

**PARTNERSHIP TAXATION
UNIVERSITY OF BALTIMORE SCHOOL OF LAW
FALL SEMESTER, 2020**

I'm proud to be paying taxes in the United States. The only thing is, I could be just as proud for half the money.

- Arthur Godfrey

The hardest thing in the world to understand is Partnership Taxation.

- Albert Einstein (actually he said income tax, but partnership tax is definitely harder)

Course: Partnership Taxation
LAW 952
Section 512

Instructor: Prof. Walter Schwidetzky
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Please feel free to make an appointment to see me or to email me with a question. I make it a point to make myself available to students.

Days/Time: Wednesday 6:15 pm – 9 pm (but see next item)

Location: The entire university is online, as you know. My current plan is to teach the class asynchronously, but invite your feedback in this regard. My sense is that most students in the past have been watching the recording after the fact, so it should not be that big of a change for most. I invite your feedback in this regard.

Course Description:

Explores problems encountered in the formation, operation and liquidation of a partnership, including the acquisition of partnership interests, compensation of the service partner, the treatment of partnership distributions and problems associated with the disposition of partnership interests or property by sale.

Required Materials

Internal Revenue Code

Treasury Regulations

(JD Students can use Steven A. Bank, Kirk J. Stark, Selected Sections: Corporate and Partnership Income Tax Code and Regulations, 2020-2021, ISBN: 9781684679751—it is permissible to use the 2019-2020 edition)

Partnership Taxation, 4th Edition, by Lipton, Carmen, Fassler, and Schwidetzky

ISBN-13: 978-1531005399. There is a supplement to this text on the Twen site. Make sure you check it, as there will be changes to the existing text due to law changes. We are currently working on a 5th edition and I may be able to sneak in a few updated chapters on the Twen site.

Recommended Materials

Cali Exercises (highly recommended for developing facility with the partnership tax rules)

and/or

Jerold Friedland, Understanding Partnership and LLC Taxation, 4th edition (ISBN-13: 978-1531000813). It is a little pricy, so I would not buy it unless you feel you genuinely need an alternative perspective.

Student Learning Outcomes:

Expected Learning Outcomes.

By the end of this course I expect students to be able to apply partnership tax law:

1. to determine how contributions to partnerships are treated and how inside and outside basis are calculated;
2. to determine how liabilities, income, and deductions are allocated to partners;
3. to determine how liquidating and nonliquidating distributions to partners are treated;

4. to determine when I.R.C. § 754 elections should be made;
5. to determine how sales and exchanges of partnership interests are treated;
6. to determine how transactions between partners and partnerships should be classified; and
7. to kind of, sort of determine when the anti-abuse rules are applied.

Grades:

The law school recently changed its assessment requirements. One way to meet them is to have a mid-term, which I am betting you do not want. Instead, we will have a series of quizzes. How well or poorly you do on them will be factored into your grade.

The Law School is still exploring means of administering a secure, off-site exam. (On-site exams, at this point, seem like a long-shot.) Assuming a secure exam proves possible, there will be a 3-hour final exam. Your grade will be based on your performance on the exam and the quizzes. 90% of your grade will be based on the final, and 10% on the quizzes that will be embedded in the recording. (If a class is synchronous, unlikely, the quiz will be given during the live class.) You may bring the following to the final exam: Your memory, any book, an outline of any length of your own authorship (or written with other students in the class), and a calculator. You will not have time to make much use of the items on the list except for the first one.

Course Expectations:

American Bar Association Standards for Law Schools (for the students to whom it is relevant) establish guidelines for the amount of work students should expect to complete for each credit earned. Students should expect approximately one hour of classroom instruction and two hours of out-of-class work for each credit earned in a class. Your mileage may vary—a lot. Partnership Taxation is generally considered to be the hardest course in the Graduate Tax Program, and the rest of the classes are not exactly walks in the park. Prepare and budget your time accordingly. If possible, take a lighter course load to compensate.

It is important to keep your class preparation current. Much of the course will be built on subjects previously discussed, and many statutes work in conjunction with one another. If you miss and/or do not prepare for one class, the next class may use terms and concepts you do not understand, which will compound the difficulty of understanding the area under discussion.

Attendance:

Don't miss classes! We cover too much in each class, and if you miss classes, remember what Khrushchev said to the west ("We will bury you.") Okay, you are too young to remember who he is or his most famous quote. It was actually to some people at a party in Poland, he probably wasn't being serious, and some people think it is a bad translation from the Russian, but you get the idea. On to the boilerplate: Class attendance is a primary obligation of each student. Law students' (but not GTP students') right to continued enrollment in the course and to take the examination is conditioned upon a record of attendance satisfactory to the professor. A student who exceeds the maximum allowed absences (generally 20% of class sessions) as illustrated below may be compelled to withdraw from the course, or may be barred from sitting for the final exam. Law students must email me after they have watched a recording, which will count as having attended that class. Students who are forced to withdraw for exceeding the allowed absences may receive a grade of FA (failure due to excessive absence). This policy is consistent with American Bar Association Standards for Law Schools.

Regular Semester Hours		
Credit Hours	Meetings Per Week	
	1	2
2	2 absences	5 absences
3	2 absences	5 absences
4	--	5 absences

Student Course Evaluations

It is a requirement of this course that students complete a course evaluation. The evaluation will be available later in the semester and is entirely anonymous. Faculty members will not have access to the feedback provided on course evaluations until after all grades are submitted.

TWEN:

This course has a TWEN page. It contains links to this syllabus, announcements, and other class materials. I communicate with the class through the TWEN page. You are responsible for self-enrolling in the TWEN page and for checking it regularly for course information.

Computers:

You may use laptop computers for class related purposes, including on the exam. That said, a number of studies have concluded that students who take handwritten notes

retain more information and do better in the class.

Class Cancellation:

If I must cancel a class, notices will be sent to you via TWEN/email and (in the unlikely event we are in-person) posted on the classroom door. What follows is mostly irrelevant, but I am required to put it in the syllabus. If there is inclement weather, and it is relevant (not), students should visit the University of Baltimore web site or call the University's Snow Closing Line at (410) 837-4201. If the University is open and we are meeting in person, students should presume that classes are running on the normal schedule. Don't get your hopes up. I have an off-road capable Jeep. I never miss a class because of weather.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or School of Law. Violations of academic integrity include, but are not limited to: cheating, plagiarism, misuse of materials, inappropriate communication about exams, use of unauthorized materials and technology, misrepresentation of any academic matter, including attendance, and impeding the Honor Code process. The School of Law Honor Code and information about the process is available at http://law.ubalt.edu/academics/policiesandprocedures/honor_code/.

Title IX Sexual Misconduct and Nondiscrimination Policy:

The University of Baltimore's Sexual Misconduct and Nondiscrimination policy is compliant with Federal laws prohibiting discrimination. Title IX requires that faculty, student employees and staff members report to the university any known, learned or rumored incidents of sex discrimination, including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation and/or related experiences or incidents. Policies and procedures related to Title IX and UB's nondiscrimination policies can be found at: <http://www.ubalt.edu/titleix>.

Disability Policy:

If you are a student with a documented disability who requires an accommodation for academic programs, exams, or access to the University's facilities, please contact the Office of Academic Affairs, at ublawaacadaff@ubalt.edu or (410) 837-4468.

Syllabus

FIRST CLASS: Do i and 1. of syllabus.

i. Introduction to Partnership Taxation text.

1. Partnership Classification

Code: §§ 761, 7701(a)(2), 7701(i), 7704

Regs: §§ 1.761-2, 301.7701-1 to 4(d), 1.7704-1

Prop. Treas. Reg. § 1.761-3

Text: Chapter 1 (skim §1.08)

Optional: Burke and McCouch, Sham Partnerships and Equivocal Transactions (on Twen site).

Problems: 5 and 8

2. Formation

Code: §§ 108(e)(8), 168(i)(7), 351(e)(1), 368(a)(2)(F), 453B
709, 721, 722, 723, 724, 751(b), 751(c), 1223(1), 1223(2)

Regs: §§ 1.351-1(b), 1.351-1(c), 1.709-2, 1.721-1, 1.722-1,
1.1223-3(b), 1.1223-3(f)

Text: Chapters 2 and 8.08A, B, skim 8.08 C.

Problems: 1 and 2

3. Outside Basis and Allocation of Liabilities

Code: I.R.C. §§ 702(a)(4), 704(d), 705, 722, 731, 732, 733, 752
Regs: Treas. Reg. §§ 1.705-1(a)(1), 1.722-1, 1.731-1(a)(1)(ii),
1.752-1, 1.752-2, 1.752-3, 1.752-4, 1.752-7
Text: Chapter 3
Problems: 1-4, 6-7

4. Operation of the Partnership: Calculation of Partnership Taxable Income

Code: §§ 108(d)(6), 108(e)(8)(B), 444, 447 (skim), 448 (skim), 464
(skim), 465, 469, 701, 702, 703, 704(d), 705, 706(b), 706(d),
724, 163(j), 7519
Regs: §§ 1.702-1, 1.704-1(d), 1.706-1(b), 1.179-2(b)
Prop. Treas. Reg. § 1.465-67, -68
Text: Chapter 4 (skim § 4.05)
Optional: Schwidetzky: The Negative Capital Account Maze (on
Twen site)
Problems: 1 (for I.R.C. § 163(j) purposes, partnership is not a tax
shelter and has under \$25,000,000 in gross receipts, i.e.
163(j) will not apply), 3-5, 8 (assume elect out of I.R.C. §
168(k))

5. Operations of a Partnership: Allocation of Partnership Income and Losses

- A. Code: I.R.C. § 704(b),
Regs: §§ 1.704-1(b)(1)(i), (iii), (iv), -1(b)(2)(i)-(iii), (iv)(a)-(e), (h), (n), (p), (q), -1(b)(3), -1(b)(5) Examples 1, 2, 3, 4, 5, 6, 7,8, 15(i), 1.1245-1(e)
Text: §§ 5.01-5.04B, 5.04L3
Optional: Goldberg, The Target Method for Partnership Special Allocations and Why It Should Be Safe-Harbored; Castle Harbour cases (on Twen site)
Problems: 1-5
- B. Code: §§ 704(a), (c)(1)(A), (3), 724
Regs: Treas. Reg. §§ 1.704-3(a)(1)-(5), (10), -3(b), (c), (d), -3(e)(1), 1.704-1(b)(1)(vi), -1(b)(2)(iv)(d)(1),(3), 1.704-1(b)(2)(iv)(f), 1.704-1(b)(4)(i), -1(b)(5) Examples 14(i)-(iv)
Text: §§ 5.05, 5.06
Problems: 14-16
- C. Regs: §§ 1.704-2(b), (c), (d), (e), (f)(1)-(3), (6),(7) Example 1, (g), (h), (i), (j), (m) Examples 1(i)-(iv), (vi), (vii), (viii),3(i)
Text: §§ 5.07
Optional: Burke, Exculpatory Liabilities and Partnership Nonrecourse Allocations (on Twen site)
Problem: 17
- D. Code: § 704(e), 761(b)

Regs: Treas. Reg. §§ 1.704-1(e)

Text: § 5.08

E. Code: § I.R.C. §§ 706(c)(2)(b), (d)

Regs: §§ 1.706-1(c)(1), (2) (4)

Text: § 5.09

6. Disposition of Partnership Interests

A. Code: §§ 357, 706, 708, 741, 743(b), 743(d), 751(a), 751(c),
751(d), 752(d), 754, 755, 761(e)

Regs: §§ 1.706-1, 1.706-4, 1.708-1, 1.737-2(a), 1.742-1, 1.743-1,
1.755-1, 1.761-1(c), 1.1001-2, 1.1011(b), 1.1223-3

Text: Chapter 6 (skim 6.05, 6.06)

Problems: 1, 8-9

7. Partnership Distributions

A. Code: §§ 731, 732(a), (c)(1), (3), (d), 733, 735, 1245(b)(6)

Regs: §§ 1.731-1(a)(1), (3), (c), -2, 1.732-1(a), (c), (d), 1.733-1,
1.735-1, 1.704-1(b)(2)(iv)(e)(1)

Text: §§ 7.01-7.06

Problems: 1

B. Code: §§ 731(b), 734, 754, 755, 1245(b)(3)

Regs: §§ 1.734-1, 1.755-1(a), (c)

Text: § 7.07

- Problem: 3
- C. Code: §§ 731(d), 732(e), 751(b)
 Regs: §§ 1.751-1(b)-(e), (g), example 2
 Text: § 7.08
 Problem: 4
- D. Code: §§ 708(a), (b)(1), 731(a)(2), 732(c)(2), 761(d), (e)(1), 736
 Regs: §§ 1.708-1(a), (b), 1.731-1(a)(2), 1.732-2(b), (c), 1.736-1
 Text: § 7.09
 Problems: 5
8. Transactions Between Partner and Partnership—Section 707(a) and 707(c);
 Section 707(b)
- Code: §§ §§ 707, 267
- Regs: §§ 1.707-1, 1.707-3, 1.707-4, 1.707-5, 1.707-6, 1.707-8
 Skim Prop. Treas. Reg. § 1.707-7
- Text: Chapter 8 (skim discussion of proposed regs in § 8.06)
- Problems: 1 and 3
- Optional: Amy S. Elliott, Clarification to Disguised Sales Rules
 Causing Confusion
9. Anti-Abuse Provisions
- Code: §§ 704(c)(1)(B), 737, (skim 731(c)), 707(a)(2)(A), 732(f)
- Regs: §§ 1.701-2, 1.707-3, -4, -5, -6, 1.737, 1.732-3, 1.1502-34

Skim Prop. Treas. Reg. § 1.337(d)-3

Text: Chapter 13