Preface

This book is about the federal income taxation of partnerships. A judge on the United States Tax Court once remarked in a judicial opinion that "[t]he distressingly complex and confusing nature of the provisions of subchapter K present a formidable obstacle to the comprehension of these provisions without the expenditure of a disproportionate amount of time and effort even by one who is sophisticated in tax matters with many years of experience in the tax field."[1] With respect to the partnership tax provision at issue in that case, the judge continued to query "whether it is reasonably comprehensible to the average lawyer or even to the average tax expert who has not given special attention and extended study to the tax problems of partners."[2] The judge concluded this lament by explaining that "its complex provisions may confidently be dealt with by at most only a comparatively small number of specialists who have been initiated into its mysteries."[3]

This text, therefore, serves to start your initiation into the mysteries of partnership taxation. This book covers the main canon of the domestic taxation of partnerships and partners; it uses the partnership's lifecycle to accomplish this by starting with the formation of a partnership, continuing with its operations, and finishing with various ways to exit or terminate the partnership. The book focuses on the tax consequences to the partnership as entity and to the partners. Given that the book generally focuses on domestic tax issues, international tax rules and international tax planning with partnerships are not discussed in this text. Relatedly, this book was primarily written in 2022 and 2023, and the rules and authorities discussed are based on this period. Tax is always changing, which is good for the business of the tax practitioner, but it means that rules change. The author therefore gives the reader a general exhortation to make sure you consult for developments that may have occurred after the writing of this book.[4] The

1. Foxman v. Comm'r, 41 T.C. 535, 551 n.9 (1964).
2. *Id.*
3. *Id.* The complexity that has plagued partnership tax has not just been noted by Tax Court judges. For example, in recommending reforms to the Tax Code in 1954, the Senate Finance Committee remarked that "[t]he existing tax treatment of partners and partnerships is among the most confused in the entire tax field." S. Rep. No. 1622, 83d Cong., 2d Sess. 89 (1954).
4. Another key practical point that the author wants to convey is that sometimes the administrative state lags primary (statutory) law changes. For example, it is not uncommon for a statute to be changed but the regulations (and the examples in those regulations) to be based on older versions of the statute. Another dimension to be mindful of is to ensure that cross

text also generally assumes an understanding of fundamental taxation principles, such as the concepts of income, gain, basis, depreciation, annual tax accounting and the like. Nevertheless, some of these concepts are unpacked in-text and in footnotes for completeness.

Although this book discusses the statutory partnership tax rules, as well as key judicial and administrative partnership tax rulings, the main focus—and key feature—of the book is explaining the *why*, *purpose*, and *object* of partnership tax. As we explain throughout the text, a deep understanding of these items makes the mechanics of partnership tax more intuitive and easier to understand. Indeed, by the end of reading and working through this text, we hope that the reader will be able to predict and intuit what the answer to a problem ought to be.

This book includes in-text and end-of-chapter problems (excluding Chapter 1) that support the key feature of explaining the why, purpose, and object of partnership tax. These problems allow for seeing the object in action and to tie the mechanics of the rules to their overarching purpose and aim. As noted, there are two types of examples in text. The first are in-text examples in the chapters. These examples tend to follow the elucidation of a partnership tax rule to show its operation and how its operation comports with the object trying to be achieved. These examples are fully worked out in text. In addition to the in-text examples, the chapter ends with additional *examples and explanations* for the reader to work through and to check his or her answers and understanding. Although both types of examples bear some resemblance to the real world, they are unlike real world problems insofar as they tend to be clean single-issue problems. Another intentional aspect of these problems is that they tend to be based on examples from the Treasury Regulations. Often lawyers must compare, contrast, and distill rules and principles from regulatory or administrative examples and apply them to their particular facts; thus, working through Treasury Regulation-like examples is another skill to be gained from working through this text.

Related to the types of examples used, partnership balance sheets are used throughout the text to demonstrate the before and after consequences to a transaction (and, sometimes, intra-transaction steps). We encourage the reader to follow along with these balance sheets and to construct balance sheets of his or her own while working problems. Creating balance sheets helps visualize the various important relationships between partnerships and partners. As well, some important concepts require this type of approach.

Generally, this text refers to partners as *individuals* (i.e., living, breathing persons), as compared to other entities (like corporations) who, of course,

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references between statutes and regulations are accurate, as sometimes statutes and regulations are mapped to prior versions, which may have been renumbered or the like.

can also be partners of a partnership.[5] In addition, some other simplifying conventions are present in the text, such as a general assumption that capital account values reflect fair market values (which is sometimes but not always the case in real life). Many of these simplifying conventions are to reduce clunkiness and to improve tractability of examples. The text also uses a "we" convention, even though it was written by a single author; the use of "we" was intentional to refer to the shared journey that the author and reader are embarking on while you work through this text.

With the conclusion of this preface, the author desires to encourage you as you embark on your study of partnership taxation. Without doubt, challenges may lie ahead—it is a tough subject. But keep going. It is worth it. As you work through the text, the author reminds you of the advice to focus on the *why*, *purpose*, and *object* of partnership tax. If you can appreciate those items (and there are four main themes of partnership tax unpacked in Chapter 1), you will have a firm foundation upon which to build your partnership tax skillset. Indeed, the author believes that embracing these themes will help you see the *beauty* and *elegance* of various partnership tax rules.

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5. The Code makes this distinction between *individuals* (the term that refers to living, breathing people) as compared to *persons*, which also includes entities. I.R.C. § 7701(a)(1) (defining "person" to include *individuals*, as well as entities such as trusts, estates, and corporations).