

FUNDAMENTALS OF PARTNERSHIP TAXATION

CASES AND MATERIALS

EIGHTH EDITION

STEPHEN A. LIND

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DANIEL J. LATHROPE

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EIGHTH EDITION

by

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To our friend, Billy Hutton

*

PREFACE

Even amidst the instability of the federal tax system that has marked the past several decades, the fundamental principles of partnership and S corporation taxation have remained intact since the First Edition of this text was published almost 25 years ago. The unrelenting pace of change abated just a bit during the brief shelf life of the Seventh Edition, as Congress extended individual income tax rate reductions and continued widening the eligibility gates for S corporations, and the IRS issued important new regulations affecting partnerships. These developments, along with the usual trickle of published rulings and a vigorous debate over taxation of the lucrative compensation received by managers of hedge funds and private equity partnerships, prompted this Eighth Edition while offering another opportunity to cure any viruses that may have infected our earlier efforts.

The periodic barrage of tax legislation and complex regulations presents a challenge to instructors who seek to provide manageable coverage of an increasingly intricate subject matter. Although more detail has become unavoidable in a partnership tax course, we once again reaffirm our allegiance to teaching the “fundamentals” by the problem method. As we said in the Preface to the First Edition:

The pedagogical philosophy of this book is grounded in the problem oriented “fundamentals” approach to tax teaching that was pioneered by James J. Freeland, Stephen A. Lind and Richard B. Stephens in *Fundamentals of Federal Income Taxation*. For the uninitiated, the fundamentals approach involves selectivity of subject matter, an emphasis on basic concepts, avoidance of esoteric detail and realistic depth of coverage. It recognizes that the primary sources for any tax course are the Code and Regulations. Proceeding from these premises, this lean volume is a product of considerable self restraint by the authors. Cases have been selected and edited with care. Legislative history has been included but only when it is informative. Lengthy notes and voluminous citations to every case on a particular point have been scrupulously avoided. This is designed as a teaching text, not a treatise.

The book also contains a healthy dose of explanatory text and problems to accompany every topic. Partnership tax is a difficult course for law students. Although there are several fine treatises in the area, they are written primarily for practitioners. From our experience, even an abridged student edition of a professional treatise

tise is simply too overwhelming and sophisticated to serve as an effective teaching tool. This volume attempts to fill the void by providing just enough explanation to provide a framework for the study of Subchapter K without getting bogged down in the details.

We also believe—almost as an article of faith—that the most productive method of teaching tax fundamentals is through a manageable set of problems that require the student to apply the Code and Regulations to discrete factual situations. Some of the problems in this book are intended to guide the student through the statutory maze; as such, they may even have specific answers. Others do not have definite solutions, reflecting the fact that much of Subchapter K remains unexplored territory. We have modestly attempted to confront students with some of the realities of practice by including a few problems with a planning orientation.

Turning to organization and coverage, the Eighth Edition retains the widely accepted “cradle to grave” organization of its predecessors. Chapter 1 introduces students to Subchapter K, examines the flexible “check-the-box” tax classification regime (without dwelling at great length on outdated concepts and cases), and provides a contemporary perspective on choice of entity issues. Chapter 2 covers partnership formations, including an introduction to partnership accounting, a preview of the impact of partnership liabilities on a partner's outside basis, and a survey of new proposed regulations governing the receipt of partnership interests for services.

Chapters 3 through 5 address operational issues, moving systematically from the basic pass-through taxation scheme through partnership allocations, including allocations with respect to contributed property and partnership liabilities, and transactions between partners and partnerships. Our efforts at self restraint are continuously tested here by the intricacy and length of the regulations. Instructors who are pressed for time or concerned about a student meltdown should consider confining the assignments on allocations attributable to nonrecourse debt and partnership liabilities to the introductory material on each of those topics.

Chapter 6 through 8, covering sales and exchanges of partnership interests, operating and liquidating distributions, and partnership terminations, reflect the issuance of final regulations in a number of important areas, particularly sales and exchanges, elective basis adjustments, and partnership mergers and divisions. Chapter 9 covers the special problems on the death of a partner.

Chapter 10 is a brief discussion of the partnership anti-abuse regulations. Our decision not to integrate this material into earlier chapters was based on the assumption that students had insufficient background to appreciate their meaning and scope. For those with the time and inclination, Chapter 10 offers an opportunity to review a few concepts studied in earlier chapters and to remind students that some tax planning maneuvers may be too good to be true.

Chapter 11 covers S corporations, which remain a popular alternative for businesses whose structure can accommodate to a simpler pass-through taxing regime. Similar surveys of Subchapter S are included in our companion volume, *Fundamentals of Corporate Taxation*, and in *Fundamentals of Business Enterprise Taxation*, an alternative text for a combined course on corporate and partnership tax. Tax professors continue to debate whether S corporations are best covered in corporate tax, a course on taxation of pass-through entities, or a combined business enterprise taxation offering. Our books accommodate any of these approaches.

As for matters of style, we assume that the text will be assigned with the most recent edition of the Code and Regulations. Suggested assignments to these sources are provided for each topic. Instructors should review these assignments carefully, editing when necessary to ensure that they are consistent with the desired depth of coverage. Deletions from cases and other authorities have been made freely, with asterisks used to denote substantive omissions, but citations and internal cross references in excerpted materials have been deleted without so indicating. Editorial additions are in brackets. Footnotes to the original text are numbered consecutively within each section, and many footnotes have been deleted from cases without renumbering those that remain. Coverage is current through April 1, 2008.

We remain indebted to the late Richard B. Stephens of the University of Florida College of Law for his advice and support on the First Edition of this book. For their work as research assistants on prior editions, we thank former students Bob Appert, Steve Gee, Matt Richardson, Jim Berard, Thea Chester, Bill Goddard, Jami Changaris Voge, and Anthony Wan from Hastings College of the Law; Jay Katz, Dennis McGlothin and Chris Hanna from the University of Florida; and Francine Augustyn, Royda Krames and Piero Sallusolia from the University of San Francisco.

We also express our gratitude to Steve Lind and Josh Rosenberg, who no longer participate as co-authors, for their contributions to the development of this text and to its many previous editions. And, as always, we are grateful to the administration of Hastings College of the Law for its research support.

STEPHEN SCHWARZ
DANIEL J. LATHROPE

San Francisco, California
May, 2008

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