

**PARTNERSHIP TAXATION
UNIVERSITY OF BALTIMORE SCHOOL OF LAW
FALL SEMESTER, 2021**

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

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, 2021-2022, ISBN: 9781647088804 — It is also permissible to use the 2020-2021 edition).

Partnership Taxation, **5th Edition**, by Lipton, Carmen, Cohen, and Schwidetzky.
The 5th Edition has not yet been published and probably will be out in August.

There is already an ISBN 978-1-5310-2239-6. I expect the book to be out before the semester begins, but if it is not, I will put pdfs of the early chapters on Sakai.

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 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. If you do well on the quizzes, it can increase your course grade by up to half of a grade. If you do poorly, it can reduce your course grade by the same amount. With many students not attending class in person and often watching the class after the fact, grading for class participation has become problematic. But if you do a good job in participating in class, that can help your grade as well. For example, if your performance on the quizzes is average, but you do a good job participating in class, the two things in combination may be sufficient to increase your grade. The balance of your grade (i.e. 90%-100%) will be based on an in-person, 3-hour final exam. 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 made 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 may watch a class remotely, but assuming the class is in-person, must watch it "live" (not after the fact) to be given attendance credit. If a given class is offered on Zoom asynchronously (as will occasionally happen), students will be given class attendance credit as long as they watch the class at some point. 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.

SAKAI:

This course will have a Sakai page. It will contain links to this syllabus (via files directory), announcements, links to recordings of class, and other class materials. I will communicate with the class through messaging on Sakai. You are responsible for self-enrolling. That said, you may be automatically enrolled in Sakai for the class, but you should confirm this. I encourage you to take part in the Sakai training for students, though our use of it will tend to be on the simpler side. Initially, you need to understand

the messages system, making sure you connect it with your email account, and the files directory. Down the road, you will need to know how to access Panopto recordings and take quizzes. I will give the assignments in class, but will also send messages with the assignments.

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.

Zoom and Panopto:

Under ABA Guidelines, up to one third of the course may be conducted via distance learning (e.g., through recorded lectures located on Panopto, over Zoom, etc.) I currently anticipate that some classes will be offered exclusively on Zoom, but comfortably under the one-third maximum.

All class recordings are for the sole use of the class and may not be reproduced by students for any other purpose. Faculty cannot reproduce students' voices or images from the class for any other purpose without additional student consent. All such recordings are protected by a UB login process based on where they are posted. For synchronous Zoom classes, students may mute their microphone or turn off their camera if they do not consent to be recorded, but this may mean they need to find additional ways to participate in the class discussion. Students may be required to turn on their cameras and participate in graded class activities. In addition, students who turn off their camera and do not remain present for the class session may be subject to the Honor Code for misrepresenting attendance.

Class Cancellation:

If I must cancel a class, notices will be sent to you via Sakai and posted on the classroom door. If there is inclement weather, 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, 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. Any cancelled class will be made up, likely through an asynchronous Zoom class.

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 the School

of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. The School of Law Honor Code and information about the process is available at https://law.ubalt.edu/academics/policiesandprocedures/honor_code/index.cfm.

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 Ms. Keri Hickey, Director of Student Support in the Law School's Office of Academic Affairs, at khickey@ubalt.edu or the University's Office of Disability and Access Services at das@ubalt.edu.

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 Sakai).

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
Sakai)
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 Sakai)
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 Sakai)
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 (on Sakai)
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