Developments in Partnership Taxation During 2005

By

Blake D. Rubin, Esquire
Jon G. Finkelstein, Esquire
Ossie Borosh, Esquire
Arnold & Porter LLP
Washington, D.C.
DEVELOPMENTS IN PARTNERSHIP TAXATION  
DURING 2005  
Blake D. Rubin, Jon G. Finkelstein and Ossie Borosh  
Arnold & Porter LLP, Washington, D.C.*  
January 2, 2006

I. Introduction ..............................................................................................................1
II. Top Ten Recent Developments in Partnership Taxation .............................................1


B. #2 – Repeal of the “Partnership Equity for Debt” Exception to Cancellation of Indebtedness Income: Jobs Act (October 22, 2004) ..........17

C. #3 – Allocations with Respect to Built-In Loss Property Limited to Contributing Partner: Jobs Act (October 22, 2004) ......................17


E. #5 – Proposed Regulations on the Treatment of Disregarded Entities for Purposes of Characterizing and Allocating Liabilities Under Section 752 (August 12, 2004) .................................................................21

F. #6 – Proposed Regulations Regarding Disguised Sales of Partnership Interests (November 26, 2004) .................................................................23

G. #7 – Hubert Enterprises v. Commissioner, 125 T.C. No. 6 (September 21, 2005) .......................................................................................................................30


* Copyright 2006 Blake D. Rubin, Jon G. Finkelstein and Ossie Borosh. All rights reserved.
I. #9 – Allocations of Excess Nonrecourse Liabilities: Chief Counsel Advice 200513022 (November 15, 2004) .................................................................40

J. #10 – Final Regulations Regarding Partnership “Non-Tax Basis” Liabilities, Treasury Decision 9207, 70 FR 30334-30358 (May 26, 2005) .................................................................43

III. Partnership Audits and Procedural Matters .................................................................61

A. Private Letter Ruling 200518037 (December 20, 2004) .................................................................61

B. Final Regulations Regarding Exceptions to the Partnership Reporting Requirements under Section 6031(a), Treasury Decision 9177, 70 FR 7176-7177 (February 11, 2005) .................................................................62

C. Private Letter Ruling 200523007 (February 24, 2005) .................................................................63


E. Whitman & Ransom v. Commissioner, T.C. Memo 2005-172 (July 12, 2005) .................................................................65


IV. Partnership Accounting ............................................................................................................72


C. Final Regulations on Treatment of Disregarded Entities as Separate from Owners, Treasury Decision 9183 (February 25, 2005) .................................................................75

D. Final Regulations Regarding Treatment of Installment Obligations Under Partnership Anti-Mixing Bowl Rules, Treasury Decision 9193, 70 FR 14394-14395 (March 7, 2005) .................................................................75


F. Private Letter Ruling 200530013 (April 14, 2005) .................................................................80
<table>
<thead>
<tr>
<th>Document Reference</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>H. Olsen-Smith v. Commissioner, T.C. Memo 2005-174 (July 18, 2005)</td>
<td>84</td>
</tr>
<tr>
<td>I. Technical Advice Memorandum 200545045 (July 21, 2005)</td>
<td>86</td>
</tr>
<tr>
<td>K. Hauge v. Commissioner, T.C. Memo 2005-276 (November 2, 2005)</td>
<td>88</td>
</tr>
<tr>
<td>L. Strangi v. Commissioner, 2005 WL 2979007 (5th Cir. Nov. 7, 2005)</td>
<td>91</td>
</tr>
<tr>
<td>M. Proposed Regulations under Section 704(b), Partner’s Distributive Share, 70 F.R. 69919-69922 (November 18, 2005)</td>
<td>93</td>
</tr>
<tr>
<td>N. Doll v. Commissioner, T.C. Memo. 2005-269 (November 21, 2005)</td>
<td>95</td>
</tr>
<tr>
<td>V. Like-Kind Exchanges</td>
<td>96</td>
</tr>
<tr>
<td>A. Field Attorney Advice 20050203F (November 30, 2004)</td>
<td>96</td>
</tr>
<tr>
<td>B. Teruya Brothers, LTD v. Commissioner, 124 T.C. 4 (February 9, 2005)</td>
<td>98</td>
</tr>
<tr>
<td>C. Private Letter Ruling 200521002 (February 24, 2005)</td>
<td>99</td>
</tr>
<tr>
<td>D. Final Regulations Regarding Additional Rules for Exchanges of Personal Property under Section 1031(a), Treasury Decision 9202, 70 FR 28818-28820 (May 19, 2005)</td>
<td>100</td>
</tr>
<tr>
<td>E. Private Letter Ruling 200541037 (June 29, 2005)</td>
<td>101</td>
</tr>
<tr>
<td>VI. Restructurings</td>
<td>102</td>
</tr>
<tr>
<td>A. Private Letter Ruling 200513001 (December 9, 2004)</td>
<td>102</td>
</tr>
<tr>
<td>B. Private Letter Ruling 200528021 (April 8, 2005)</td>
<td>103</td>
</tr>
<tr>
<td>C. Private Letter Ruling 200538005 (June 14, 2005)</td>
<td>104</td>
</tr>
<tr>
<td>E. Private Letter Ruling 200505010 (October 14, 2004)</td>
<td>106</td>
</tr>
</tbody>
</table>
VII. Partnerships With Tax-Exempt Entities .............................................................. 108
   A. Private Letter Ruling 200528029 (April 20, 2005) ........................................ 108

VIII. S Corporations .................................................................................................. 110
    A. Private Letter Ruling 200524020 (February 16, 2005) .................................... 110
    C. Maloof v. Commissioner, T.C. Memo. 2005-75 (April 6, 2005) ................. 112
    D. Final Regulations Regarding Deemed Election to Be an
       Association Taxable as a Corporation for a Qualified Electing S
       Corporation, Treasury Decision 9203 (May 23, 2005) ............................ 114
    E. Private Letter Ruling 200535017 (May 26, 2005) ...................................... 114
    F. Private Letter Ruling 200539009 (June 21, 2005) ...................................... 115
    G. Kaplan v. Commissioner, T.C. Memo 2005-217 (September 20,
       2005) ........................................................................................................ 116

IX. Real Estate Investment Trusts ............................................................................. 120
    A. Private Letter Ruling 200507004 (October 25, 2004) .............................. 120
    B. Private Letter Ruling 200510002 (November 19, 2004) ......................... 121
    C. Private Letter Ruling 200513002 (December 28, 2004) ....................... 122
    D. Private Letter Ruling 200525013 (March 22, 2005) ................................. 123
    E. Private Letter Ruling 200528004 (April 5, 2005) ...................................... 126
    F. Private Letter Ruling 200532009 (May 6, 2005) ....................................... 127
    G. Private Letter Ruling 200534013 (May 12, 2005) .................................... 128
    H. Private Letter Ruling 200532015 (May 17, 2005) .................................... 129