

51A Middle Street Newburyport, MA 01950Phone: 800-588-7039Fax: 877-902-4284contact@bhfe.comwww.bhfe.com

# **Course Information**

Course Title: *Tax Guide to Partnerships #493118* 

### Recommended CPE credit hours for this course

In accordance with the standards of the CFP Board, the National Registry of CPE Sponsors and the IRS, CPE credits have been granted based on a 50-minute hour.

### CPA 2.5 (All states)

National Registry of CPE Sponsors ID Number: 107615.

Sponsor numbers for states requiring sponsor registration: Florida Division of Certified Public Accountancy: 4761 (Ethics #11467) Hawaii Board of Public Accountancy: 14003 New York State Board of Accountancy: 002146 Ohio State Board of Accountancy: M0021 Texas State Board of Accountancy: 009349

**EA/OTRP 2** (All States) IRS: Qualified Sponsor number: *FWKKO*.

### CLU, ChFC Professional Recertification 2

### **Course Description**

The mini-course will examine tax issues relating to the formation and operation of partnerships. Participants will gain a familiarity with basic areas of partnership taxation so as to recognize a problem and have at hand some practical knowledge for its solution.

### Program Delivery Method: Self-Study (NASBA QAS Self-Study/interactive)

### Subject Codes/Field of Study

NASBA (CPA): Taxes. IRS (EA, OTRP): Federal Tax Law.

#### **Course Level, Prerequisites, and Advance Preparation Requirements**

Program Level: Overview.

This program is appropriate for professionals at all organizational levels. Prerequisites: Basic familiarity with federal taxation Advance Preparation: None

#### Course Content

Publication/Revision Date: 3/5/2018. Author: Danny Santuccci, J.D. Final exam (online): Ten questions (multiple-choice).

#### Instructions for taking this course

You must complete this course within one year of the date of purchase (if you do not complete the course within one year, contact us to determine whether an updated edition of the course is available, in which case we will provide you with a PDF of the updated course and the online exam at no charge).

A passing grade of at least 70% is required on the final exam for this course. You may retake the exam if you do not pass it on the first attempt (no charge).

Complete the course by following the learning objectives listed on the following page, studying the text, and studying the review questions at the end of each major section (or at the end of the course). Once you have completed studying the course and you are confident that the learning objectives have been met, answer the final exam questions (online).

### Instructions for Taking the Final Exam Online

- Login to your account online at <u>www.bhfe.com</u>.
- Go to "*My Account*" and view your course.
- Select "*Take Exam*" for this course and follow instructions.

### Additional Information

- The exam may be started, stopped, then resumed at a later date.
- The exam is "open book," it is not timed, and it may be retaken if not passed on the first attempt (no charge).
- Results (correct, incorrect answers) and certificate appear immediately upon passing the exam.
- EA credits are reported weekly.

Have a question? Call us at 800-588-7039 or email us at <u>contact@bhfe.com</u>.

# Learning Assignment & Objectives

As a result of studying the assigned materials, you should be able to meet the objectives listed below.

### ASSIGNMENT

At the start of the materials, participants should identify the following topics for study:

- \* Partnership definition
- \* Partnership inco-1 me
- \* Partnership tax return
- \* Year taxable
- \* Transactions between partner & partnership
- \* Contributions to partnerships
- \* Sales & exchanges of partnership interests
- \* Partnership distributions
- \* Partnership liquidations
- \* Limited liability companies

### Learning Objectives

After reading the chapter, participants will be able to:

**1.** Recognize the tax treatment of partnerships noting advantages and disadvantages and their effect on income attribution.

2. Determine partnership income and reporting requirements by:

**a.** Identifying filing requirements and the impact partnership K-1's on individual or partner taxation; and

**b.** Specifying loss deduction limitations and stating the tax treatment of guaranteed payments, organizational expenses and other fees.

**3.** Identify the tax treatment of contributions of property to a partnership under §721 and the impact on tax basis.

**4.** Recognize the tax treatment of partnership distributions and sale of partnership interests by:

**a.** Identifying the tax treatment of partner liabilities and of sales and exchanges of partnership interests and property; and

**b.** Determining the differences between liquidating and nonliquidating payments including definition of a partner's basis on such an event.

After studying the materials, answer the exam questions 1 to 10.

### Notice

This course and test have been adapted from materials and information contained in the above text and any supplemental material provided. This course is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice and assumes no liability whatsoever in connection with its use. Since laws are constantly changing, and are subject to differing interpretations, we urge you to do additional research and consult appropriate experts before relying on the information contained in this course to render professional advice.

## Tax Guide to Partnerships



By

#### Danny C. Santucci

The author is not engaged by this text, any accompanying electronic media, CD, or lecture in the rendering of legal, tax, accounting, or similar professional services. While the legal, tax, and accounting issues discussed in this material have been reviewed with sources believed to be reliable, concepts discussed can be affected by changes in the law or in the interpretation of such laws since this text was printed. The accuracy and completeness of this information and the author's opinions based thereon cannot be guaranteed. In addition, state or local tax laws and procedural rules may have a material impact on the general discussion. As a result, the strategies suggested may not be suitable for every individual. Before taking any action, all references and citations should be checked and updated accordingly.

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional service. If legal advice or other expert advice is required, the services of a competent professional person should be sought.

*—-From a Declaration of Principles jointly adopted by a committee of the American Bar Association and a Committee of Publishers and Associations.* 

Copyright February 2018 Danny Santucci

# TABLE OF CONTENTS

Course Information	ii
Learning Assignment & Objectives	iv
TABLE OF CONTENTS	vi
Introduction	1
Definition of Partnership	1
Section 761(a)	1
Factors	1
Husband-Wife Partnerships	1
Limited Partnerships	2
Taxed as Corporations	2
Analysis	2
Continuity	2
Centralized Management	2
Limited Liability	3
Transferability	3
Ruling Policies	3
Corporate General Partner	3
Co-tenancies	4
Definition of Trade or Business	4
Joint Ventures	5
Partnership Agreement	5
Modifications	5
Partner's Share of Tax Items	5
Limited Partners	5
Family Partnerships - §704(e)	6
Capital Partnerships	6
Gifts & Interfamily Sales	6
Material Use of Capital	7
Minor Children as Partners	7 8
Non-Capital Partnerships Advantages	8
Disadvantages	8
Termination Of Partnership	9
Partnership Income	9
Partners Taxed as Individuals	9
Self-Employment Tax	10
Exception - Separate Entity for Some Purposes	10
Individual Returns & K-1s	10
Partnership Expenses Paid By a Partner	11
Separately Treated Items	11
Character of Items & Limitations	12
Deduction of Losses	12
Outside Basis Limitation - §704(d)	13
Loss Ultimately Deductible	13
Effect of Losses on Outside Basis - §705	13

Partnership Tax Return	13
Organization & Syndication Fees - §709	13
Capitalized Syndication Fees	14
Business Start-up Costs - §195	14
Definition	14
Filing Requirements	15
Due Date of Return	15
Failure to File	15
Failure to Furnish Copies to Partners	16
Year Taxable - §706(a)	16
Limitation on Choice of Taxable Year	16
Required Tax Year	16
Business Purpose - §706(b)	17
Rev. Proc. 87-32	17
Highest Average Requirement	18
47-Month Exclusion	18
Restrictions	18
Form 1128	18
Section 444 Election	19
Limitations on Changing a Tax Year	19
Making the Election - Form 8716	19
Back-Up Election	19
Required Payment	20
When to File	20
Termination of Election	20
Transactions between Partner and Partnership	20
Treating Partner as Stranger - §707(a)	20
Payments by Accrual Basis Partnership to Cash Basis Partner	21
Guaranteed Payments - §707(c)	21
Capitalization	21
Prepaid & Capital Expenses - §707(c)	21
Organization & Syndication Expenses - §709	22
Guaranteed Minimum	22
Year Taxed - §706(a)	22
Salary vs. Distribution	22
Stranger Payment vs. Guaranteed Payment	22
Payments Resulting in Loss	23
Recipient of Salary as an "Employee"	23
Exception	23
Accident & Health Insurance Premiums	23
Certain Losses Disallowed - §707(b)	23
Two Partnerships	24
Constructive Ownership	24
Sales at Gain	24
Contributions to Partnerships	27
Contributions of Property - §721	27
	27
Contribution vs. Sale or Exchange	27 27
Disguised Sale - §707(a) Disguised Taxable Exchanges - \$704 & \$727	27 27
Disguised Taxable Exchanges - \$704 & \$737 Proportribution Gain or Loss Proporty	
Precontribution Gain or Loss Property	28

Property Distribution to Contributing Partner - §737	28
Anti-Abuse Rules Under §737	28
Contributed Property Distribution to Another Partner - §704(c)	29
Seven Year Period (Formerly Five)	29
Allocation Methods for Precontribution Gain or Loss	29
Transfers to Investment Company Type Partnerships - §721(b)	30
Contributed Assets Inside (Partnership) Basis - §723	31
Allocations as to Contributed Property - §704(c)	31
Liabilities	31
Earlier Optional Application of §704(c)	31
Character of Subsequent Gain	32
Taint On Contribution - §724	32
Character of Subsequent Loss - §724(c)	32
Contribution of Services	32
Basis of Partner's Interest - Outside Basis	32
Original Basis - §722	33
Adjustments to Basis	33
Effect of Liabilities - §752	33
Deemed Distribution & Contribution	34
Special Rule for Liabilities of Cash Basis Partnership	35
Partner's Share of Partnership Liabilities	35
Limited Partnerships	35
Exception	35
Guarantees	35
Sales & Exchanges of Partnership Interests	36
Capital Asset Treatment - §741	36
Capital Associated include (2) +1	
Importance of Capital Treatment	
Importance of Capital Treatment Bags on Gain on Sale of Passtbrough Entities 81(H)	36
Regs on Gain on Sale of Passthrough Entities - §1(H)	36 36
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers	36 36 37
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031	36 36 37 37
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351	36 36 37 37 37
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis	36 36 37 37 37 37 37
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest	36 36 37 37 37 37 37 38
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751	36 36 37 37 37 37 38 38
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership	36 36 37 37 37 37 38 38 38 38
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest	36 36 37 37 37 37 38 38 38 38 38 39
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a)	36 36 37 37 37 37 38 38 38 38 39 39
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d)	36 36 37 37 37 37 38 38 38 38 39 39 39 39
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b)	36 36 37 37 37 37 38 38 38 38 38 39 39 39 39 39 39
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755	36 36 37 37 37 37 38 38 38 38 38 39 39 39 39 39 39 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner	36 36 37 37 37 37 38 38 38 38 38 39 39 39 39 39 39 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception	36 36 37 37 37 37 38 38 38 38 39 39 39 39 39 40 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner	36 36 37 37 37 37 38 38 38 38 38 39 39 39 39 39 39 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception Permanency of Election	36 36 37 37 37 37 38 38 38 38 38 39 39 39 39 39 39 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception Permanency of Election	36 36 37 37 37 37 38 38 38 38 39 39 39 39 39 39 40 40 40 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - \$1(H) Exchanges & Transfers Like-Kind Exchanges - \$1031 Transfers to Controlled Corporations - \$351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - \$751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - \$743(a) Substantial Built-in Loss - \$743(d) Special Inside Basis Adjustment - \$754 & \$743(b) Allocation of Basis - \$755 Death of Partner Basis Exception Permanency of Election <b>Partnership Distributions</b> General Nonrecognition Rule - \$731	36 36 37 37 37 37 38 38 38 39 39 39 39 39 39 39 39 40 40 40 40 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - \$1(H) Exchanges & Transfers Like-Kind Exchanges - \$1031 Transfers to Controlled Corporations - \$351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - \$751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - \$743(a) Substantial Built-in Loss - \$743(d) Special Inside Basis Adjustment - \$754 & \$743(b) Allocation of Basis - \$755 Death of Partner Basis Exception Permanency of Election <b>Partnership Distributions</b> General Nonrecognition Rule - \$731 Exceptions to General Rule	36 36 37 37 37 37 38 38 38 38 39 39 39 39 39 39 40 40 40 40 40 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception Permanency of Election <b>Partnership Distributions</b> General Nonrecognition Rule - §731 Exceptions to General Rule Basis Adjustments	36 36 37 37 37 38 38 38 39 39 39 39 39 40 40 40 40 40 40 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception Permanency of Election <b>Partnership Distributions</b> General Nonrecognition Rule - §731 Exceptions to General Rule Basis Adjustments Partner's Interest - §733	36 36 37 37 37 38 38 38 39 39 39 39 39 40 40 40 40 40 40 40 40 40 40
Regs on Gain on Sale of Passthrough Entities - §1(H) Exchanges & Transfers Like-Kind Exchanges - §1031 Transfers to Controlled Corporations - §351 Partner's Interest Basis Foreign Person Sale of U.S. Partnership Interest Hot Assets - §751 Liabilities of Partnership Inside Basis after Transfer of Partnership Interest General Rule - §743(a) Substantial Built-in Loss - §743(d) Special Inside Basis Adjustment - §754 & §743(b) Allocation of Basis - §755 Death of Partner Basis Exception Permanency of Election <b>Partnership Distributions</b> General Nonrecognition Rule - §731 Exceptions to General Rule Basis Adjustments	36 36 37 37 37 38 38 38 39 39 39 39 39 40 40 40 40 40 40 40 40 40 40

Basis Limitation - §732(a)	42
Liquidating or Complete Distribution	42
Allocation of Basis When Limited - §732(c)	42
Partnership's Basis Greater Than Partner's Basis	43
Partner's Basis Greater Than Partnership's Basis	43
Special Adjustment to Basis	43
Mandatory Application	43
Holding Period - §735	44
Partnership Property - §754 & §734	44
Basis Allocation on Properties Distributed By a Partnership	44
Partnership Liquidations	45
Flexible Treatment	45
Types of Liquidating Distributions	45
Liquidating Distributions of Money	45
Section 736(a) Payments	45
Section 736(b) Payments	46
Effect	46
Exclusions From §736(b) Treatment	46
Basis Adjustment after Distributions	47
Election - §754	47
Additional Adjustments Required by §734	47
Limited Liability Companies	48
Introduction	48
LLC Benefits	48
Disadvantages	48
Federal Tax Consequences	49
Check-the-Box Regulations	50
Glossary	57
Index of Keywords & Phrases	58