Table of Contents

Preface Ashrocauladoments		xix
ACK	knowledgments	XXI
Cl	hapter 1: Introduction to Partnership Tax	1
A.	Introduction	1
B.	Classification	3
	1. Qualifying as an Entity Separate from Its Owners	3
	Rev. Rul. 75-374	4
	Wheeler v. Commissioner	7
	Problem 1-1	12
	2. Not Taxable as a Corporation	12
C.	Tax Choices Available to Private Unincorporated Firms	17
	American Law Institute Reporters' Study	17
D.	5	27
	1. Introduction	27
	2. Section 199A Deduction	28
Cl	hapter 2: The Passthrough System	33
A.	Introduction	33
	Schneer v. Commissioner	33
B.	Determination and Passthrough of Partnership Tax Items	41
	1. In General	41
	2. Partnership Taxable Year	42
	Problem 2-1	43
	Problem 2-2	43
	3. Partnership Elections	45
	Demirjian v. Commissioner	45
	4. Characterization Issues	48
	Podell v. Commissioner	48
	United States v. Basye	52

xi

C.	Ba	isis Adjustments and Limitation on the Passthrough of Losses	55
	1.	5	55
		Problem 2-3	56
		Problem 2-4	57
		Rev. Rul. 96-11	57
	2.	Limitation on the Passthrough of Losses	60
		Problem 2-5	60
		Rev. Rul. 66-94	61
		Problem 2-6	62
		Problem 2-7	63
Cł	napí	ter 3: Introduction to Partnership Accounting	67
A.	Int	troduction	67
B.	Sta	arting the Partnership	69
C.		ontributions of Appreciated Property and the Concept of	
		ax Capital"	72
		Problem 3-1	76
D.	Sal	les of Partnership Interests and Potential Imbalances	76
E.		rtnership Income, Loss, and Distributions	78
		Problem 3-2	80
F.	En	ntry of New Partners and the Need for Revaluations	81
		Problem 3-3	83
Cł	napt	ter 4: Partnership Allocations: General Rules	85
A.	Int	troduction	85
		Orrisch v. Commissioner	87
B.	Th	e Section 704(b) Regulations: General Rules	93
		Overview	93
		Economic Effect	94
		a. Basic Test for Economic Effect	94
		b. Alternate Test for Economic Effect	95
		Problem 4-1	96
		Rev. Rul. 97-38	97
		c. Economic Effect Equivalence	101
	3.	Substantiality	101
	0.	a. Introduction	101
		b. "Shifting,""Transitory," and "Overall-Tax-Effect" Tests for	101
		Substantiality	103
		Problem 4-2	105
		c. The "Value-Equals-Basis" and Five-Year Rules	105
		Rev. Rul. 99-43	100
		d. Testing Allocations for Substantiality	111
		a. round relations for substantianty	111

xii

Table of Contents

	4.	Reallocation in Accordance with the Partners' Interests in the	
		Partnership (PIP)	114
		Problem 4-3	115
	5.	Special Rules for Tax Items That Cannot Satisfy the	
		Economic-Effect Requirement	116
	6.	Target Allocations	116
		Problem 4-4	117
C.	Oı	itside Basis and the Allocation of Partnership Recourse Liabilities	118
	1.		118
		Rev. Rul. 88-77	119
		Notice 2000-44	121
		Problem 4-5	124
	2.	Allocating Partnership Recourse Liabilities	124
		a. Introduction	124
		Raphan v. United States	125
		b. The Economic Risk of Loss Concept	128
		c. Determining the Payment Obligation	131
		Problem 4-6	134
Cł	napt	er 5: Partnership Allocations: Nonrecourse Deductions	137
A.	Int	roduction	137
		Commissioner v. Tufts	138
B.	All	ocation of Nonrecourse Deductions	142
	1.	What Are Nonrecourse Deductions?	143
	2.	The Nonrecourse-Deduction Safe Harbor	143
	3.	Partnership Minimum Gain	146
		a. Net Increases in PMG	147
		b. Net Decreases in PMG	147
	4.	Nonrecourse Distributions	153
		Problem 5-1	155
		Problem 5-2	155
C.	Οı	itside Basis and the Allocation of Nonrecourse Liabilities	156
	1.	Introduction	156
	2.	Tier 1: Partner's Share of PMG	156
	3.	Tier 2: Partner's Share of Minimum Section 704(c) Gain	158
	4.	Tier 3: Partner's Share of Partnership Profits	159
		Problem 5-3	161
		Problem 5-4	162
		Problem 5-5	162
D.	At	Risk, Passive Loss, and Section 461(1) Limitations	162
	1.	Introduction	162
	2.	"At Risk" Limitation	164
	3.	Passive Loss Limitation	165

xiii

	4. Relationship of Sections 704 and 752 to the At Risk and	
	Passive Loss Rules	167
	5. Overall Loss Limitation under Section 461(<i>l</i>)	168
Cl	napter 6: Partnership Allocations: Special	
01	Anti-Income-Shifting Rules	173
	Anti-Income-Similing Rules	175
А.	Introduction	173
В.	Allocations Involving Contributed or Revalued Property	174
	1. Introduction	174
	2. Traditional Method	177
	Problem 6-1	177
	Problem 6-2	178
	3. Traditional Method with Curative Allocations	179
	Problem 6-3	180
	4. Abusive Use of the Traditional Method and Traditional	
	Method with Curative Allocations	181
	5. Remedial Allocation Method	183
	Problem 6-4	183
	6. Revalued Property	186
	Problem 6-5	187
	Problem 6-6	190
	7. Collateral Impact of Section 704(c) on Other	
	Subchapter K Issues	190
	a. Allocation of Nonrecourse Liabilities	190
	Rev. Rul. 95-41	191
	Problem 6-7	192
	b. Tax Treatment of Non-Liability Obligations	193
С.	Allocations When Partners' Interests Change During the Year	195
	1. The Basic Rules	195
	Problem 6-8	197
	2. Planning Under the Basic Rules	197
D.		199
	TIFD III-E, Inc. v. United States	202
Cl	napter 7: Sales of Partnership Interests	209
	•	
А.	Introduction	209
B.	Consequences to the Transferor	210
	1. The Entity Approach	210
	2. The Look-Through Exception	212
	a. Definition of Unrealized Receivables and Inventory Items	213
	Ledoux v. Commissioner	213

xiv

		b. Mechanics of the Look-Through Exception	219		
		Problem 7-1	219		
C.	Consequences to the Transferee				
		The Entity Approach	221		
	2.	The Look-Through Approach	222		
		a. Calculating the Overall SBA	224		
		Problem 7-2	224		
		b. Allocating the Overall SBA to the Partnership's Assets	225		
		Problem 7-3	225		
		Problem 7-4	226		
		c. Using the SBA	226		
	3.	Prevention of Loss Duplication	227		
		Problem 7-5	229		
Ch	napt	er 8: Property Contributions and Distributions	231		
A.	Int	roduction	231		
B.	Сс	ntributions and Nonliquidating Distributions	232		
	1.	Contributions	232		
		Problem 8-1	232		
	2.	Nonliquidating Distributions	234		
		Problem 8-2	234		
	3.	Contributions and Distributions of Encumbered Property	235		
		a. Contributions of Encumbered Property	235		
		Problem 8-3	236		
		Problem 8-4	238		
		b. Distributions of Encumbered Property	238		
		Rev. Rul. 79-205	238		
		Problem 8-5	242		
C.	Lie	quidating Distributions	242		
	1.	Introduction	242		
		Problem 8-6	244		
	2.	Basis of Distributed Property	244		
		a. Allocation of Upward Adjustments	245		
		b. Allocation of Downward Adjustments	245		
		Problem 8-7	247		
D.	Partnership Basis Adjustments				
	1.	Introduction	249		
	2.	Amount of Section 734(b) Adjustment	250		
	3. Allocation of Section 734(b) Adjustment Among the Assets				
		of the Partnership	251		
		Problem 8-8	252		
	4.	Section 734(b) "Trap"	254		

xv

E.	Distributions Affecting the Allocation of Income Character	255
	1. Liquidating Distributions	258
	Problem 8-9	260
	2. Nonliquidating Distributions	260
	Problem 8-10	261
Cŀ	napter 9: Recharacterizing Contributions, Distributions,	
	and Sales	265
A.	0	265
	1. Introduction	265
	Otey v. Commissioner	266
	Jacobson v. Commissioner	271
	2. Section $707(a)(2)(B)$	276
	a. In General	276
	b. Part-Sale, Part-Contribution	277
	Problem 9-1	277
	c. Liabilities	277
	Problem 9-2	279
ъ	d. Debt-Financed Distributions	279
В.	0	202
	and Distributions	282
	1. Overview: Sections 704(c)(1)(B) and 737	282
	2. Section $704(c)(1)(B)$	283
	Problem 9-3	283
C	3. Section 737	285
C.	Distributions of Marketable Securities	287
р	Countryside Limited Partnership v. Commissioner	288
D.	1	292
	Southgate Master Fund, L.L.C. v. United States	292
Cł	hapter 10: Compensating Partners for Services or the	
	Use of Property	297
А.	Introduction	297
B.	Receipt of a Partnership Interest	297
	1. Introduction	297
	2. Receipt of a Vested Capital Interest	298
	McDougal v. Commissioner	298
	Problem 10-1	306
	3. Receipt of a Vested Profits Interest	306
	Diamond v. Commissioner	306

xvi

		Rev. Proc. 93-27	313
		Problem 10-2	316
	4.	Receipt of an Unvested Capital or Profits Interest	317
		Rev. Proc. 2001-43	318
		Crescent Holdings, LLC v. Commissioner	321
	5.	Tax Treatment of "Carried Interests"	326
	6.	Partnership Options and Debt-Equity Exchanges	330
C.	Gı	aranteed Payments	334
		Miller v. Commissioner	334
		Gaines v. Commissioner	341
		Problem 10-3	345
		Problem 10-4	346
D.	Co	ompensation Recharacterized as Nonpartner Payments	346
		Joint Committee on Taxation Excerpt	347
		Problem 10-5	349
Cł	napt	ter 11: Termination of Partnership Interests and Partnerships	351
A.	Int	troduction	351
B.	Te	rmination of Partnership Interests	352
	1.	The Statutory Pattern of Section 736	352
	2.	The Significance of Section 736	354
		Commissioner v. Jackson Investment Co.	356
	3.	Installment Payments	359
	4.	Partnership Liabilities	361
	5.	Liquidating Distributions vs. Sales	361
		Foxman v. Commissioner	362
	6.	Special Considerations upon the Death of a Partner	365
		a. Taxable Year and Outside Basis	365
		b. IRD Attributable to Partnership Interests	365
		George Edward Quick Trust v. Commissioner	366
		Woodhall v. Commissioner	370
		c. Special Basis Adjustments	373
-	_	Problem 11-1	373
C.		rtnership Terminations	374
	1.	0 1	374
		Rev. Rul. 84-52	375
	2.	Tax Consequences of a Partnership Termination	376
	~	Rev. Rul. 99-6	377
	3.	Mergers and Divisions of Partnerships	379
	4.	Incorporation of a Partnership	382
		Rev. Rul. 84-111	382

Cł	hapter 12: Preventing Abuse of the Partnership Tax Rules	389
A.	Introduction	389
	ACM Partnership v. Commissioner	391
	Problem 12-1	398
B.	The Partnership Anti-Abuse Regulation	398
	1. Transactions Inconsistent with the Intent of Subchapter K	398
	Cemco Investors, LLC v. United States	400
	2. The Abuse of Entity Rule	405
	Brown Group, Inc. v. Commissioner	406
	3. Evaluation of the Partnership Anti-Abuse Regulation	410
С.	Codification of Economic Substance Doctrine	411
	Joint Committee on Taxation Technical Explanation	411
D.	Partnership Audit Rules	417
	1. TEFRA Audit Rules	417
	2. Post-TEFRA Audit Rules	419
Ap	pendix: Form 1065 and Schedule K-1	423
Tal	ble of Authorities	431
Index		435