted Basis of Contributed Property is Less Than Liability
5.02[B][3] Example of Contribution of Property Subject to a Nonrecourse Liability
5.02[C] Liability Exceeds Fair Market Value of Contributed Property
5.02[D] Potential Planning Techniques to Mitigate Gain Recognition

5.03 CONTRIBUTION OF DEPRECIATION RECAPTURE PROPERTY

5.03[A] Overview

5.04 CONTRIBUTION OF OTHER RECAPTURE PROPERTY

5.05 CONTRIBUTION OF INVESTMENT CREDIT RECAPTURE PROPERTY

5.05[A] Overview
5.05[B] Contribution of Investment Credit Recapture Property

5.06 CONTRIBUTION OF PROPERTY SUBJECT TO CODE SECTION 467 RENTAL AGREEMENTS

5.07 DEPRECIATION COMPUTATION FOR CONTRIBUTION YEAR AND SUBSEQUENT YEARS

5.08 UNREALIZED RECEIVABLES AND INVENTORY ITEMS

5.09 OTHER TYPES OF PROPERTY

5.09[A] Intangible Property
5.09[B] Installment Notes
5.09[C] Long-Term Contracts
5.09[D] Market Discount Bonds
5.09[E] Code Section 481 Adjustments
5.09[F] Passive Activities
5.09[G] Partner Stock and Promissory Notes
5.09[H] Personal Use Property

CHAPTER 6 - THE CONTRIBUTION OF SERVICES IN EXCHANGE FOR A PARTNERSHIP INTEREST

6.01 OVERVIEW - NONRECOGNITION RULE OF CODE SECTION 721(A) DOES NOT APPLY

6.02 BRIEF OVERVIEW OF DIFFERENCE BETWEEN CAPITAL INTERESTS AND PROFITS INTERESTS

6.02[A] Capital Interests Versus Profits Interests
6.02[B] Undistributed Profits to Become Partnership Capital
6.02[C] Disguised Capital Interests

6.03 HISTORIC TREATMENT OF THE GRANT OF A CAPITAL INTEREST IN EXCHANGE FOR SERVICES

6.03[A] Prior to Enactment of Code Section 83
6.03[B] Interaction with Code Section 83

6.04 HISTORIC TREATMENT OF A GRANT OF A PROFITS INTEREST IN EXCHANGE FOR SERVICES

6.04[A] The Sol Diamond Case
6.04[A][1] The Tax Court Decision
Contemporary Commentary On The Tax Court Decision
Seventh Circuit's Decision On Appeal
Campbell v. Commissioner
The Tax Court decision
The Eighth Circuit's Decision On Appeal
Period Between Sol Diamond and Campbell v. Commissioner
Campbell v. Commissioner
The Tax Court decision
Revenue Procedure 93-27 Exceptions
Revenue Procedure 2001-43
THE IRS' INITIAL ADMINISTRATIVE RESPONSE TO CAMPBELL V. COMMISSIONER - REVENUE PROCEDURES 93-27 AND 2001-43
Applicable Definitions
Capital Interest
Profits Interest
General Rule of Revenue Procedure 93-27
Revenue Procedure 93-27 Exceptions
Revenue Procedure 2001-43
THE IRS' LATEST ADMINISTRATIVE APPROACH - THE 2005 PROPOSED REGULATIONS AND NOTICE 2005-43
Overview
Application of Code Section 83 to Compensatory Partnership Interests
Valuation of Compensatory Partnership Interest
The Safe Harbor Election in Notice 2005-43's Proposed Revenue Procedure
Conditions Precedent
Termination of Safe Harbor Election
Practical Issues Surrounding Safe Harbor Election
Tax Accounting for Compensatory Partnership Interests
Income Inclusion and Partnership's Deduction
Timing of Income Inclusion and Partnership's Deduction
Allocation of Partnership's Deduction
Forfeiture of Certain Compensatory Partnership Interests
Effective Dates
Special Case of Disregarded Entities
"CARRIED INTEREST" LEGISLATION - THE SPECIAL CASE OF "INVESTMENT SERVICES PARTNERSHIP INTERESTS"
Overview
Current Federal Income Tax Treatment of Carried Interests
Proposed Legislation to Change Taxation of Carried Interests
Overview
Proposed Carried Interest Tax Legislation
DEFERRED COMPENSATION - CODE SECTION 409A ISSUES
CHAPTER 7—CONTRIBUTIONS TO PARTNERSHIP DISTINGUISHED FROM OTHER TRANSACTIONS
OVERVIEW
DISGUISED SALES
Background
Inconsistent Case Law
Cases Resulting in Sale Treatment
Cases Resulting in Contribution/Distribution Treatment
Code Section 707(a)(2)(B)
1992 Treasury Regulations
General
Simultaneous versus Non-Simultaneous Transfers
Encumbered Property
Other Effects of Having a Disguised Sale
Certain Transfers Exempted from Disguised Sale Rules
DISGUISED SALE OF PROPERTY BY PARTNERSHIP TO PARTNER
CONTRIBUTION VERSUS LOAN
General
Caselaw Involving Partnership Capital Contribution Versus Loan to Partnership Question
Other Tax Consequences of Contribution Versus Loan
Nature of Transferee's Loss
Partnership Versus Disregarded Entity
CHAPTER 8—PARTNER'S BASIS IN PARTNERSHIP INTEREST (OUTSIDE BASIS)

8.01 OVERVIEW
- Importance of Outside Basis
- Partner Only Has One Outside Basis
- Outside Basis Compared to Capital Accounts

8.02 INITIAL BASIS OF PARTNERSHIP INTEREST
- Partnership Interest Acquired by Contribution of Money or Other Property
- Partnership Interest Acquired by Purchase or Exchange
- Partnership Interest Acquired by Gift or From Decedent
  - 8.02[C][1] Acquired by Gift
  - 8.02[C][2] Acquired From Decedent
- Partnership Interest Acquired by Performance of Services

8.03 SPECIAL CONSIDERATIONS FOR NONCOMPENSATORY OPTIONS AND CREDITORS' EXCHANGE OF PARTNERSHIP DEBT FOR PARTNERSHIP INTEREST
- Issuing Noncompensatory Options to Acquire Partnership Interests
- Creditor's Exchange of Partnership Debt for a Partnership Interest

8.04 ADJUSTMENTS TO BASIS DURING LIFE OF PARTNERSHIP
- Increases in Outside Basis
- Decreases in Outside Basis
- Special Rule for Transfers to Foreign Corporations
  - 8.04[C][1] Transfer by Partnership Treated as Transfer by Partners
  - 8.04[C][2] Transfer of Partnership Interest Treated as Transfer of Proportionate Share of Assets

8.05 ALTERNATIVE METHOD OF DETERMINING BASIS

8.06 ORDERING AND TIMING OF BASIS ADJUSTMENTS
- In Connection with Code Section 704(d)
- In Connection with Current Distributions

8.07 EFFECT OF PARTNERSHIP LIABILITIES ON PARTNER'S BASIS
- Prior Law
- Current Law
  - 8.07[B][1] Effect of Partnership Liabilities on Outside Basis
  - 8.07[B][2] Special Considerations for Contributions and Distributions of Property Subject to a Liability
  - 8.07[C][1] IRS vs. the Taxpayers in Recent Transactions Involving Basis
  - 8.07[C][2] Borrowing at a Premium, with Partnership Assuming Debt and Taxpayer Contributing Proceeds to Partnership

CHAPTER 9- PARTNERSHIP LIABILITIES

9.01 OVERVIEW—PARTNERSHIP LIABILITIES

9.02 LIABILITY DEFINED
- Historic Meaning of "Liability" for Code Section 752 Purposes
- Current Definitions under Treasury Regulations Section 1.752-1(a)(4)
  - 9.02[B][1] Section 1.752-1 Liabilities
  - 9.02[B][2] Section 1.752-7 Liabilities

9.03 DETERMINING A PARTNER'S SHARE OF SECTION 1.752-1 LIABILITIES
- Recourse Liabilities
  - 9.03[A][1] Definition
  - 9.03[A][2] Determination of a Partner's Share of Recourse Liabilities
- Nonrecourse Liabilities
  - 9.03[B][1] Definition
  - 9.03[B][2] Determination of a Partner's Share of Nonrecourse Liabilities
  - 9.03[B][3] Partnership Minimum Gain
  - 9.03[B][4] Section 704(c) Minimum Gain
  - 9.03[B][5] Excess Nonrecourse Liabilities
  - 9.03[B][6] Example of a Partner's Share of Nonrecourse Liabilities
- Bifurcation of Partnership Liabilities
- When to Determine a Partner's Share of Liabilities
- Netting Rule for Simultaneous Changes in a Partner's Share of Partnership Liabilities
- Fair Market Value Limitation
- Special Rule for Disregarded Entities

©2012 Wolters Kluwer. All rights reserved.
9.03 History of the Rules
  9.03[1] Prior to 1988
  9.03[3] Current Regulations under Code Section 752

9.04 Special Rules for Section 1.752-7 Liabilities
  9.04[A] Purpose and Intent of Regulations Section 1.752-7
    9.04[A][1] Certain Defined Terms
    9.04[A][2] Application of Code Section 704(c) Principles
    9.04[A][3] When a Liability is Assumed
  9.04[B] Triggering Events
    9.04[B][1] Sale or Other Taxable Disposition of a Section 1.752-7 Liability
    9.04[B][2] Distribution in Liquidation of Section 1.752-7 Liability Partner’s Interest
    9.04[B][3] Assumption of a Section 1.752-7 Liability by a Partner Other Than a Section 1.752-7 Liability Partner
  9.04[C] Exceptions to Basis Reduction Rule
  9.04[D] Tiered Partnerships
  9.04[E] Regulations Section 1.752-6

9.05 Partner Loans, Guarantees, Indemnification and Assumption Arrangements
  9.05[A] Historical Background
  9.05[B] Guarantees, Indemnification Agreements and Assumption Agreements
  9.05[C] Nonrecourse Loans by Partners
    9.05[C][1] Wrapped Debt
    9.05[C][2] De Minimis Exception

Part 3
Chapter 10 Partnership Tax Year
10.01 Overview - Partnership Tax Year
  10.01[A] Issues Involved in a Partnership’s Selection of its Tax Year
  10.01[B] Observation on Reference to Guaranteed Payments in Regulation Section 1.706-1(a)(1)
  10.01[C] Majority Interest Taxable Year
    10.01[C][1] Interests in Partnership Profits and Capital
    10.01[C][2] Majority Interest Taxable Year Rules
  10.01[D] Principal Partner Rule
  10.01[E] Least Aggregate Deferral Rule
  10.01[F] Interests of Tax-Exempt Partners
  10.01[G] Disregarded Foreign Partners

10.02 Changes in a Partnership’s Required Taxable Year
  10.02[A] Partner’s Natural Business Year
  10.02[B] Filing Requirements
  10.02[C] Code Section 444 Election to Use a Tax Year Other Than a Permitted Tax Year
    10.02[C][1] Procedures for Making a Code Section 444 Election
    10.02[C][2] Tiered Structures under Code Section 444

10.03 Monthly Reporting Period for Tax-Exempt Bond Investment Partnerships

Chapter 11-Partnership’s Method of Accounting
11.01 Overview - Partnership’s Method of Accounting
  11.01[A] Partnership’s Accounting Method Independent of Partners’ Methods

11.02 General Rules Concerning Accounting Methods
  11.02[A] Definition of Accounting Method
  11.02[B] Clear Reflection of Income Principle
  11.02[C] Different Accounting Methods for Different Businesses
  11.02[D] Adoption of and Change in Accounting Method

11.03 Methods of Accounting
  11.03[A] Cash Receipts and Disbursements Method
    11.03[A][1] General Rules for Cash Receipts and Disbursements Method
    11.03[A][2] Doctrine of Constructive Receipt

©2012 Wolters Kluwer. All rights reserved.
Prohibitions on the Use of the Cash Receipts and Disbursements Method of Accounting

Accrual Method of Accounting

General Rules for Accrual Method of Accounting

Rules for Accrual of Income

General Rules for Accrual of Expenses

Limitations for Partnerships on Use of Cash Method of Accounting

Definition of a Tax Shelter

Partnership with a C Corporation General Partner

Partnerships Engaged in a Farming Business

Partnership That is Qualifying Taxpayer Under Rev. Proc. 2001-10

Partnership That is Qualifying Small Business Taxpayer Under Rev. Proc. 2002-28

CHANGING ACCOUNTING METHODS

Automatic Consent of IRS for Changes in Accounting Methods

Advance Consent of IRS for Changes in Accounting Methods

Chapter 12 - Tax Accounting for Partnership Operations

OVERVIEW - TAX ACCOUNTING FOR PARTNERSHIP OPERATIONS

Introduction

Aggregate and Entity Concepts in United States vs. Basye

PARTNER'S CAPITAL ACCOUNTS

Significance of Partners' Capital Accounts

Distinguishing Book Capital Accounts from GAAP Capital Accounts and Tax Capital Accounts

Capital Account Maintenance Rules for Specific Items

Money and Liabilities

Contribution of Promissory Notes

Fair Market Value of Other Property

Code Section 704(c) Considerations

Allocation of other Items to Partners' Capital Accounts

Revaluation of Partners' Capital Accounts

Importance of Capital Account Revaluation of Partnership Property Rules

Mandatory Revaluations of Property

Elective or Optional Revaluations of Partners' Capital Accounts and Partnership Property

Analysis of Situations Involving Capital Account Maintenance Rules

COMPUTATION OF PARTNERSHIP TAXABLE INCOME

DETERMINING PARTNERSHIP ITEMS VS. PARTNER ITEMS

Differentiating Partnership Revenue and Expenses from Partner Revenue and Expenses

TREATMENT OF SPECIFIC ITEMS OF INCOME, GAIN, LOSS, DEDUCTION & CREDIT

Dealer Status

Dealer or Trader Partnerships

Partnerships that are Real Estate Dealers

Code Section 1033 Condemnation of Property

Code Section 1031 Tax-Deferred Exchanges

Summary of Pertinent Provisions of Code Section 1031

Summary of Provisions of Code Section 1031(a) and Partnerships

Cancellation of Indebtedness Income

Summary of Provisions of Code Section 108

Application of Code Section 108 to Partnerships

Tax Credits of Partnerships

Rehabilitation Credit

Other Investment credits

Alcohol Fuels Credit

Credit for Research Activities

Low-Income Housing Tax Credit

Work Opportunity Credit
¶12.07[E][7] Enhanced Oil Recovery Credit
¶12.07[E][8] Disabled Access Credit
¶12.07[E][9] Employer Social Security Credit
¶12.07[E][10] Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions
¶12.07[E][11] Credit for Qualified Fuels Produced from Nonconventional Sources
¶12.07[E][12] Renewable Electricity Production Credit
¶12.07[E][13] Empower Zone Employment Credit
¶12.07[E][14] Indian Employment Credit
¶12.07[E][15] Credit for Certain Uses of Gasoline
¶12.07[E][16] New Markets Credit
¶12.07[E][17] Credit for Small Employer Pension Plan Startup Costs
¶12.07[E][18] Employer Provided Child Care Credit
¶12.07[E][19] New Energy Efficient Home Credit
¶12.07[E][20] Manufacturer's Credit for Energy Efficient Appliances
¶12.07[E][21] Credit for Health Insurance Premiums paid by Eligible Small Business Employer

¶12.11 APPLICATION OF AGGREGATE OR ENTITY THEORY DEPENDENT UPON ISSUE

CHAPTER 13: SEPARATELY STATED PARTNERSHIP ITEMS

¶13.01 INTRODUCTION - SEPARATELY STATED PARTNERSHIP ITEMS

¶13.01[A] Separately Stated Items Required By Code Section 702(a)
¶13.01[A][1] Capital Gains and Losses
¶13.01[A][2] Section 1231 Gains and Losses
¶13.01[A][3] Charitable Contributions
¶13.01[A][4] Dividends
¶13.01[A][5] Foreign Taxes

¶13.01[B] Other Separately Stated Items Addressed in the Regulations or Elsewhere
¶13.01[B][1] Tax Exempt Interest
¶13.01[B][2] Qualified Production Activities Income
¶13.01[B][3] Recovery of Tax Benefit Items
¶13.01[B][4] Gains and Losses from Wagering Transactions
¶13.01[B][5] Soil and Water Conservation Expenditures
¶13.01[B][6] Non business Expenses described in Code Section 212
¶13.01[B][7] Medical Expenses Described in Code Section 213
¶13.01[B][8] Taxes and Interest Paid to Cooperative Housing Corporation
¶13.01[B][9] Intangible Drilling and Development Costs
¶13.01[B][10] Certain Mining Exploration Expenditures
¶13.01[B][11] Partnership Gain or Loss on Disproportionate Distributions
¶13.01[B][12] Specially Allocated Items
¶13.01[B][13] Alimony and Expenses for the Care of Certain Dependents
¶13.01[B][14] Hobby Losses
¶13.01[B][15] Controlled Foreign Corporations
¶13.01[B][16] Foreign Earned Income Exclusion
¶13.01[B][17] Net Operating Loss Deduction
¶13.01[B][18] Alternative Minimum Tax Items
¶13.01[B][19] Investment Interest and Net Investment Income
¶13.01[B][20] Code Section 179 Expense
¶13.01[B][21] Oil and Gas Depletion
¶13.01[B][22] Foreign Partners
¶13.01[B][23] Partnerships Subject to Uniform Capitalization Rules
¶13.01[B][24] Debt Financed Distributions
¶13.01[B][25] Contributions to Partner Retirement Plans
¶13.01[B][26] Net Earnings from Self-Employment
¶13.01[B][27] Other Amounts That Have to be Separately Stated by a Partnership

¶13.02 CHARACTER OF SEPARATELY STATED ITEMS

¶13.02[A] Partnership Level Characterization
¶13.02[B] Entity and Aggregate Concepts in International Taxation-Brown Group Cases

©2012 Wolters Kluwer. All rights reserved.
Chapter 14 - Partnership Compliance Issues

14.01 OVERVIEW - PARTNERSHIP COMPLIANCE ISSUES

14.02 ESTIMATED TAX PAYMENTS

14.03 CODE SECTION 481 ADJUSTMENTS

14.04 PARTNERSHIP ELECTIONS VS. ELECTIONS SEPARATELY MADE BY PARTNERS

14.05 EFFECT OF PARTNERSHIP OWNERSHIP OF CERTAIN ASSETS

14.06 PARTNERSHIP AS A PERSON OR TAXPAYER FOR PURPOSES OF CERTAIN PROVISIONS

14.07 PARTNERSHIP REPORTING

14.08 REPORTABLE TRANSACTIONS AND DISCLOSURE REQUIREMENTS

Chapter 15 - Partnership Organization and Syndication Costs

15.01 OVERVIEW - PARTNERSHIP ORGANIZATION AND SYNDICATION COSTS

15.02 PARTNERSHIP ORGANIZATIONAL EXPENSES

15.03 SYNDICATION EXPENSES

15.04 START-UP COSTS

CHAPTER 16 - TEFRA PARTNERSHIP AUDIT & LITIGATION RULES

16.01 OVERVIEW - TEFRA PARTNERSHIP AUDIT & LITIGATION RULES
¶16.01 Statutory and Regulatory Scheme
¶16.01[C] Small Partnership Exception
¶16.01[D] Electing Large Partnerships

¶16.02 AUDIT RULES
¶16.02[A] Tax Matters Partner
¶16.02[A][1] TMP Eligibility
¶16.02[A][2] TMP Designation
¶16.02[A][3] Resignation of, or Revocation of Designation as, TMP
¶16.02[A][4] Summary of Duties of TMP
¶16.02[B] Partnership Items
¶16.02[B][1] Treatment of Partnership Items
¶16.02[B][2] Definition
¶16.02[B][3] Conversion to Nonpartnership Item
¶16.02[B][4] Affected Items
¶16.02[C] Consistency requirement - partner — partnership

¶16.03 ADMINISTRATIVE PROCEEDINGS
¶16.03[A] Notice Requirements
¶16.03[A][1] General Rule
¶16.03[A][2] Responsibilities of TMP
¶16.03[B] Settlement agreements
¶16.03[C] Computational adjustments

¶16.04 PARTNER'S PARTICIPATION IN ADMINISTRATIVE PARTNERSHIP PROCEEDINGS
¶16.05 PETITION FOR READJUSTMENT OF PARTNERSHIP ITEMS AFTER FPAA
¶16.06 ASSESSMENTS
¶16.07 ADMINISTRATIVE ADJUSTMENT REQUESTS
¶16.07[A] AAR Filed on Behalf of Partnership
¶16.07[B] AAR Filed by Partner on Behalf of Itself

¶16.08 STATUTES OF LIMITATIONS
¶16.08[A] General Three-Year Statute of Limitations
¶16.08[B] Four-Year Statute of Limitations for Converted Items
¶16.08[C] Suspension of Statute of Limitations
¶16.08[D] Extension of Statute of Limitations

¶16.09 "OVERSHELTERED" RETURNS (an income tax return that shows no taxable income for the tax year and a net loss from TEFRA partnership items)

Part 4

CHAPTER 17-COMPUTATION OF PARTNERS' DISTRIBUTIVE SHARES
¶17.01 OVERVIEW - PARTNERS' DISTRIBUTIVE SHARE - CODE SECTION 704
¶17.02 GENERAL RULES FOR VALIDITY OF PARTNERSHIP ALLOCATIONS - THREE TESTS UNDER CODE SECTION 704(b)
¶17.03 SUBSTANTIAL ECONOMIC EFFECT SAFE HARBOR
¶17.03[A] Maintenance of Capital Accounts
¶17.03[A][1] General Rules
¶17.03[A][2] Specific Items
¶17.03[A][3] Restatement of Capital Accounts
¶17.03[B] Economic Effect
¶17.03[B][1] Safe Harbor
¶17.03[B][2] Alternate Test for Economic Effect (Qualified Income Offset)
¶17.03[C] Substantiality
¶17.03[C][1] Shifting Allocations
¶17.03[C][2] Transitory Allocations
¶17.03[D] Economic Effect Equivalence Test

¶17.04 REALLOCATION PER PARTNERS' INTERESTS IN PARTNERSHIP
¶17.05 SPECIAL RULES REGARDING CERTAIN ALLOCATIONS
¶17.05[A] Nonrecourse Deductions
¶17.05[A][1] Overview
¶17.05[A][2] Nonrecourse Deductions Defined
¶17.05[A][3] Partnership Minimum Gain
¶17.05[A][4] Partner's Share of Minimum Gain
¶17.05[A][5] Minimum Gain Chargeback
¶17.05[A][6] Distributions of Proceeds of Nonrecourse Financing
¶17.05[A][7] Safe Harbor for Nonrecourse Deduction Allocations
§17.05[A][8] Nonrecourse Debt Where Partner Bears Economic Risk of Loss
§17.05[A][9] Tiered Partnerships
§17.05[B] Tax / Book Capital Account Disparities
§17.05[C] Restrictions on Allocations of Particular Items
  §17.05[C][1] Tax Credits
  §17.05[C][2] Depreciation Recapture
  §17.05[C][3] Percentage Depletion Allowance
  §17.05[C][4] Foreign Taxes
  §17.05[C][5] Forfeiture of Compensatory Capital Interest

§17.06 ALLOCATIONS AND DISTRIBUTIONS WITH RESPECT TO CONTRIBUTED PROPERTY: CODE SECTION 704(c)
  §17.06[A] Traditional Method of Allocations
  §17.06[A][1] Ceiling Rule
  §17.06[B] Other Reasonable Methods
    §17.06[B][1] Traditional Method with Curative Allocations
    §17.06[B][2] Remedial Allocation Method
  §17.06[C] "Reverse" Section 704(c) Items
    §17.06[C][1] Special Rules for Securities Partnerships
    §17.06[C][2] Contributions of Loss Property
    §17.06[E] Distributions of Contributed Property

§17.07 BASIS LIMITATION ON DEDUCTIBILITY OF PARTNER'S SHARE OF LOSSES: CODE SECTION 704(d)

CHAPTER 18-SPECIAL LIMITATIONS ON DEDUCTIBILITY OF PARTNERSHIP LOSSES-AT RISK RULES

§18.01 OVERVIEW - SPECIAL LIMITATIONS ON DEDUCTIBILITY OF PARTNERSHIP LOSSES-AT RISK RULES

§18.02 AT RISK RULES OF CODE SECTION 465
  §18.02[A] Overview
    §18.02[A][1] Reasons for At Risk Rules
    §18.02[A][2] Taxpayers covered by Code Section 465
    §18.02[A][3] Limitation on Deductibility of Losses and Treatment of Suspended Losses under Code Section 465

§18.03 COMPUTATION OF AMOUNT CONSIDERED AT RISK
  §18.03[A] Summary of the Rules for Computing a Partner's Amount at Risk
  §18.03[B] Definition of Activity
  §18.03[C] Rules for Aggregation of Activities
    §18.03[C][1] Original At Risk Activities and Separate Activity Rule
    §18.03[C][2] Aggregation of Code Section 1245 Equipment Leasing Activities
    §18.03[D] Aggregation of Activities Due to Active Participation
    §18.03[E] Holding of Real Property and a Manufacturing Business

§18.04 AMOUNTS CONSIDERED AT RISK
  §18.04[A] Contributions of Money
  §18.04[B] Contributions of Property
  §18.04[C] Capital Contributions to a Partnership
  §18.04[D] Loans by a Partner to a Partnership
  §18.04[E] Partner Personally liable for Borrowed Amounts Contributed to Activity
  §18.04[F] Partner Pledges Partner's Property as Collateral for Borrowed Amount

§18.05 BORROWINGS FROM RELATED PERSONS
  §18.05[A] Loans from Identically-Owned Limited Liability Companies
  §18.05[B] Protection Against Loss by Nonrecourse Debt, Guarantees, Stop Loss Agreements, & Similar Arrangements
    §18.05[B][1] Guarantees
    §18.05[B][2] The Hubert Decision

§18.06 QUALIFIED NONRECOURSE DEBT
  §18.06[A] Qualified Activity Requirement
  §18.06[B] Lack of Personal Liability Requirement
  §18.06[C] Convertible Debt
  §18.06[D] Qualified Lender requirement
  §18.06[E] Allocation of a Partnership's Qualified Nonrecourse Debt Among Partners

§18.07 OTHER INCREASES AND DECREASES TO A PARTNER'S AT RISK AMOUNT
  §18.07 At Risk Rules for Certain Tax Credits

©2012 Wolters Kluwer. All rights reserved.
CHAPTER 19—SPECIAL LIMITATIONS ON DEDUCTIONS-PASSIVE LOSS RULES

19.01 OVERVIEW - SPECIAL LIMITATIONS ON DEDUCTIONS-PASSIVE LOSS RULES
   19.01[A] Synopsis of Passive Activity Loss and Credit Rules
   19.01[B] Rules for Publicly Traded Partnerships

19.02 DEFINITION OF AN ACTIVITY
   19.02[A] Significance of the Definition of an Activity
   19.02[B] Definition of Activity
      19.02[B][1] Grouping by Partnerships and Consistency Requirements
      19.02[B][2] Disclosure Requirements
      19.02[B][3] Property Rented to Taxpayer's Trade or Business

19.03 TRADER PARTNERSHIPS

19.04 MATERIAL PARTICIPATION
   19.04[A] Definition of Participation
   19.04[B] Significant Participation Activities
   19.04[C] Significant Participation Passive Activities
   19.04[D] Material Participation on a Regular, Continuous and Substantial Basis
   19.04[E] Participation by Limited Liability Company Members and Limited Partners

19.05 PASSIVE ACTIVITY GROSS INCOME AND DEDUCTIONS
   19.05[A] Passive Activity Gross Income
      19.05[A][1] Gain or Loss from an Interest in an Activity or an Interest in Property Used in an Activity
      19.05[A][2] Disposition of Substantially Appreciated Property Formerly Used in Non-Passive Activity
      19.05[A][3] Gain on Partnership Distributions and Partnership Capital Contributions
   19.05[B] Passive Activity Deductions
   19.05[C] Deductions that are not Passive Activity Deductions

19.06 PORTFOLIO INCOME
   19.06[A] Items that Generally are Portfolio Income
   19.06[B] Self-Charged Interest
      19.06[B][1] Reg. §1.469-7 Regulations on Treatment of Self-Charged Interest
      19.06[B][2] Applying the Self-Charged Interest Rules to Other Expenses

19.07 RECHARACTERIZATION RULES
   19.07[A] Rental of Non Depreciable Property
   19.07[B] Equity Financed Lending Activities
   19.07[C] Property Rented Incidental to Development Activities
   19.07[D] Partnerships that License Intangible Property

19.08 RULES FOR MATERIALLY PARTICIPATING REAL ESTATE PROFESSIONALS
   19.08[A] Decisions for a Materially Participating Real Estate Professional

19.09 SPECIAL ALLOWANCE FOR RENTAL REAL ESTATE ACTIVITIES WITH ACTIVE PARTICIPATION

19.10 OTHER RULES
   19.10[A] Transfer by Gift or Transfers at Death
   19.10[B] Dispositions of an Interest in a Passive Activity

19.11 IMPOSITION OF MEDICARE TAX AND IRS PROJECTS

CHAPTER 20—PARTNERSHIP ALLOCATIONS IN CONNECTION WITH CHANGES IN PARTNERS' INTERESTS

20.01 OVERVIEW - PARTNERSHIP ALLOCATIONS - CODE SECTIONS 706(C) & 706(D)

20.02 SHIFTS THAT CLOSE THE PARTNERSHIP'S TAX YEAR
   20.02[A] Termination of Partnership
   20.02[B] Dispositions of Partner's Entire Interest
   20.02[C] Dispositions of Less Than Partner's Entire Interest

20.03 DETERMINING DISTRIBUTIVE SHARES WHEN PARTNER'S INTEREST CHANGES
   20.03[A] Allocation under "Varying Interests Rule"
      20.03[A][1] Interim Closing of the Books and Pro Rata Method
      20.03[A][2] Other Permissible Allocation Methods: Conventions
   20.03[B] Allocable Cash Basis Items
   20.03[C] Allocation Rule for Tiered Partnerships

20.04 RELATIONSHIP WITH CODE SECTION 704(B) SPECIAL ALLOCATIONS; SHIFTS AMONGST CONTEMPORANEOUS PARTNERS

Part 5

©2012 Wolters Kluwer. All rights reserved.
Chapter 21-Distributions Not Involving "Hot Assets" or Code §736(a) Payments

\(\texttt{21.01}\) OVERVIEW - DISTRIBUTIONS TO PARTNERS

- \(\texttt{21.01[A]}\) Types of Distributions
- \(\texttt{21.01[B]}\) General Rules Concerning Partnership Distributions
  - \(\texttt{21.01[B][1]}\) Current Distributions of Money
  - \(\texttt{21.01[B][2]}\) Constructive Distributions and Code Section 108(i)
  - \(\texttt{21.01[B][3]}\) Current Distributions of Property
  - \(\texttt{21.01[B][4]}\) Liquidating Distributions of Money, Unrealized Receivables and Inventory Items
  - \(\texttt{21.01[B][5]}\) Liquidating Distributions of Property other than Cash, Unrealized Receivables and Inventory Items
  - \(\texttt{21.01[B][6]}\) Special Partnership Basis of Distributed Property

\(\texttt{21.02}\) DRAWING ACCOUNT REGULATION

\(\texttt{21.03}\) SPECIAL SITUATIONS CONCERNING PARTNERSHIP DISTRIBUTIONS

\(\texttt{21.04}\) LOANS FROM PARTNERSHIPS TO PARTNERS

\(\texttt{21.05}\) DISGUISED SALES OF PARTNERSHIP INTERESTS

\(\texttt{21.06}\) DISTRIBUTIONS OF MARKETABLE SECURITIES

  - \(\texttt{21.06[A]}\) General Rule and Reasons for its Enactment
  - \(\texttt{21.06[B]}\) Exceptions to the General Rule
  - \(\texttt{21.06[C]}\) Reduction of Value of Distributed Marketable Securities for Partner's Share of Gain
  - \(\texttt{21.06[D]}\) Definition of Marketable Securities
  - \(\texttt{21.06[E]}\) Partner's Basis in Marketable Securities Distributed
  - \(\texttt{21.06[F]}\) Interaction of Code Sections 731(c), 704(c)(1)(B) and 737
  - \(\texttt{21.06[G]}\) Technical Terminations and the Anti-Abuse Rule
  - \(\texttt{21.06[H]}\) Investment Partnerships

\(\texttt{21.07}\) DISTRIBUTIONS OF CODE SECTION 704 (C)(1)(A) PROPERTY

  - \(\texttt{21.07[A]}\) Exceptions to Code Section 704(c)(1)(B)
  - \(\texttt{21.07[B]}\) Carve-over of Code Section 704(c)(1)(a) Treatment to a Successor Partner

\(\texttt{21.08}\) CODE 737-RECOGNITION OF PRE CONTRIBUTION GAIN IN CASE OF CERTAIN DISTRIBUTIONS TO CONTRIBUTING PARTNER

  - \(\texttt{21.08[A]}\) Basis of Partner's Interest before the Excess Distribution and Recognition of Code Section 704(c)(1)(B) Gain
  - \(\texttt{21.08[B]}\) Character of Code Section 737 Gain
  - \(\texttt{21.08[C]}\) Other Rules of Regulation Section 1.737-1
  - \(\texttt{21.08[D]}\) Exceptions and Special Rules
    - \(\texttt{21.08[D][1]}\) Transfers to Another Partnership
    - \(\texttt{21.08[D][2]}\) Distribution of Previously Contributed Property
    - \(\texttt{21.08[E]}\) Basis of Property Received in a Code Section 737
    - \(\texttt{21.08[F]}\) Code Section 737 Anti-abuse Rule
    - \(\texttt{21.08[G]}\) Application of Partnership Rules to Real Estate Development

\(\texttt{21.09}\) ADJUSTMENT TO BASIS OF DISTRIBUTED PARTNERSHIP PROPERTY UNDER CODE SECTION 732(D)

  - \(\texttt{21.09[A]}\) Making the Code Section 732 (d) Election
  - \(\texttt{21.09[B]}\) Other Rules

\(\texttt{21.10}\) ADJUSTMENT TO BASIS OF ASSETS OF A DISTRIBUTED CORPORATION CONTROLLED BY A CORPORATE PARTNER

CHAPTER 22 - POST-DISTRIBUTION CONSEQUENCES TO RECIPIENT PARTNER

\(\texttt{22.01}\) OVERVIEW - POST-DISTRIBUTION CONSEQUENCES TO RECIPIENT PARTNER

\(\texttt{22.02}\) CHARACTER OF UNREALIZED RECEIVABLES AND INVENTORY

  - \(\texttt{22.02[A]}\) Unrealized Receivables
  - \(\texttt{22.02[B]}\) Inventory Items
  - \(\texttt{22.02[C]}\) Holding Period for Distributed Property

\(\texttt{22.03}\) DISTRIBUTION OF RECAPTURE PROPERTY

  - \(\texttt{22.03[A]}\) Section 1245 Depreciation Recapture
  - \(\texttt{22.03[B]}\) Section 1250 Depreciation Recapture
  - \(\texttt{22.03[C]}\) Other Recapture Property
    - \(\texttt{22.03[C][1]}\) Mining Exploration Expenditures
    - \(\texttt{22.03[C][2]}\) Stock of a Domestic International Sales Corporation
    - \(\texttt{22.03[C][3]}\) Gain from Sales of Exchanges of Stock in certain Foreign Corporations
\[22.03\text{C}[4]\] Code Section 1252 Gain from Disposition of Farm Land
\[22.03\text{C}[5]\] Gain on Transfers of Franchises, Trademarks and Trade Names
\[22.03\text{C}[6]\] Code Section 1254 Gain from Disposition of Interest in Oil, Gas, Geothermal or other Mineral Properties
\[22.03\text{C}[7]\] Market Discount Bonds
\[22.03\text{C}[8]\] Short-term Obligations

\[22.04\] POST-DISTRIBUTION COMPUTATION OF DEPRECIATION

\[22.05\] PARTNERSHIP DISTRIBUTIONS OF INTANGIBLES
\[22.05\text{A}\] Description of Issue with respect to Partnership Distributions of Intangibles
\[22.05\text{B}\] General Description of Code Section 197
\[22.05\text{C}\] Anti-Churning Rules
\[22.05\text{D}\] Application of Anti-Churning Rules to Shift of Decline in Other Assets

CHAPTER 23 - Disproportionate Distributions of Ordinary Income Assets - Section 751(b)

\[23.01\] SECTION 751(B) - THE ECONOMICS OF PRESERVING THE CHARACTER OF INCOME IN PARTNERSHIP DISTRIBUTIONS

\[23.02\] THE LEGISLATIVE SOLUTION - STATUTORY ELEMENTS OF SECTION 751(B)
\[23.02\text{A}\] The General Rule (Code Section 751(b)(1))
\[23.02\text{B}\] Statutory Exceptions to the General Rule (Section 751(b)(2))
\[23.02\text{C}\] Identifying and Categorizing Hot Assets under Section 751(b)
\[23.02\text{C}[1]\] Unrealized Receivables under Section 751(b)
\[23.02\text{C}[2]\] Inventory Items under Section 751(b)
\[23.02\text{D}\] Tiered Partnerships: Section 751(f)

\[23.03\] DETERMINING WHETHER SECTION 751(B) APPLIES
\[23.03\text{A}\] Overview
\[23.03\text{B}\] The Requirement of a Distribution
\[23.03\text{C}\] The Requirement of an Exchange Altering Interests in Hot and Cold Assets

\[23.04\] THE APPLICATION OF SECTION 751(B) TO A DISPROPORTIONATE DISTRIBUTION - OPERATING PRINCIPLES
\[23.04\text{A}\] Overview
\[23.04\text{B}\] Determining and Separating the Hot Assets from the Cold Assets
\[23.04\text{C}\] Determining Relevant Gross Values
\[23.04\text{D}\] Constructing the Partnership Exchange Table
\[23.04\text{E}\] Determining the Assets Affected by the 751(b) Distribution
\[23.04\text{F}\] Determining the Basis of the Assets Deemed Surrendered
\[23.04\text{G}\] Determining the Gain or Loss on the Exchange and Collateral Matters
\[23.04\text{H}\] Determining the Consequences of the Distribution Not Subject to Section 751(b)
\[23.04\text{I}\] Collateral Problems in Nonliquidating Distributions

\[23.05\] CODE SECTION 751(B) AND PARTNERSHIP DISSOLUTIONS
\[23.05\text{A}\] Liquidation of a Two-Person Partnership
\[23.05\text{B}\] Uncertainty Relating to Dissolutions of Partnerships of Three or More Partners

Part 6

CHAPTER 24—TRANSFER OF PARTNERSHIP INTERESTS

\[24.01\] OVERVIEW—TRANSFER OF PARTNERSHIP INTERESTS—MODIFIED ENTITY APPROACH (CODE SECTION 741)

\[24.02\] GENERAL RULES—TRANSFER OF PARTNERSHIP INTERESTS

\[24.03\] SALE OF A PARTNER’S INTEREST
\[24.03\text{A}\] General Rule
\[24.03\text{B}\] When Is There a “Sale or Exchange”?
\[24.03\text{B}[1]\] Change in Partner’s Interest
\[24.03\text{B}[2]\] Sale of Future Personal Services
\[24.03\text{C}\] Tax Effect on Selling Partner
\[24.03\text{C}[1]\] Computation of Gain or Loss
\[24.03\text{C}[2]\] Computation of Amount Realized
\[24.03\text{C}[3]\] Computation of Basis
\[24.03\text{C}[4]\] Holding Period Based on Assets Contributed and Holding Period of Partnership Interest
\[24.03\text{C}[5]\] Ordinary Income
\[24.03\text{C}[6]\] Collectibles, Small Business Stock and Recapture Property
\[24.03\text{C}[7]\] Allocation of Profits and Losses for Partial Year
\[24.03\text{C}[8]\] Sale of Parent in Multi-Tiered Partnership
$24.03$ Tax Effect on Purchasing Partner
  $24.03[1]$ Basis Generally Equals Purchase Price Plus Share of Liabilities
  $24.03[2]$ Non-Recognition Transaction

$24.04$ Sale v. Liquidation of Partnership Interest: Withdrawal or Retirement of a Partner
  $24.04[A]$ Comparison of Consequences
    $24.04[A][1]$ Goodwill
    $24.04[A][2]$ Deferred Payments
    $24.04[A][3]$ Unrealized Receivables
    $24.04[A][4]$ Basis Adjustments
    $24.04[A][5]$ Partnership Termination
    $24.04[A][6]$ Closing of Partnership Year
  $24.04[B]$ Recharacterization of Transaction
    $24.04[B][1]$ Form Prevails if Proportionate Increase by Remaining Partners
    $24.04[B][2]$ Substance Prevails if Disproportionate Increase by Some Partners
    $24.04[B][3]$ Step Transaction and In-Kind Distributions
    $24.04[B][4]$ Special Considerations for Two Person Partnerships

$24.05$ Transfer of Partnership Interest v. Transfer of Partnership Assets

$24.06$ Exchange of Partnership Interest for Partnership Interest
  $24.06[A]$ Like Kind Exchange
  $24.06[B]$ Exchange of Partnership Interests in the Same Partnership

$24.07$ Abandonment of Partnership Interest
  $24.07[A]$ Abandonment

$24.08$ Gratuitous Transfers (Other Than by Sale or Exchange)
  $24.08[A]$ By Gift
    $24.08[A][1]$ On Death - Non-Recognition
    $24.08[A][2]$ Inter-Vivos
    $24.08[A][3]$ Charitable Contribution of Partnership Interest

$24.09$ Transfers of Partnership Interests to and from Corporations and Other Partnerships
  $24.09[A]$ Transfer to Corporation
    $24.09[A][1]$ Section 351 Non-Recognition
    $24.09[A][2]$ Boot Under CODE Section 741
    $24.09[A][3]$ Basis Adjustment Under CODE Section 743 Possibly
  $24.09[B]$ Distribution by Corporation
    $24.09[B][1]$ Corporations Recognize Gain/(Loss) under CODE SECTIONS 311 and 336
    $24.09[B][2]$ Effect on Shareholder
  $24.09[C]$ Transfer to Other Partnership
    $24.09[C][1]$ Non-Recognition Generally Under CODE Sections 721-723
    $24.09[C][2]$ Distribution from Other Partnership
    $24.09[D][1]$ Sale or Exchange for CODE Sections 708 and 743

$24.10$ Transfer of Partnership Interests to Related Persons
  $24.10[A]$ Code Section 267 Limitations
  $24.10[B]$ Ordinary Income Recognition Under CODE SECTION 1239
  $24.10[C]$ Code Section 704(e) Transfers

CHAPTER 25— Transfers of Partnership Interests—Collapsible Partnerships
  $25.01$ Overview - Transfers of Partnership Interests—Collapsible Partnerships
  $25.02$ Procedure for Calculating Gain or Loss for Section 751 Property
    $25.02[A]$ In General
    $25.02[B]$ Nonrecognition Transfers
      $25.02[B][1]$ Code Section 351 Incorporations
      $25.02[B][2]$ Partnership Non-recognition transfers
      $25.02[B][3]$ Gifts
    $25.03$ Inventory Items CODE Section 751(D)
      $25.03[A]$ Inclusion of receivables in inventory
      $25.03[B]$ Code Section 1221(a)(1) property
      $25.03[C]$ Other ordinary income property
Ordinary Income property in the hands of the selling partner

UNREALIZED RECEIVABLES
Payments for goods
Payments for Services
Specifically the Identical Unrealized Receivables

TIERED PARTNERSHIPS

STATEMENT REQUIRED TO BE FILED

CHAPTER 26—INCORPORATION OF A PARTNERSHIP

OVERVIEW - REASONS FOR INCORPORATION OF A PARTNERSHIP

THREE ALTERNATIVE METHODS—INCORPORATION OF A PARTNERSHIP

Section 351; Recognition of Gain and Loss and Determining Basis
Contribution of Partnership Assets and Distribution of Corporate Shares
(Assets-Over)
Distribution and Contribution of Partnership Assets (Assets-Up)
Contribution of Partnership Interests and Distribution of Corporate Shares
(Interests-Up)
Planning Illustrations

INCORPORATION OF A PARTNERSHIP—OTHER ISSUES

Assignment of Income Issues and Accounting Issues
Treatment of Section 754 Adjustments

INCORPORATION OF A PARTNERSHIP—COLLATERAL CONSEQUENCES AND ISSUES

Interaction with Code Section 367
Interaction with Section 362(e)
Incorporation when Liabilities are in Excess of Basis
Disguised Sale Issues
Subchapter S Corporation Status of the New Corporation
Section 1244 Stock
Personal Holding Company Issues

Part 7

CHAPTER 27—TRANSACTIONS BETWEEN PARTNERS AND PARTNERSHIPS

OVERVIEW - THREE CATEGORIES OF SECTION 707 PAYMENTS

Framework and Purpose of Section 707
Distinguishing Among Section 707 Payments

PARTNER ACTING AS A "THIRD PARTY" - SECTION 707(A) PAYMENTS

Loans
Services
Leases
Sale of property

In General
Disguised Sales of Property to the Partnership
Exceptions to Disguised Sale Treatment
Effect of Liabilities
Disguised Sales by Partnerships to Partner
Disguised Sale of Partnership Interest

GUARANTEED PAYMENTS TO PARTNERS - SECTION 707(C) PAYMENTS

Determining Whether Payment is a Guaranteed Payment
Acting in Partner Capacity
Determined Without Regard to Income of Partnership
Reporting as Income and Deduction
Employment Tax Issues
Fringe Benefits
Transfer of Property as Consideration for Guaranteed Payment

RELATED PARTY ISSUES

Code Section 707(b) Limitations with Controlling Partners or Commonly Controlled Partnerships
Loss Limitations
Capital Gain Recharacterization
Losses, Expenses, and Interest Limitations with Related Parties - Code Section 267
CHAPTER 27—LOSS TRANSACTIONS WITH RELATED NON-PARTNERS - CODE SECTION 267(a)(1)

CHAPTER 27—DEFERRAL OF ACCRUED EXPENSES - CODE SECTION 267(a)(2)

CHAPTER 27—DISALLOWANCE OF INSTALLMENT SALE TREATMENT - CODE SECTION 453

CHAPTER 27—SALES OF DEPRECIABLE PROPERTY BETWEEN PARTNERSHIPS AND CONTROLLING PERSONS - CODE SECTION 1239

CHAPTER 28—COMPENSATION ARRANGEMENTS USING PARTNERSHIP INTERESTS

Chapter 28—Compensation Arrangements Using Partnership Interests

Overview - Compensatory Arrangements Using Partnership Interests

Basic Code Section 83 Principles

Grant of Partnership Profits or Capital Interests

- Profits Interests
  - Fully Vested Profits Interest
  - Subject to Vesting

- Capital and Profits Interests
  - Fully Vested
  - Subject to Vesting

Grants of Options to Acquire Partnership Equity

- Profits Interests
- Option to Acquire a Capital Interest - Fully Vested

Business Considerations with Grants of Profits Interests, Capital Interests and Options

Equity Appreciation Rights

- Key Characteristics
- Advantages
- Disadvantages
- Changing Role of SARs
- Tax Treatment
- EARs for Partnerships
- Tax Treatment of Partnership EAR to Service Provider
- Tax Treatment of Partnership EAR to Partnership

Other Phantom Equity

- Key Characteristics
- Advantages
- Disadvantages
- Strategic Application
- Tax Treatment of Phantom Equity to Partnership
- Planning Suggestions

Code Section 409A in the Partnership Context

- In General
- Code Section 409A as Applied to Partnerships
- Special Issues in Respect of Equity Compensation for Private Investment Partnerships
  - Special Issues With Respect to Deferral Elections Under Code Section §409A
  - Other Code Section 409A Issues for Private Investment Partnership Managers

Code Section 457A

Corporate Partner Equity and Other Issues

Part 8

Chapter 29—Tax Planning—Special Partners & Partnerships

Overview - Special Partners and Partnerships

Family Partnerships

- Overview of Code Section 704(e)
- Family Partnerships Where Capital is a Material Income-Producing Factor
- Determining When Capital is a Material Income-Producing Factor
- Ownership of Capital Interest
- Family Service Partnerships
- Donee Treated as Partner
- Legal Title
- Conduct of Business
- Control Retained by Donor
§29.02 Indirect Control
§29.02 Interest Purchased from Family Member
§29.02 Allocation Restrictions
§29.03 PUBLICLY TRADED PARTNERSHIPS
§29.03 General
§29.03 Definition of Publicly Traded
§29.03 Conversion to PTP Treatment
§29.03 Exceptions
§29.03 Passive Income Exception
§29.03 Electing 1987 Partnerships
§29.04 TAX-EXEMPT ORGANIZATIONS AS PARTNERS
§29.04 Unrelated Business Taxable Income of Tax-Exempt Partners
§29.04 Reduction of Cost Recovery Deductions
§29.05 OTHER TYPES OF PARTNERS AND PARTNERSHIPS
§29.05 C corporations as partners
§29.05 S corporations as partners
§29.05 REITs as partners
§29.05 Regulated investment companies as partners
§29.05 Limited Liability partnerships
§29.05 Limited Liability limited partnerships
§29.05 Electing large partnerships
§29.05 Securities partnerships
§29.05 Syndicated investment partnerships

CHAPTER 30—TREATMENT OF DISTRESSED PARTNERSHIPS
§30.01 INTRODUCTION—DISTRESSED PARTNERSHIPS AND PARTNERSHIPS IN BANKRUPTCY
§30.02 PRE-BANKRUPTCY—DISTRESSED PARTNERSHIPS
§30.02 Debt Modifications
§30.02 Debt Cancellation
§30.02 Repaying Creditors at a Discount
§30.02 Transferring Partnership Property to Repay Debt
§30.02 In General
§30.02 Transfer of Property Subject to Nonrecourse Debt
§30.02 Transfer of Property Subject to Recourse Debt
§30.02 Issuing Partnership Equity to Repay Debt
§30.03 TREATMENT OF A PARTNERSHIP UNDER THE BANKRUPTCY CODE
§30.03 General
§30.03 Procedural Issues
§30.04 CANCELLATION OF INDEBTNESS IN A PARTNERSHIP
§30.04 General
§30.04 Exception to COD Income Inclusion Applied at Partner Level
§30.04 Allocation of COD Income
§30.04 In General
§30.04 Substantial Economic Effect Issues
§30.04 Election to Defer COD Income
§30.04 General
§30.04 Acceleration Events
§30.04 Allocation of Deferred COD Income
§30.05 PLANNING TECHNIQUES FOR DISTRESSED PARTNERSHIP
§30.05 Debt Restructure Versus Foreclosure
§30.05 Abandonment of Partnership Interest
§30.05 Partnership Going Into Bankruptcy

CHAPTER 31—PROFESSIONAL PARTNERSHIPS
§31.01 OVERVIEW—PROFESSIONAL PARTNERSHIPS
§31.02 FORMATION ISSUES
§31.02 Who is a partner?
§31.02 Issues Involving Receivables and Payables
§31.02 Contribution of Services
§31.03 OPERATIONAL ISSUES
§31.03 Distributive Shares
§31.03 Self-employment Tax
¶31.03 Use of Guaranteed Payments

¶31.04 WITHDRAWAL ISSUES

¶31.04[A] Sale

¶31.04[B] Liquidation

¶31.04[C] Death

¶31.04[D] Allocating income in the Year of Withdrawal

CHAPTER 32—INTERNATIONAL PARTNERSHIPS

Part 9

CHAPTER 33— TERMINATION OF A PARTNERSHIP

¶33.01 OVERVIEW OF CODE SECTION 708

¶33.02 TERMINATION OF A PARTNERSHIP

¶33.02[A] Actual Termination of a Partnership

¶33.02[A][1] State law and actual termination of a partnership

¶33.02[A][2] Actual Termination of Two Member Partnership

¶33.02[A][3] Winding Up a Partnership's Affairs and Cessation of Partnership's Business Activities

¶33.02[B] Consequences of an Actual Termination of a Partnership

¶33.02[C] Revenue Ruling 99-6-Conversion of a Multi-Member partnership to a Single-Member LLC

¶33.02[C][1] Actual Termination of a Partnership with Two Partners

¶33.02[C][2] Application of Revenue Ruling 99-6 to a Deferred Like-kind Exchange

¶33.02[C][3] Involuntary Conversions and Revenue Ruling 99-6

¶33.03 TECHNICAL TERMINATION OF A PARTNERSHIP

¶33.03[A] Occurrence of Sales or Exchanges Within a Twelve Month Period

¶33.03[B] Sale or Exchange Requirement

¶33.03[C] Transactions that are not Sales or Exchanges

¶33.03[D] Distributions of Interests in Tiered Partnership Arrangements

¶33.03[E] Summary of Strategies to Avoid a Code Section 708(b)(1)(B)

¶33.03[E][1] Transfer Interests over a period of more than 12 consecutive months

¶33.03[E][2] Liquidate a Partner's Interest in a Transaction that is not a Sale or Exchange

¶33.04 DEEMED TRANSACTIONS THAT OCCUR AS A RESULT OF A PARTNERSHIP'S TECHNICAL TERMINATION

¶33.05 EFFECTS OF A TECHNICAL TERMINATION OF A PARTNERSHIP

¶33.05[A] Closing of the Terminated Partnership's Tax Year

¶33.05[B] Basis and Holding Period of Assets in New Partnership

¶33.05[C] Basis and Holding Period of Interests of Partners in New Partnership

¶33.05[D] Elections by Terminated Partnership

¶33.05[E] Depreciation of Assets of New Partnership

¶33.05[E][1] Special Bonus Depreciation Allowance

¶33.05[F] Section 197 Assets and Amortization of those assets

¶33.05[G] No Recapture of Investment Credit

¶33.05[H] Effect of Technical Termination on Partnership's Book Capital Accounts

¶33.05[I] Application of Rules of Code Section 704( c) to Technical Termination

¶33.05[J] Treatment of Retirement Plans

¶33.05[K] Partnership Organization Costs, Syndication Costs and Start-Up Expenses

¶33.05[L] Other Tax Consequences of a Technical Termination

CHAPTER 34 Partnership Mergers and Divisions

¶34.01 OVERVIEW - PARTNERSHIP Mergers and Divisions

¶34.02 REASONS FOR PARTNERSHIP Mergers

¶34.02[A] Definition of Partnership Merger and Continuity of Interest Doctrine

¶34.02[B] Types of Partnership Mergers Allowed

¶34.02[B][1] Assets-Over Merger

¶34.02[B][2] Assets-Up Merger

¶34.02[B][3] Other Forms of Merger

¶34.02[B][4] Bifurcation of Assets-Over and Assets-Up Forms of Merger

¶34.02[B][5] Assets-over Merger Coupled with a Sale of a Partnership Interest

©2012 Wolters Kluwer. All rights reserved.
¶34.02[C] Tax Consequences of Partnership Mergers
  ¶34.02[C][1] Termination of Taxable year of Terminating Partnership
  ¶34.02[C][2] Accounting Methods
  ¶34.02[C][3] Basis and Holding Periods of Assets
  ¶34.02[C][4] Application of Code Section 704(c) to Assets-Over Mergers
  ¶34.02[C][5] Depreciation Methods
  ¶34.02[C][6] Intangible Assets
  ¶34.02[C][7] Section 1245 and Section 1250 Depreciation Recapture
  ¶34.02[C][8] Investment Credit Recapture
  ¶34.02[C][9] Qualified Retirement Plan of Terminating Partnership

¶34.03 PARTNERSHIP DIVISIONS
  ¶34.03[A] Introduction and Reasons for a Division
  ¶34.03[B] Definition of Terms Contained in Partnership Division Regulations
  ¶34.03[C] Rules for Partnership Divisions
    ¶34.03[C][1] Prior Partnership Partners that Do Not Join a Resulting Partnership
    ¶34.03[C][2] Assets-Over Division
    ¶34.03[C][3] Assets-Up Division
  ¶34.03[D] Tax Consequences of Partnership Divisions
    ¶34.03[D][1] Assets-Over Divisions
    ¶34.03[D][2] Assets-Up Divisions

¶34.04 GENERAL TAX CONSEQUENCES OF PARTNERSHIP CONVERSIONS
  ¶34.04[A] Conversion of General Partnership to Limited Partnership
  ¶34.04[B] Conversion of a Partnership to a Limited Liability Company
  ¶34.04[C] Conversion of a Partnership or LLC to a C Corporation
    ¶34.04[C][1] Methods of Transferring Assets and Liabilities from a Partnership to a Corporation
    ¶34.04[C][2] Evaluation of Methods for Converting a Partnership to a Corporation
  ¶34.04[D] Conversion of C Corporation to Partnership
  ¶34.04[E] Conversion of S Corporation to Partnership
  ¶34.04[F] Conversion of Sole Proprietorship to Single-Member LLC
  ¶34.04[G] Conversion of Single-Member LLC to an LLC with Multiple Members
  ¶34.04[H] Conversion of Single-Member LLC to an LLC with Multiple Members

Part 10
CHAPTER 35-DEATH OR RETIREMENT OF A PARTNER
¶35.01 OVERVIEW OF CODE SECTION 736
  ¶35.01[A] Scope of Code Section 736
  ¶35.01[B] Application of Code Section 736 in general
  ¶35.02 CHARACTERIZATION AND TREATMENT OF PAYMENTS UNDER CODE SECTION 736
    ¶35.02[A] Payments for Interest in Partnership Property - Code Section 736(b)
    ¶35.02[B] Payments for Certain Unrealized Receivables and Goodwill
      ¶35.02[B][1] In General
      ¶35.02[B][2] Unrealized Receivables
      ¶35.02[B][3] Goodwill
    ¶35.02[C] Other Payments - Code Section 736(a)
    ¶35.02[D] Timing and Reporting Issues
    ¶35.02[E] Examples
    ¶35.02[F] Distributions of Property other than Money
      ¶35.02[F][1] No Section 736(a) Payment
      ¶35.02[F][2] Section 736(a) Payments with Property Distributions
      ¶35.02[F][3] Section 736(a) Payments with Property Distributions and Unrealized Receivables
  ¶35.03 SALES OF PARTNERSHIP INTERESTS V. LIQUIDATING DISTRIBUTIONS OF MONEY
    ¶35.03[A] Identification of the Transaction
    ¶35.03[B] Tax Consequences of Sale versus Liquidation
      ¶35.03[B][1] Gain or Loss Recognized; Character and Timing
      ¶35.03[B][2] Hot Asset Rules
      ¶35.03[B][3] Basis Adjustments

©2012 Wolters Kluwer. All rights reserved.
CHAPTER 36—SPECIAL ISSUES RELATING TO DEATH OF A PARTNER

36.01 OVERVIEW—SPECIAL ISSUES RELATING TO DEATH OF A PARTNER

36.02 BASIS OF PARTNERSHIP INTEREST ACQUIRED FROM A DECEDENT

36.03 REPORTING PARTNERSHIP INCOME ATTRIBUTABLE TO DECEASED PARTNER

Part 11

Chapter 37—Adjustments to the Basis of Partnership Assets

37.01 OVERVIEW—ADJUSTMENTS TO THE BASIS OF THE PARTNERSHIP ASSETS

37.02 MECHANICS OF A SECTION 754 ELECTION

37.03 THE AMERICAN JOBS CREATION ACT OF 2004

37.04 THE CODE SECTION 743 RULES

37.05 THE CODE SECTION 734 RULES

37.06 SECTION 755 RULES
¶37.06 E Income in Respect of a Decedent
¶37.06 F Transferred Basis Exchanges
¶37.06 G The following rules apply for allocating within a class on a nontaxable transfer of a partnership interest.

¶37.07 ALLOCATING BASIS ADJUSTMENTS UNDER SECTION 734(B)
¶37.07 1 In General

¶37.07 2 Regulations On Allocating Basis Adjustments Among Partnership Assets

¶37.08 THE CODE SECTION 732(D) RULES

Part 12
CHAPTER 38-STATUTORY AND REGULATORY PROVISIONS AND JUDICIAL DOCTRINES AFFECTING PARTNERSHIPS AND PARTNERSHIP TRANSACTIONS; TAX SHELTER REPORTING AND PENALTIES; PRACTITIONER STANDARDS

¶38.01 OVERVIEW—STATUTORY AND REGULATORY PROVISIONS AND JUDICIAL DOCTRINES AFFECTING PARTNERSHIPS

¶38.02 PARTNERSHIP ANTI-ABUSE REGULATION
¶38.02 A General
¶38.02 A 1 General Abuse-of-Subchapter-K-Rule
¶38.02 A 2 Abuse-of-Entity Rule
¶38.02 A 3 Application of Anti-Abuse Regulation

¶38.03 SUBSTANCE OVER FORM

¶38.04 FICTITIOUS TRANSACTIONS (SHAM IN FACT)

¶38.05 ECONOMIC SUBSTANCE DOCTRINE (SHAM IN SUBSTANCE)
¶38.05 A Statement of the Doctrine
¶38.05 A 1 The Size of the Tax Benefit and Protection of the Fisc
¶38.05 A 2 Size of the Profit Related to the Tax Benefit.
¶38.05 A 3 Relationship to Business
¶38.05 A 4 Noneconomic Losses, Deductions and Credits
¶38.05 A 5 Complexity
¶38.05 A 6 Concealment

¶38.06 SECTION 7701(O)

¶38.07 TAX SHELTER REPORTING
¶38.07 A Introduction
¶38.07 B Reportable Transactions
¶38.07 B 1 Listed Transactions
¶38.07 B 2 Confidential Transactions
¶38.07 B 3 Transactions with Contractual Protection
¶38.07 B 4 Loss Transactions
¶38.07 B 5 Transactions of Interest

¶38.08 NEGLIGENCE AND "SUBSTANTIAL UNDERSTATEMENT" PENALTIES

¶38.09 MATERIAL ADVISORS

¶38.10 REGULATIONS GOVERNING PRACTICE BEFORE THE IRS — CIRCULAR 230
¶38.10 A Written Advice
¶38.10 A 1 Covered Opinions
¶38.10 A 2 Limited Scope Opinions
¶38.10 B Registered Return Preparers

¶38.11 SAMPLE REPORTABLE TRANSACTION AND CIRCULAR 230 LEGENDS