

Tax Cuts and Jobs Act

Three-year holding period for LTCG treatment on on certain partnership profits interest received in connection with the performance of investment services

1.2

Tax Nonresident Partner's Gain on Sale of PSP Interest	3.8
Charity and foreign taxes reduce partner's outside basis for losses	1.2

3

Mandatory 743(b) Adjustment (Deemed 754 Election)

4

Current Law: Mandatory if
a "substantial built-in
loss":

total adjusted basis of
partnership assets exceed
total FMV by >\$250,000

5

Example -- 10% PSP Interest
(no discount/no debt)

\$ 70,000 Inheritance (DOD FMV)*
- 100,000 Inside Basis
= <30,000> Sec. 743(b) Adj.

*DOD FMV (10%)

Asset Tax Basis	1,000,000
Asset FMV	700,000

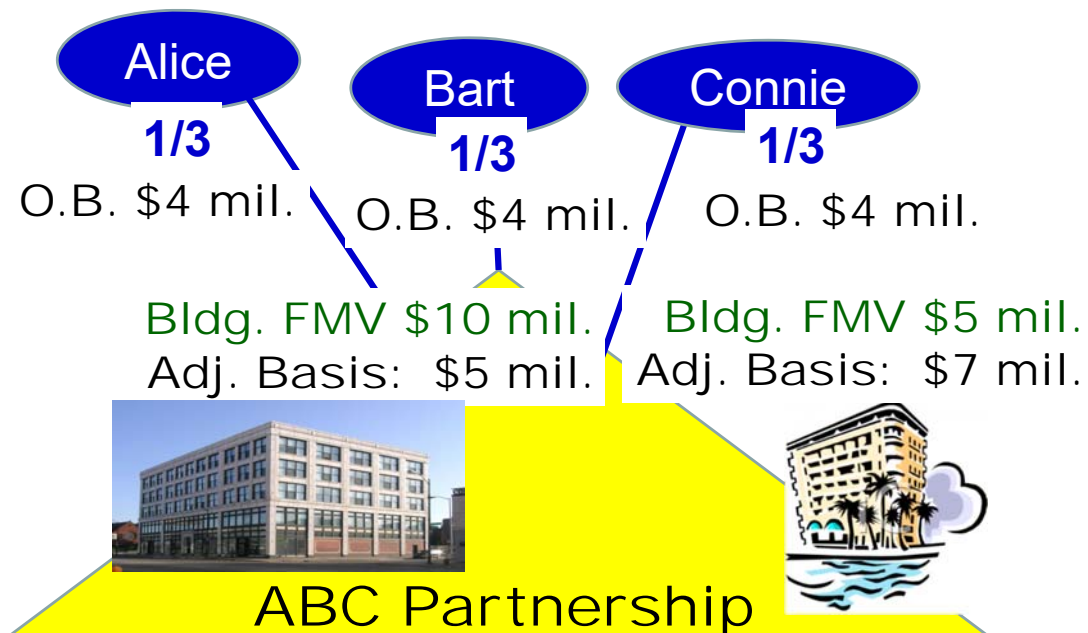
A discount increases
the downward adjustment

6

Proposed Law:
Also mandatory
adjustment **if a loss of
over \$250K would be
allocated** to the
transferee partner, if all
assets were sold for FMV

7

Sale by Alice to Connie



8

No More
Deemed
Terminations
Under Sec. 708

9

Partnerships
and LLCs

Chapter 6

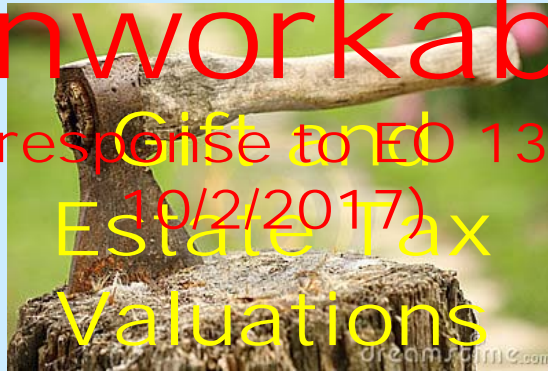
REG-163113-02 (1-16)
(8/4/16) Prop. Regs.
25.2701-2,-8, 25.2704-
1, -2, -3, -4.

"Unworkable"

(IRS response to EO 13789--

10/2/2017)

Gift and
Estate Tax
Valuations



11

Section 2704(b)(1)
provides that an
"applicable restriction"
is disregarded in
valuing the transferred
interest.

An **applicable restriction** is a restriction that **limits the ability of the entity to liquidate and which after the transfer** may be removed by the transferor's family.

13

Sec. 2704(b)(4)

"The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if

14

such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee."

15

"These rules do not affect minority discounts or other discounts available under present law."
(Conf. Rpt. (1990))

16

2016
Section 2704
Proposed Reg.
Preamble

17

"...current regulations
have been rendered
substantially
ineffective in
implementing the
purpose and intent of
the statute...."

18

“First, courts have concluded that, under the current regulations, section 2704(b) applies **only to restrictions on liquidating an entire entity rather than merely an interest in the entity.** Kerr v. Commissioner,”

19

Example (1)

(Compare Example (5) Prop.
Reg. 25.2704-5(g))

20

Family Limited Partnership

Assets (In Thousands)	Tax Basis	FMV	O.B.
Building	<u>0</u>	<u>10,000</u>	
Total Assets	<u>0</u>	<u>10,000</u>	
Capital:			
Ann (5%) -GP	0	500	0
Bo (5%) - GP	0	500	0
D (90%)- Ltd. P	<u>0</u>	<u>9,000</u>	0
Debt + Capital	<u>0</u>	<u>10,000</u>	

21

Discount Enhancing PSP Agreement Language:

“No limited partner shall have the right to withdraw his or her capital from the Company or to receive any distribution of or return on such partner’s Capital Contributions, except as otherwise provided in Section X of this Agreement.”

22

- Debra (D) gifts a 30% Ltd. PSP interest to each child: Ann and Bo.
- The net asset value of each gifted Ltd. PSP interest is \$3 mil (30% x 10 mil.).
- Each gross gift is valued at \$1,800,000 -- a discount of \$1,200,000 (40%).

23

The Proposed Regs.
Required the Liquidation
Restriction on the PSP
interest to be ignored for
valuation purposes

Gift of \$3 Mil.

24

TD 9787
(10/5/2016)

1-19



25

Treasury and IRS are
"considering whether the
proposed and temporary
regulations relating to
disguised sales should be
revoked and the prior
regulations reinstated."

(IRS response to EO 13789--
10/2/2017)

26

TD 9788; 1.752-2T
(10/5/2016)

1-19

Bottom Dollar Guarantees are Not Payment Obligations

27

“Treasury and the IRS continue to believe ... that the temporary regulations on bottom-dollar guarantees are needed to prevent abuses and do not meaningfully increase regulatory burdens for the taxpayers affected.”

(IRS response to EO 13789--
10/2/2017)

28

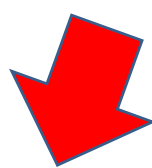
*Prop Reg 1.754-1 and
Preamble (10/11/2017)*

6-2

Proposed Regs Remove
Signature Requirement
For Partnership Section
754 Election

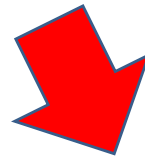
29

754 Election
Activates



Sec.
743

Sales, Exchanges,
Deaths




Sec.
734

Distributions

30

Section 743(b)

O.B. > I.B. = 

I.B. > O.B. = 

Not a Sch. L common
balance sheet
adjustment

31

Example (1):
Sale of Alice's
Partnership
Interest to Connie
for \$5 mil.

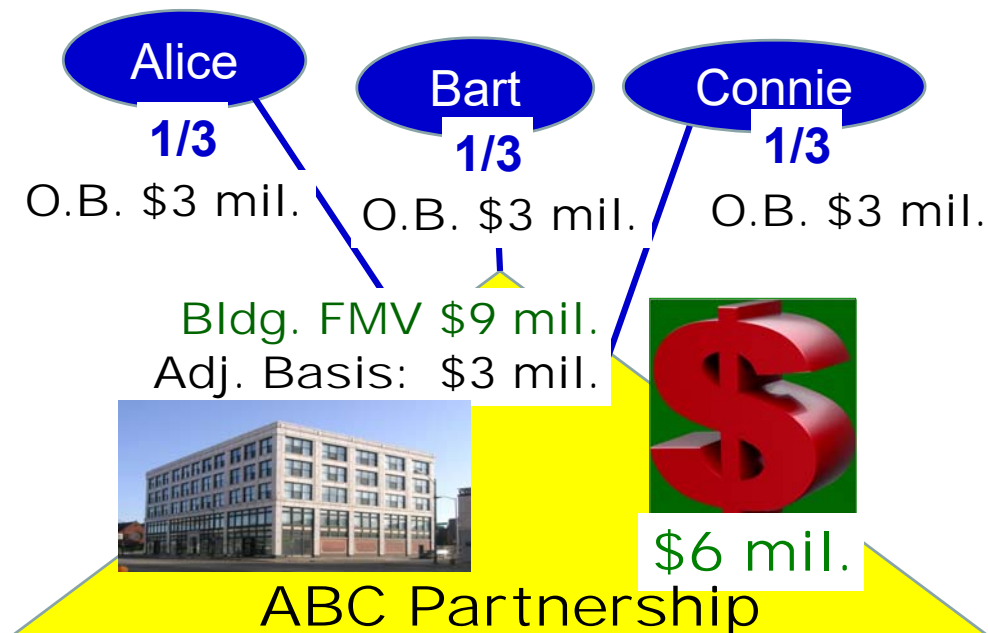
Sec. 754 Election
Activates Sec. 743(b)

32

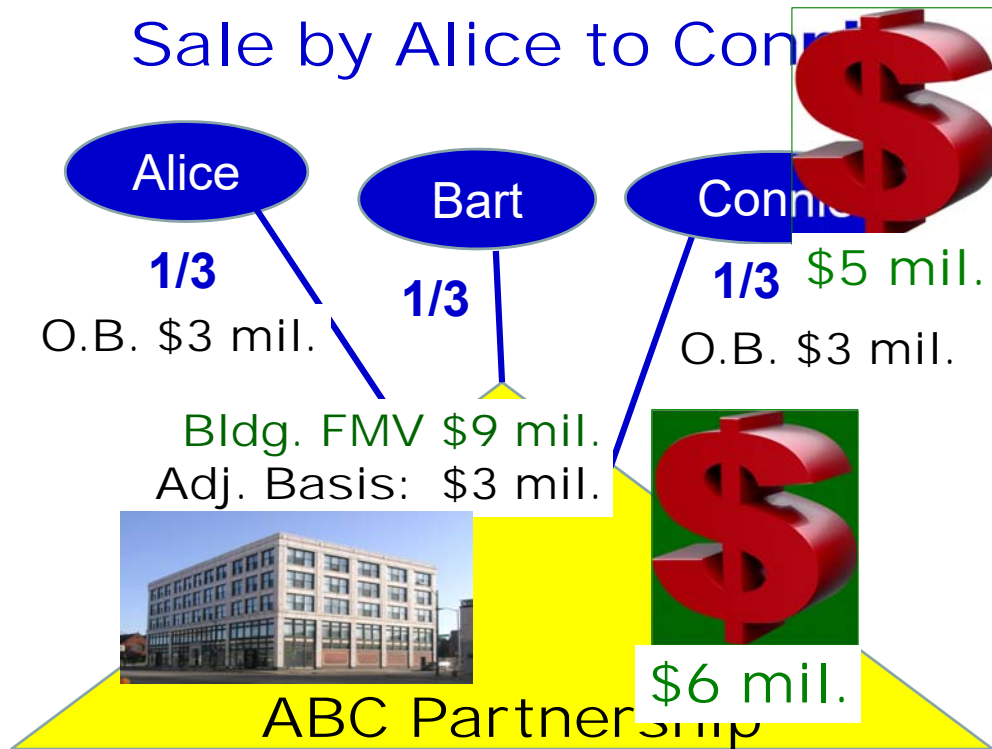
Pre-Sale Balance Sheet

Assets (in thousands)	Tax Basis	FMV	O.B.
Cash	6,000	6,000	
Bldg.	<u>3,000</u>	<u>9,000</u>	
Total Assets	<u>9,000</u>	<u>15,000</u>	
Capital:			
Alice -- 1/3	3,000	5,000	3,000
Bart -- 1/3	3,000	5,000	3,000
Connie -- 1/3	3,000	5,000	3,000
Debt + Equity	<u>9,000</u>	<u>15,000</u>	

Sale by Alice to Connie



Sale by Alice to Connie



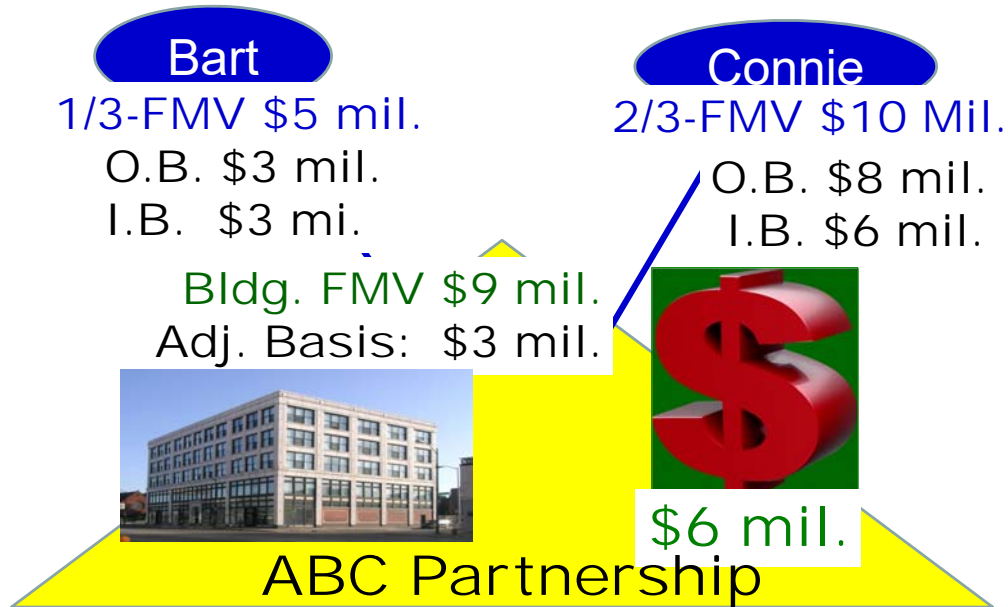
35

Alice's Gain on Sale:
\$2 mil. (\$5 mil. - \$3 mil.)

(Section 741)

36

After Sale to Connie



37

Post-Sale Balance Sheet

Assets (in thousands)	Tax Basis	FMV	O.B.
Cash	6,000	6,000	
Bldg.	<u>3,000</u>	<u>9,000</u>	
Total Assets	<u>9,000</u>	<u>15,000</u>	
Capital:			
Bart - 1/3	3,000	5,000	3,000
Connie - 2/3	6,000	10,000	8,000
Debt + Equity	<u>9,000</u>	<u>15,000</u>	

Connie's 743(b) Adj.

$$O.B^* . > I.B^* . = \uparrow$$

$$\$5 \text{ Mil.} > \$3 \text{ Mil.} = \$2 \text{ mil.}$$

(Same adjustment if buyer
were a third party)

* For the **acquired
partnership interest** only --
per Reg. 1.743-1(b).

39

Redemption by
ABC PSP of Alice's
1/3 interest for
\$5 mil.

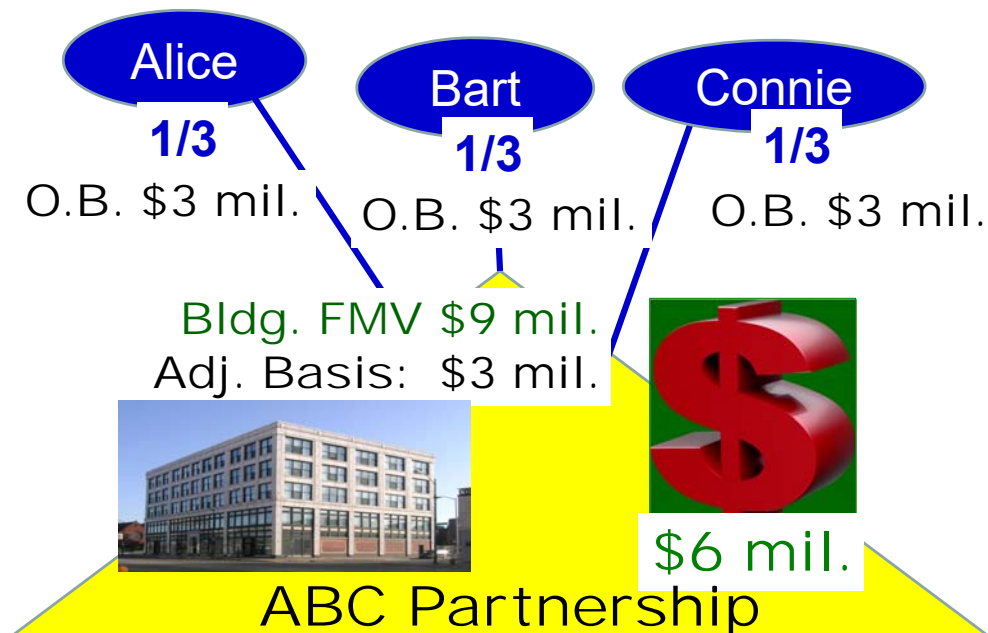
Sec. 754 Election
Activates Sec. 734(b)

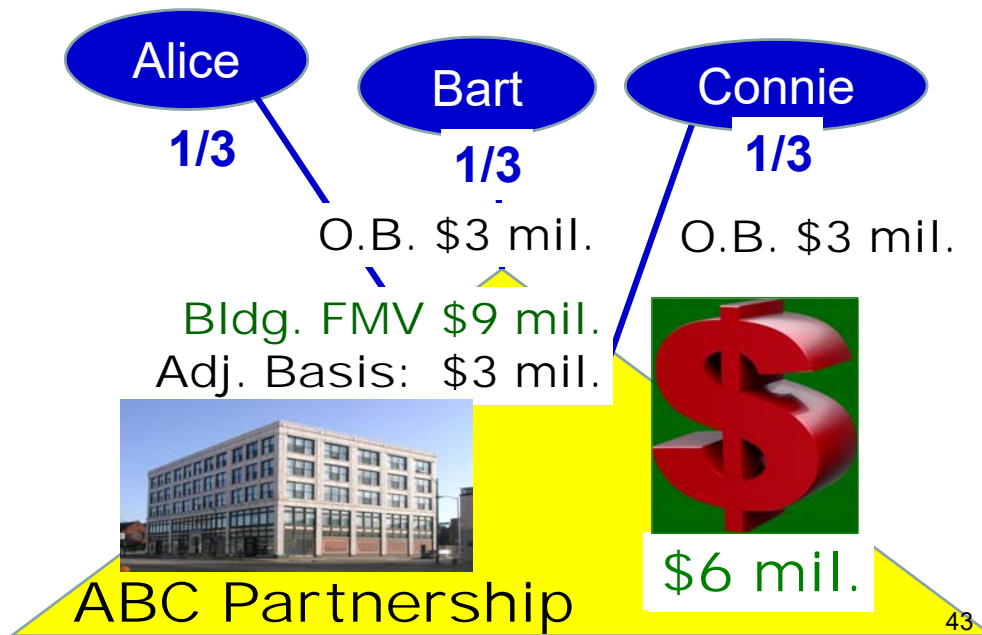
40

Pre-Redemption Balance Sheet

Assets (in thousands)	Tax Basis	FMV	O.B.
Cash	6,000	6,000	
Bldg.	<u>3,000</u>	<u>9,000</u>	
Total Assets	<u>9,000</u>	<u>15,000</u>	
Capital:			
Alice -- 1/3	3,000	5,000	3,000
Bart -- 1/3	3,000	5,000	3,000
Connie -- 1/3	3,000	5,000	3,000
Debt + Equity	<u>9,000</u>	<u>15,000</u>	

Redemption of Alice



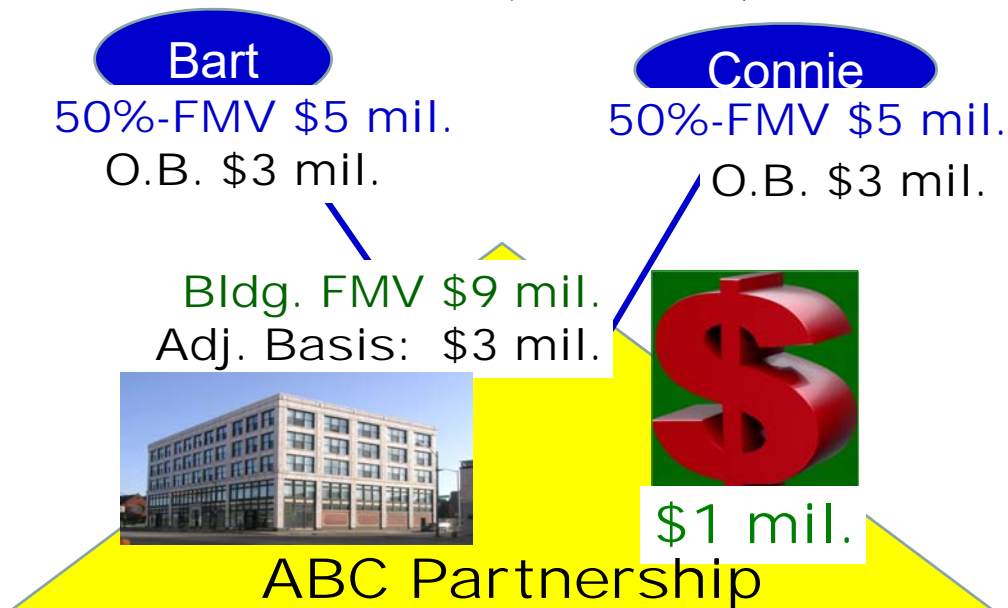


Alice's Gain on
Redemption:
\$2 mil. (\$5 mil. - \$3 mil.)

(Section 731)

Alice's Gain (Sec. 731) :


\$2 mil. (\$5 - \$3)



45

Post-Redemption Balance Sheet Before Sec. 734 Adjustment

Assets (in thousands)	Tax Basis	FMV	O.B.
Cash	1,000	1,000	
Bldg.	<u>3,000</u>	<u>9,000</u>	
Total Assets	<u>4,000</u>	<u>10,000</u>	
Capital:			
Bart - 50%	2,000	5,000	3,000
Connie - 50%	2,000	5,000	3,000
Debt + Equity	<u>4,000</u>	<u>10,000</u>	

Distributee's
recognized
sec. 731(a)
gain. 

Sec. 734

47

- Adjust the inside basis in the Building by + \$2 million.
- Restores parity between O.B. and I.B.

48

Increase I.B. in Bldg. by \$2 mil.

Assets (in thousands)	Tax Basis	FMV	O.B.
Cash	1,000	1,000	
Bldg.	<u>5,000</u>	<u>9,000</u>	
Total Assets	<u>6,000</u>	<u>10,000</u>	
Capital:			
Bart - 50%	3,000	5,000	3,000
Connie - 50%	3,000	5,000	3,000
Debt + Equity	<u>6,000</u>	<u>10,000</u>	

How Elected?

A **written statement**
attached to Form
1065 in the tax year
of transfer or
distribution – **by**
extended due date

The written statement must:

- 1) Set forth the name and address of the partnership making the election;
- 2) Declaration that the PSP elects under section 754 to apply sections 734(b) and 743(b);

51

- ~~3) Be signed by any one of the partners.~~

Eliminated in 2017 Proposed Regulations. Effect when final. However, taxpayers **"may rely on this proposed regulation for periods preceding the proposed applicability date."** (Preamble)

52

CCA 201733013
(released 8/18/2017)

6-3

Rev. Proc. 84-35 Relief
from Failure To File
Penalty Does Not
Eliminate Form 1065
Filing Requirement

53

Issue

Does Rev Proc. 84-35
represent an
automatic exemption
to partnerships from
the requirement of
filing a Form 1065?

54

Sec. 6698 Legislative history:

“The penalty will not be imposed if the partnership can show that failure to file a complete or timely return is due to reasonable cause. The Committee understands that small partnerships (**those with 10 or fewer partners**) often do not file partnership returns, but rather

55

each partner files a detailed statement of his share of partnership income and deductions with his own return. Although these partnerships may technically be required to file partnership returns, **the Committee believes that full reporting of the partnership income and deductions by each partner is adequate and that it is reasonable not to file a partnership return in this instance.”**

56

CCA Conclusion

“Neither I.R.C. §6031 [the Form 1065 filing requirement] nor I.R.C. §6698 [the failure to file penalty] **contain an automatic exception to the general filing requirement set forth in I.R.C. §6031(a).**”

57

“Although Rev. Proc. 84-35 does provide some relief for failure to file a partnership Return we disagree that the guidance provides for **almost automatic reasonable cause relief for the failure to file a partnership return...**”

58

*Notice 2017-47
(9/1/2017)*

6-4

Penalty relief for PSPs
filing late in 2017

59

For the first partnership tax
year beginning in 2016:

Forms 1065, 1065-B, 8804,
8805, and 5471 **are treated as
timely if filed by** the
Pre-Surface Transportation
Act law—**April 18 for calendar
year partnerships.**

60

Same relief for Form 7004
extensions requests timely
filed under prior law.

Still need to file Form
1065 and send K-1s by
15th day of ninth month
(Sept. 15, 2017 for
calendar year PSPs)

61

*Notice 2017-71
(12/21/2017)*

62

CCA 201741018
(10/13/2017)

6-5

Chief Counsel Limits
Loss Allocation Under
Section 704(b)

63

Background

64

The allocation in
the partnership
agreement must:

65

1) Have
substantial
economic effect

OR

66

2) "be determined in accordance with such partner's interest in the partnership [PIP]"
(Reg. 1.704-1(a))
(same if no agreement)

67

Primary Test
For Economic Effect
(PTEE)

68

Three Requirements

The **partnership agreement** must provide that:

1) **Capital accounts** be determined and **maintained** according to the rules of §1.704-1(b)(2)(iv);

69

2) **Upon liquidation** of a partner's interest, liquidating distributions are made in accordance with the **partners' positive capital account** balances; and

70

3) The partner must be unconditionally obligated to restore the deficit balance in the partner's capital account following the liquidation of the partner's partnership interest.

71

Alternate Test For Economic Effect (ATEE)

72

Aimed at **limited partners and LLC members** who do not agree to an **unlimited DRO**.

73

Typical LLC Language

“No Member shall be required to pay to the LLC or to any other Member the amount of any negative balance which may exist from time to time in such Member’s Capital Account.”

74

ATEE

The partnership agreement satisfies the **first two PTEE tests**:

(1) Capital account maintenance.

(2) Liquidate in accordance with positive capital account balances.

~~(3) Unlimited deficit restoration obligation.~~

75

A **loss allocation** still has economic effect if:

- 1) the loss is charged to the properly maintained capital account; and
- 2) the **loss does not reduce** the capital account **below zero** or in excess of **a limited DRO**;

AND

76

The partnership agreement contains a “qualified income offset” (QIO)

77

Observation 6-8

- A, B, C, and D, who each contribute \$100,000 but the partnership agreement says that **A and B bear all losses equally**, but profits (after a recovery to A and B of prior year losses) are allocated 25% to each partner—A, B, C, and D.

78

- Because the entity is an LLC, none of the members/partners agree to deficit restoration obligations.
- Assume that in Year 1, the LLC/partnership **loses the entire <\$400,000>**.
- How is it allocated?

79

The partnership
agreement
allocates
<\$200,000> to A
and the same to B

80

Because neither A nor B (LLC members) agree to restore capital account deficits, that allocation **fails to have** substantial economic effect and **must be allocated based upon the partners interest in the partnership.**

81

The allocation of ABCD's loss to A and B must be limited (each) to their \$100,000 positive capital account balances.

82

Therefore, the total loss of <\$400,000> should be allocated <\$100,000> to each partner under the PIP test

83

A desirable outcome because each partner will have sufficient outside basis and at-risk basis to claim the entire loss in the current year (assuming no passive activity loss limitation).

84

PLR 201714028
(4/7/2017)

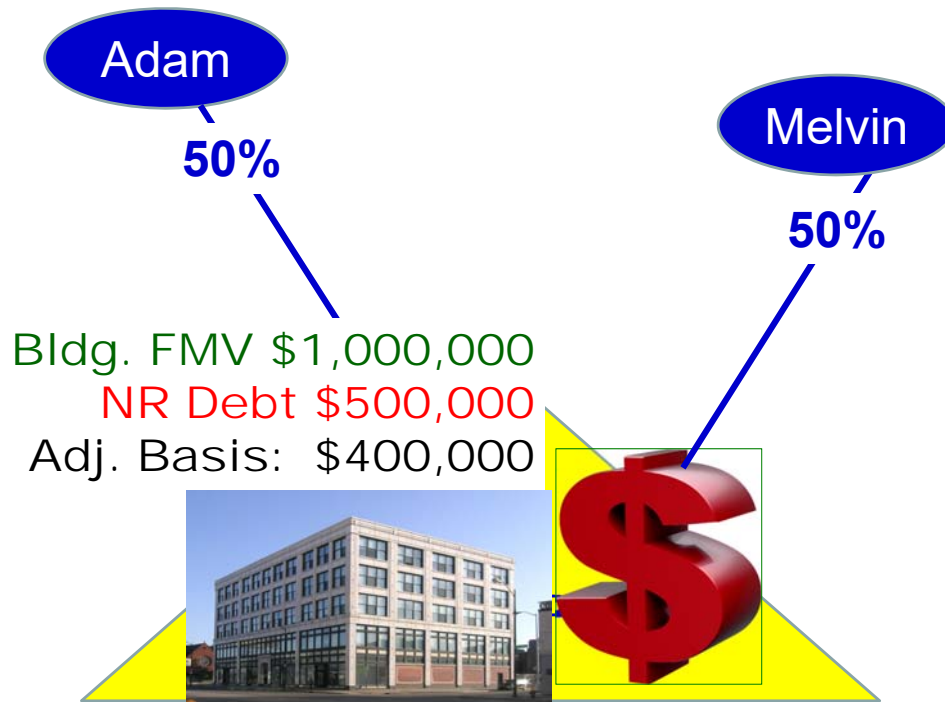
6-8

“Qualified Liability” So
No Disguised Sales
Proceeds

85



86



87

Adam incurred the
\$500,000
nonrecourse debt 12
months earlier and
used the money to
purchase other
property

88

The debt is not a “qualified liability”; but, is the entire debt sales proceeds?

No. Only the debt in excess of Adam’s share of PSP debt is sales proceeds (the debt financed distribution exception).

89

For this purpose,
Adam’s share of PSP
nonrecourse debt is
based upon the excess
NR debt rule alone and
profit share (per Reg.
1.707-5T(a)(2))

90

A's Sale Gain:

$$\begin{array}{r} \text{Debt} \quad \text{Excess Nonrecourse Debt - Reg. 1.752-3(a)(3)} \\ \$250\text{K} \quad (500\text{K} - 250\text{K}) \\ - \quad \underline{100\text{K}} \quad ((250\text{K} \div 1,000\text{K}) \times 400\text{K}) \\ = \quad \underline{\underline{150\text{K Gain Recognized}}} \end{array}$$

Reg 1.707-5(f) Example (1)
and Reg. 1.707-5T(a)(2)

91

- Same outcome even if the debt is recourse debt.
- For example, if Adam guaranteed the entire debt—so the entire PSP debt is allocated to Adam under sec. 752, he is only allocated \$250,000 (50%) for purposes of computing disguised sale proceeds.

92

If Adam incurred the \$500,000 nonrecourse debt to purchase the building several years ago, then the debt is a "qualified liability" (so zero gain recognized)

Reg 1.707-5(a)(6)(C)

93

Recall, IRS is "considering" the revocation of this rule.
(IRS response to EO 13789--10/2/2017)

94

PLR 201714028
involved “qualified
debt” based upon
debt incurred “in
connection with” the
T or B transferred to
the PSP.

Reg 1.707-5(a)(6)(i)(E)

95

AOD 2017-01
(2/13/2017)

6-9

IRS Disagrees With
Fifth Circuit On Active
Participation Exception
To Farming Syndicate

Burnett Ranches, Ltd (5th Cir. 2014)

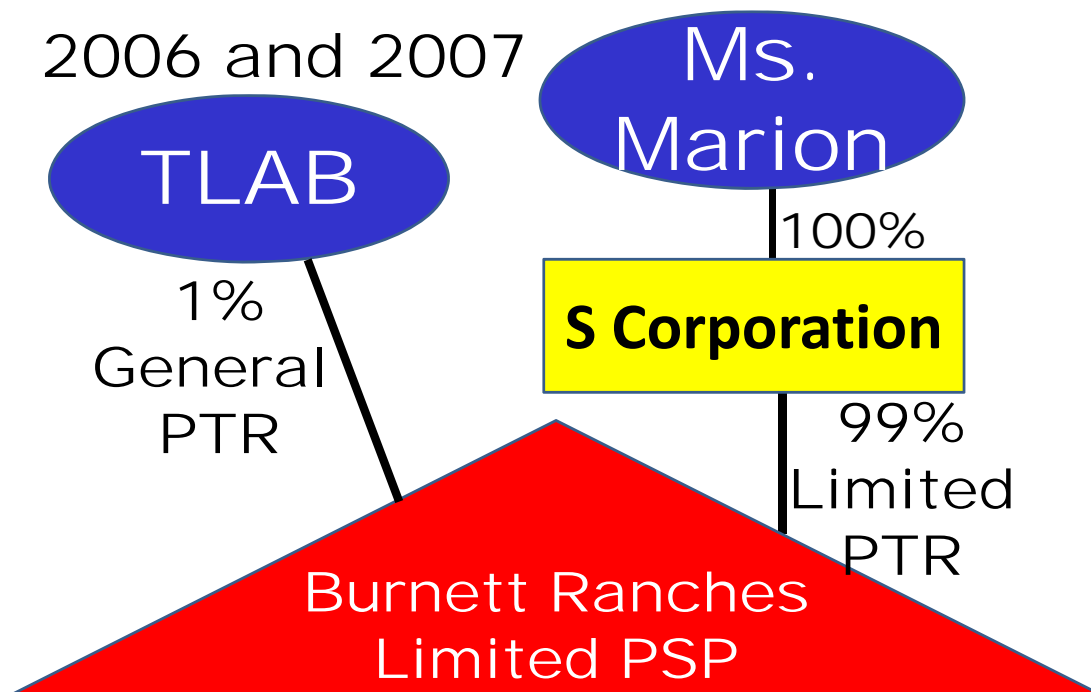
96

Background

97

In *Burnett Ranches, Ltd v. U.S.* (5th Cir. 2014) the IRS argued (and lost) that the Partnership was a **farming syndicate** required to use **an accrual method of accounting** rather than the cash method.
(huge tax difference)

98



Ms. Marion is just the **latest member of the Burnett family to oversee the cattle ranch** "which has been operated continuously by a series of direct descendants of Captain S. B. Burnett, who founded the Four Sixes Ranch sometime between the **fall of the Alamo and the commencement of the Civil War.**"



Anne Burnett Windfohr Marion (“Ms. Marion”)

101

A farming
syndicate (a type of
“tax shelter”)
cannot use the cash
method.
(sec. 448, 461(i)(3)(B))

102

Farming Syndicate (Sec. 464)

“a partnership or any other enterprise [other than a C corporation] engaged in the trade or business of farming, if **more than 35 percent of the losses during any period are allocable to limited partners or limited entrepreneurs.**”

(Burnett Ranches had large losses in the years at issue)

103

Active Participation Exception

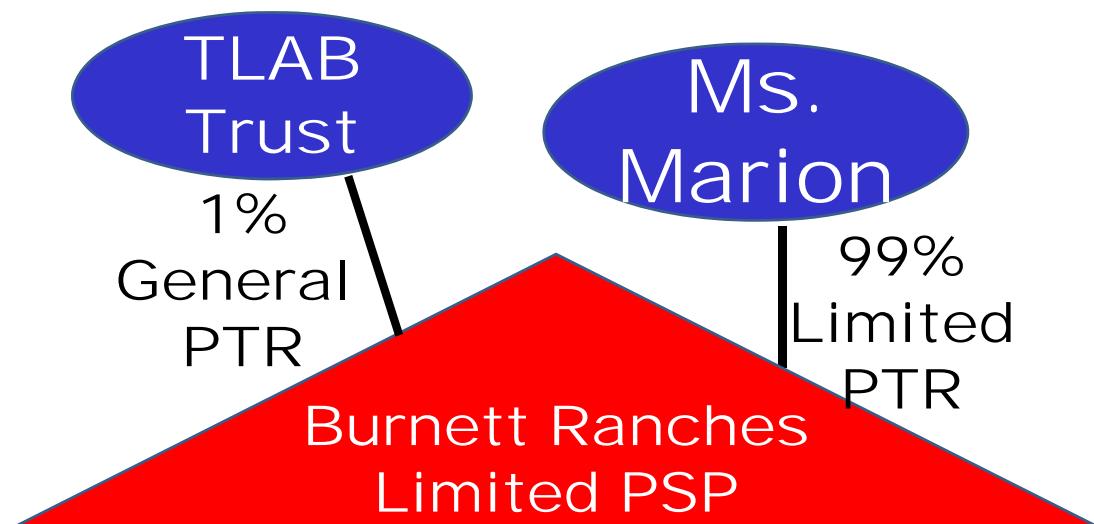
Subsection 464(c)(2)(A) provides that “[i]n the case of **any individual** who has actively participated (for a period of not less than 5 years) in the management of any trade or business of farming, **any interest** in a partnership or other enterprise [that] is attributable to such active participation” must “be treated as **an interest [that] is not held by a limited partner.**”

104

IRS agrees that M.S. Marion would meet the active participation exception if she owned her **limited partnership interest** directly (not through the S corporation).

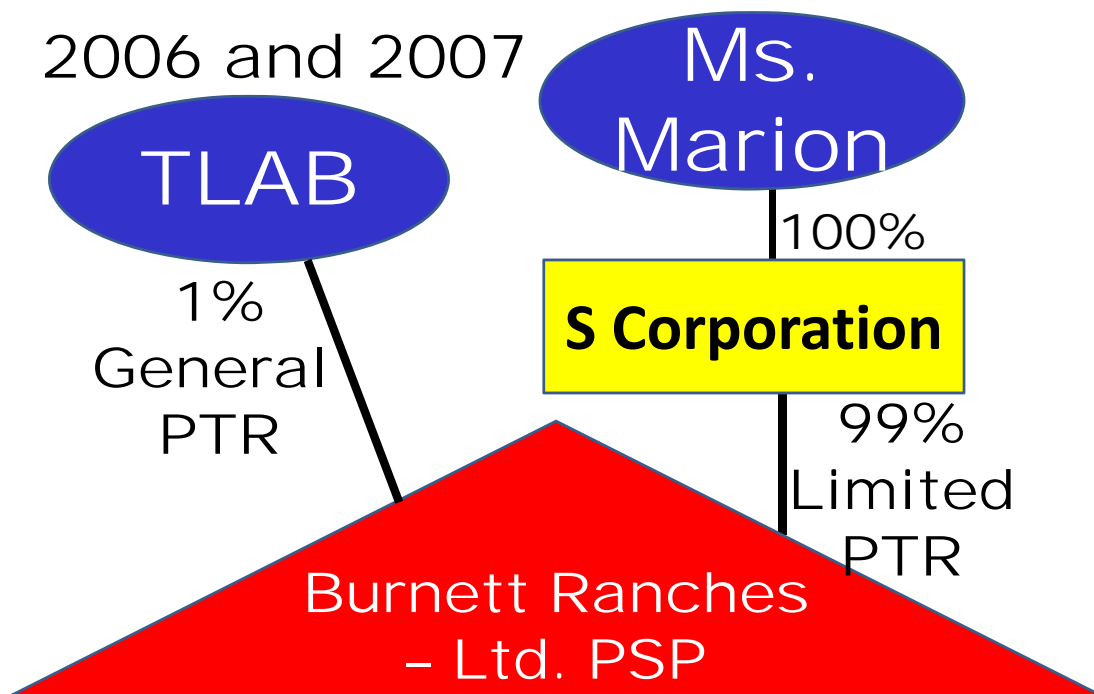
105

Ms. Marion would meet the Active Participation Exception:



Issue: Does the fact that legal title to Ms. Marion's interest in Burnett Ranches stands in the name of her S corp change her eligibility for the Active Participation Exception?

107



5th Circuit Holding

“We embrace the district court's observation that there is ‘no meaningful basis for distinguishing between the partnership **interest** of a rancher who has structured his business as a **sole proprietorship** and a rancher who has structured his business as [a subchapter S] corporation.’”

109

This is underscored by the fact that “**individual**” is used in subsection §464(c)(2) and in its sub-subsection (A), in reference to the providing of **active management services**, not in reference to the technical method of having an **interest** in the venture.

110

AOD 2017-01
(2/13/2017)

IRS
Nonacquiescence
to
Burnett

111

IRS disagrees with
the Fifth Circuit's
use of the **dictionary**
definition of
"interest" in a
partnership.

112

“By modifying the phrase ‘any interest in a partnership’ with the phrase ‘in the case of any individual,’ the plain meaning of the statute is that the interest must be an interest held by an individual [not an S corporation].”

113

Outside of the 5th Circuit:

“the Service will continue to assert that the §464(c)(2)(A) exception must be read in reference to the statute as a whole, and that the exception applies only to an interest held by the individual meeting the active participation requirement.”

114

Seaview Trading LLC,
(Ninth Circuit 6/7/2017)

6-11

Disregarded Entities are
Pass-Thru Partners Thus
not Eligible for the Small-
Partnership exception
from TEFRA Audit
Procedures.

115

Watts
TC Memo 2017-114
(June 14, 2017)

6-11

Disposition of
Partnership Interest
Did Not Create an
Abandonment Loss

116

Tax Court found a **sale of a partnership interest (capital loss of <\$754,077>)** rather than an abandonment of the partnership interest (**ordinary loss**).

117

CCA 201726012
(Released 6/30/2017)

6-13

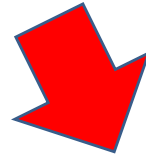
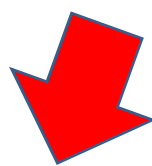
Transfer of Partnership
Interest In A
Liquidation Was Sale
Or Exchange for
Section 743 purposes

118

Background

119

754 Election
Activates



Sec.
743

Sec.
734


Sales, Exchanges,
Deaths

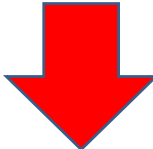
Distributions

120

Sec. 743(b) Adjustments

121

O.B. > I.B. = 

I.B. > O.B. = 

Not a Sch. L common
balance sheet
adjustment

122

Example

100,000 O.B. Purchase*

- 70,000 Inside Basis**

= 30,000 Sec. 743(b) Adj.

* Cash + PSP debt share of buyer

** Same as seller's

123

Example

70,000 O.B. Inheritance*

- 100,000 Inside Basis**

= <30,000> Sec. 743(b) Adj.

* DOD FMV + Debt Share

** Same as decedent's

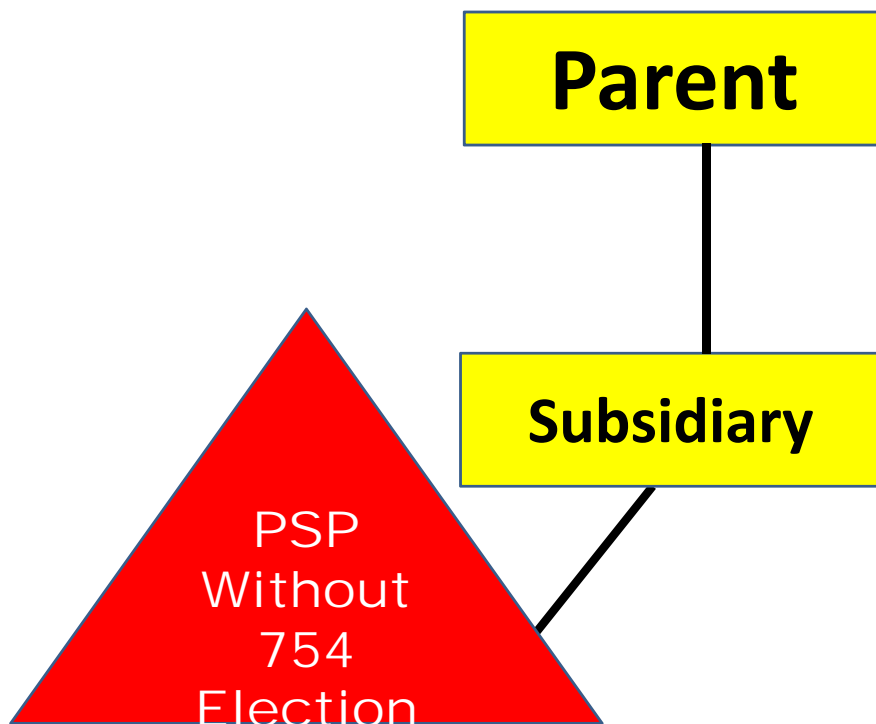
124

Section 743(b)
adjustments should
NOT be reflected **in**
the transferee
partner's book or
tax basis capital
accounts:

125

CCA
201726012
Simplified

126



Assume that the subsidiary purchased the PSP interest several years ago when the PSP did not have a section 754 election in effect.

As a result, the subsidiary has a much higher outside basis than share of inside basis in partnership assets (which are highly appreciated).

129

This year, the partnership will make a section 754 election when Parent liquidates the subsidiary—thus activating sec. 743(b)

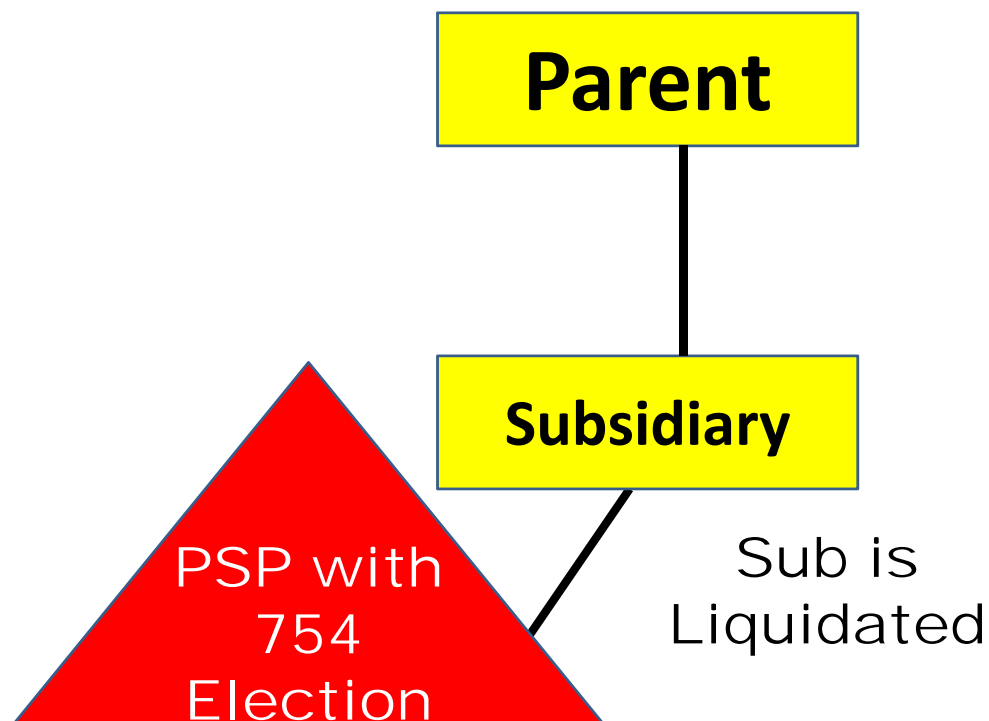
See Reg. 1.755-1(b)(5)

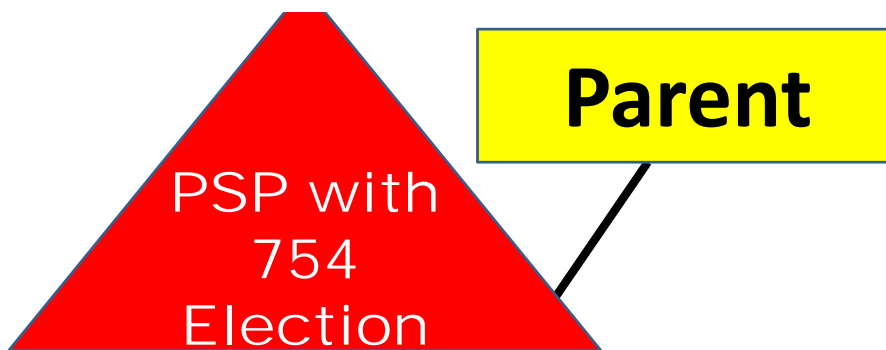
130

“The proposed regulations [when final] under §1.755-1(b)(5) will apply to transfers of partnership interests occurring on or after January 16, 2014.”

Prop. Reg. 1.755-1(f)(2)

131





Parent takes subsidiary's outside basis in the partnership (per section 334(b)(1)) and gets a section 743(b) adjustment for the excess of that O.B. over inside basis of PSP assets.

IRS Conclusions

- 1) "The transfer of a partnership interest in a complete liquidation to which §332(a) [tax free parent/sub liquidation] applies or in a [tax free] reorganization to which §368(a)(1)(A) and/or (D) applies is considered a **transfer by sale or exchange for purposes of §743(b).**"

- 2) Section 743(b) adjustments are not subject to reallocation under §704(b) because they are personal to the transferee and do not affect common basis.

Section 743(b) adjustments are not reflected in book capital accounts. (Reg. 1.704-1(b)(2)(iv)(m)(1))

135

- 3) Under the circumstances described [in the CCA], §1.1502-13 does not permit the Taxpayer Group to claim increased deductions for depreciation and amortization that are attributable to § 743(b) adjustments arising from the transfer of a partnership interest...."

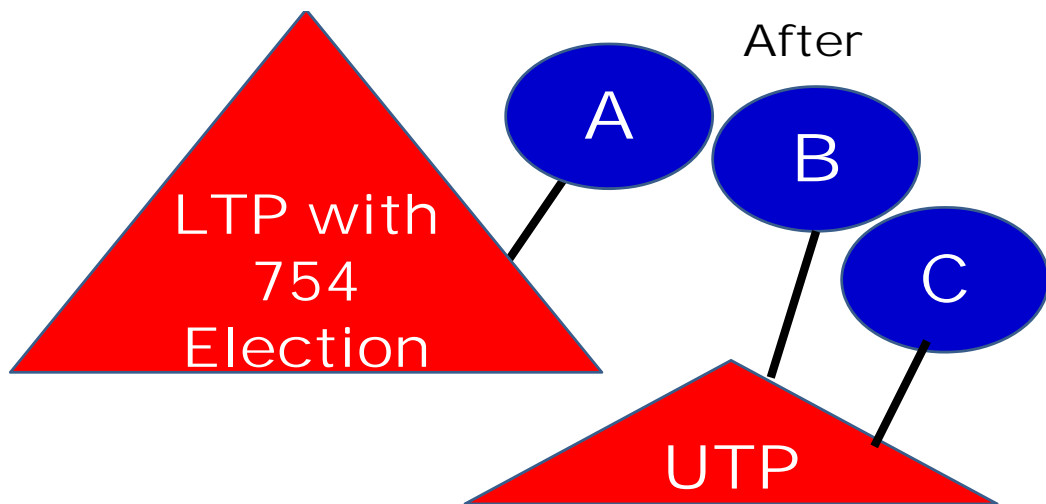
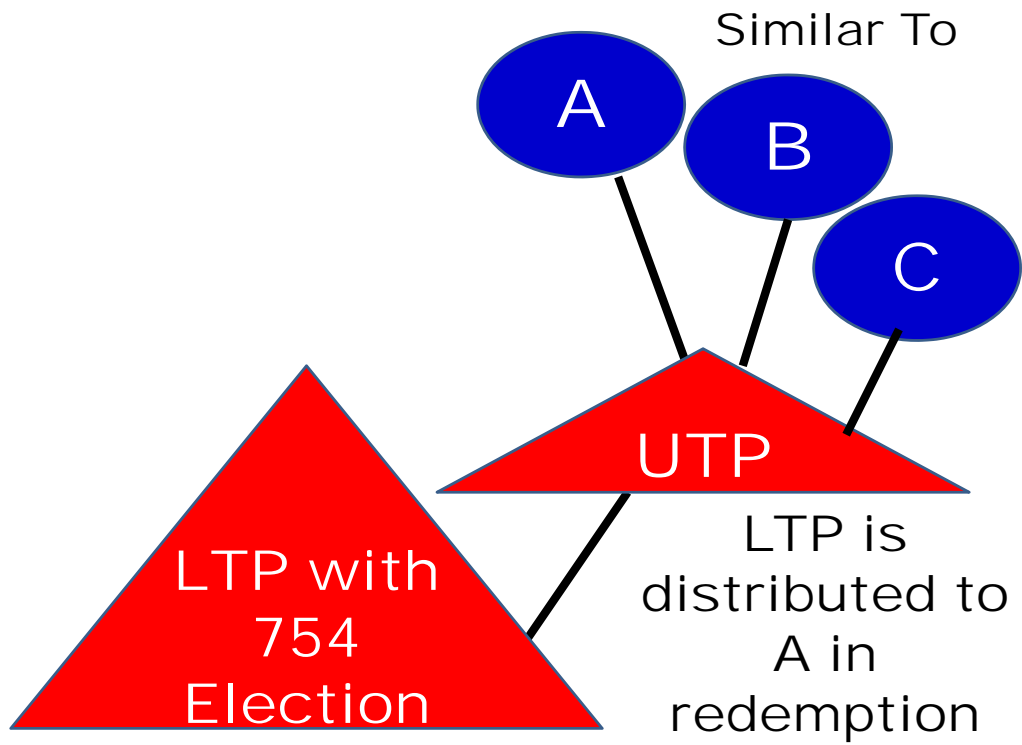
136

4) Under the circumstances described [in the CCA], the basis adjustment provisions of §743(b) do not conflict with the basis provisions of § 362(a) when a partnership interest is transferred in an intercompany reorganization to which § 368 applies or

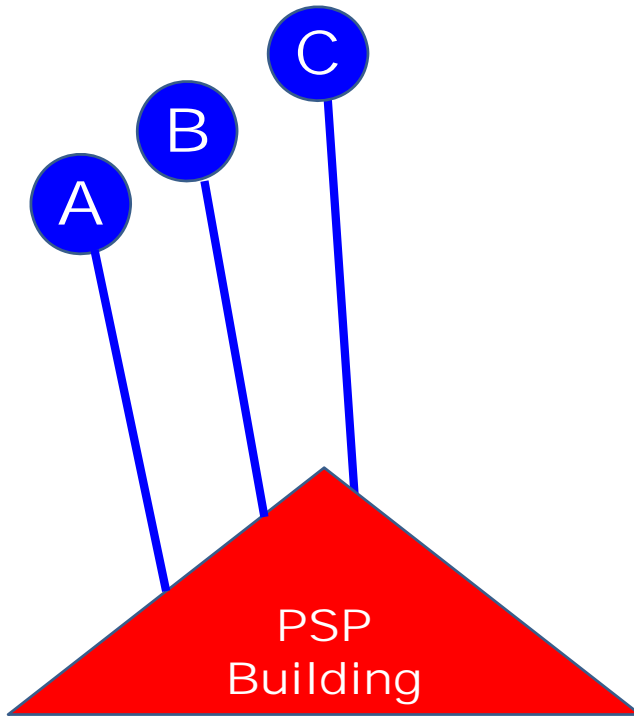
137

with the basis provisions of §334(b)(1) when a partnership interest is distributed in an intercompany liquidation to which § 332(a) applies.

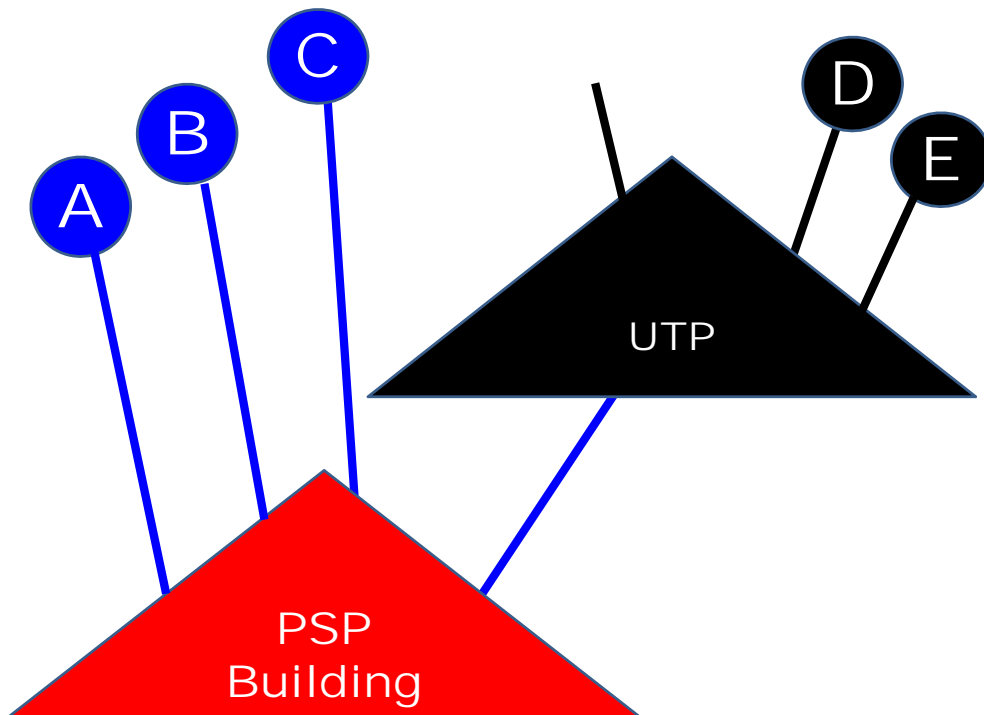
138



See Prop.
Reg. 1.755-1(b)(5)
Example 3



141



142

REG 136118-15
(June 13, 2017) 6-15

2015 Budget Act
Partnership Audit Rules
and Proposed Regs.
Finally Published in
Federal Register

143

Aimed at large
partnerships
(over 100 ptrs)
and
Tiered PSPs

144

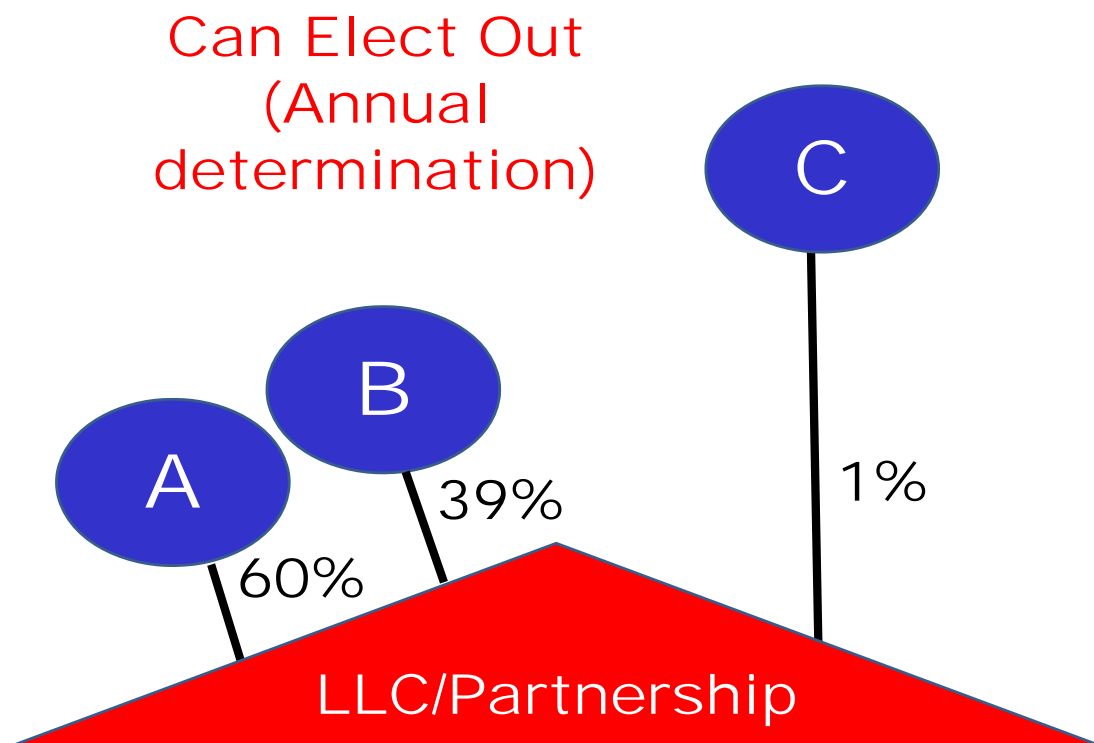
Mandatory for
tax years
beginning on or
after
January 1, 2018.

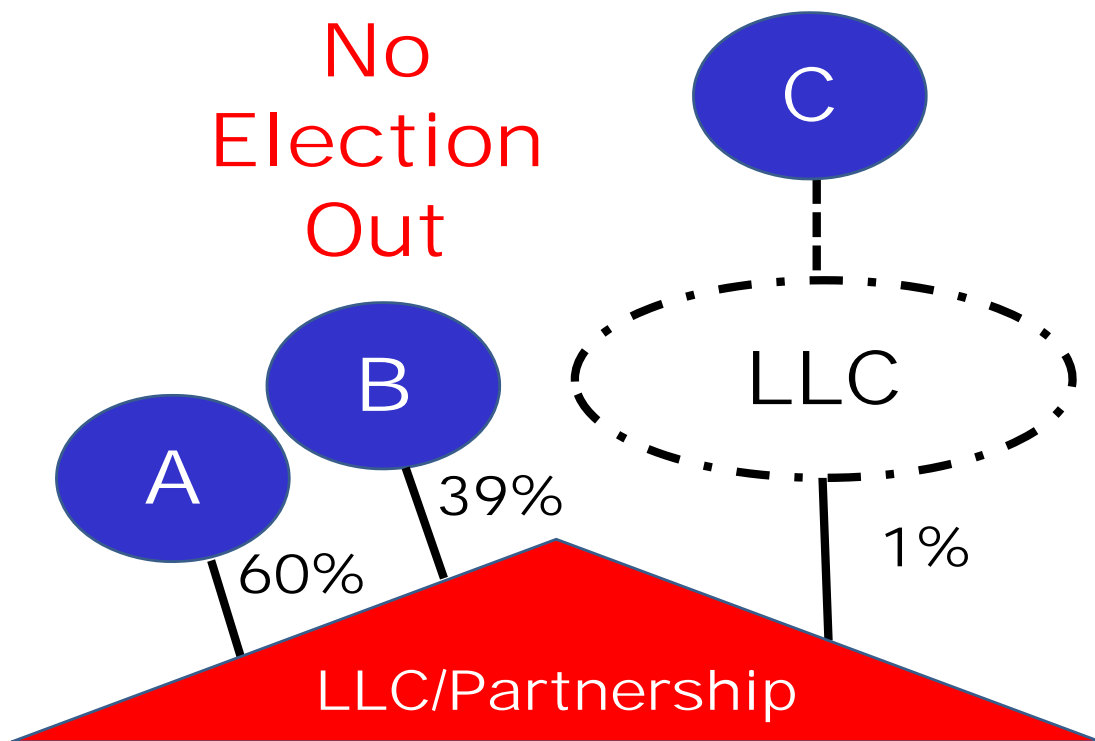
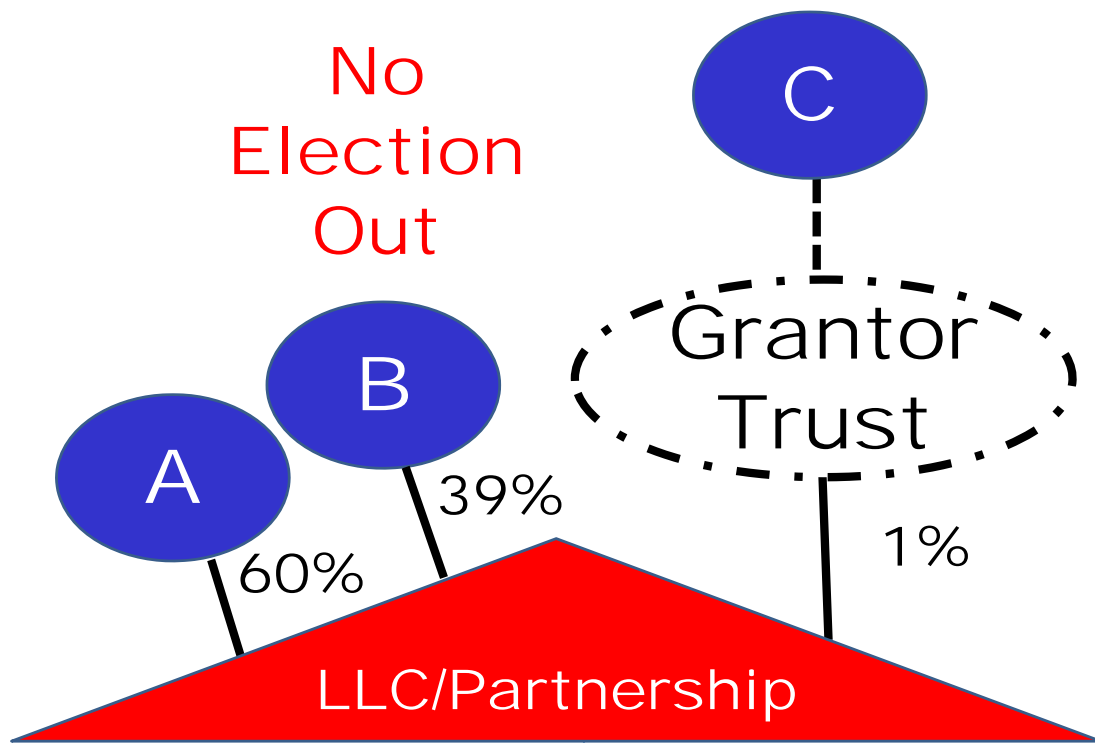
145

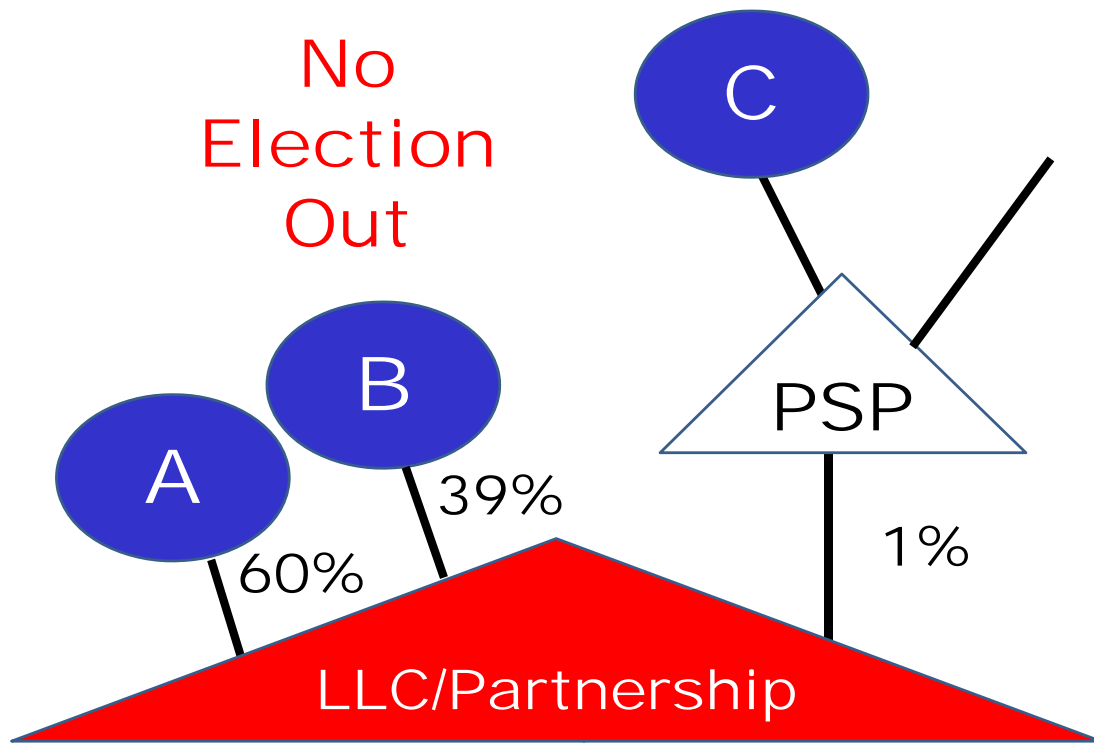
Annual Small
Partnership
Election
Out
Entirely
(Sec. 6221(b))

Partnerships with 100 or fewer K-1s can opt out, if **all** partners are:

- Individuals
- C Corps (RIC or REIT OK)
- Foreign Corps
- S Corps
- Estates (Sec. 6221(b))







Two
Options for
A Partnership
Facing a
Centralized Regime
IRS Audit
(TYBOA 1/1/2018)

1) Accept the IRS's
partnership level
imputed
underpayment
(Sec. 6225).

The default!

153

Amended Returns

Payments made with
amended returns of the
reviewed year partners
reduce the imputed
underpayment.
(Sec. 6225(c)(2))

2) Elect to push-out
the adjustment to
the reviewed year
partners **within 45
days of the NFPA**
(See Prop. Reg.
301.6226-1.)

155

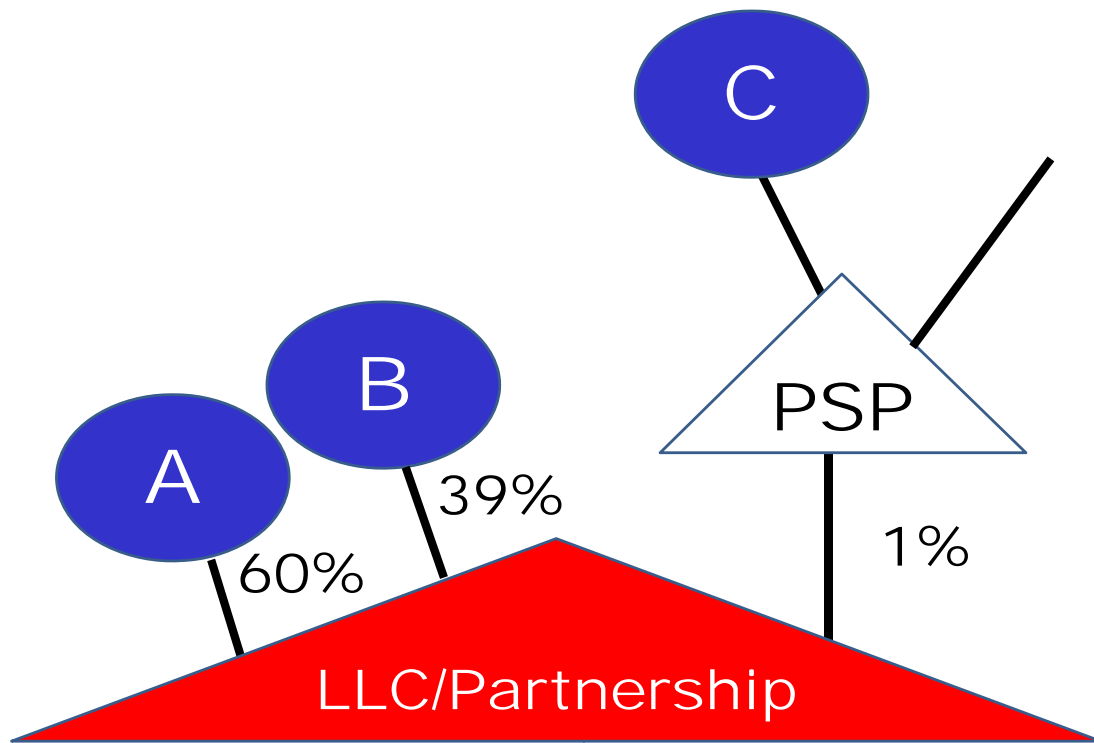
A partnership making a
valid push out election
“is no longer liable for
the imputed
underpayment.”

(Prop Reg
301.6226-1(a))

The tax (plus interest and penalties) on the adjustments are **reported** by the reviewed year partners **in the tax year the statement is received.** (Prop Reg 301.6226-3(a))
(but taxed as if reported in the reviewed year)

Still unclear if an upper tiered partnership can push the adjustment out to its partners.

Prop. Reg. 1.6226-3(e) –
“Pass-Through Partners
[*reserved*]”



Interest on underpayment is calculated at the fed. short-term rate (FSR) + 5% (instead of 3%).

IRS Guidance to IRS
LGB&I Employees on
Elections into Centralized
Audit Regime
(June 29, 2017)

6-25

Implements
Reg. §301.9100-22T

161

Can Elect Into
Centralized Audit
Regime for TYBA
Nov. 2, 2015 and
before
Jan.1, 2018.

162

Why Elect In?

For small partnerships, with small adjustments, it may be simpler.

163

Must elect IN
within 30 days of
the date the IRS
notice of audit.

IRS Letter 2205-D

164

Part I

I hereby elect to have the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015 (BBA) apply to the following partnership return:

Partnership name		Taxpayer Identification Number	
Tax period beginning date	Tax period ending date		

This partnership:

1. Was notified of selection for examination by the IRS in a letter dated _____;
2. Is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment for the partnership taxable year for which the election is being made;
3. Is not currently and does not reasonably anticipate becoming subject to a bankruptcy petition (voluntary or involuntary) under Title 11 of the United States Code; and
4. Has sufficient assets, and reasonably anticipates having sufficient assets, to pay the potential imputed underpayment that may be determined during the partnership examination.

Part II

I hereby designate the following partnership representative as defined in IRC Section 6223 as amended by the BBA:

Partnership representative's name		Taxpayer Identification Number	
Address	City	State	Zip code
Daytime telephone number			
Other information			

Under penalties of perjury, I declare that I am duly authorized to make this election, and that to the best of my knowledge and belief, this statement is true, correct and complete.

Name (print/type)		Taxpayer Identification Number	
Address	City	State	Zip code
Daytime telephone number			
Signature	Date		

Either the Tax Matters Partner or an individual authorized to sign the partnership return for the taxable year under examination is authorized to make this election for any partnership return filed for taxable years beginning after November 2, 2015 and before January

165

Either the **Tax Matters Partner (TMP)** or an individual authorized to sign the partnership return for the taxable year under examination is **authorized to make this election**

166

Part I

I hereby elect to have the centralized partnership audit regime enacted by the Bipartisan Budget Act of 2015 (BBA) apply to the following partnership return:

Partnership name	Taxpayer Identification Number
Tax period beginning date	Tax period ending date

- This partnership:
1. Was notified of selection for examination by the IRS in a letter dated _____;
 2. Is not insolvent and does not reasonably anticipate becoming insolvent before resolution of any adjustment for the partnership taxable year for which the election is being made;
 3. Is not currently and does not reasonably anticipate becoming subject to a bankruptcy petition (voluntary or involuntary) under Title 11 of the United States Code; and
 4. Has sufficient assets, and reasonably anticipates having sufficient assets, to pay the potential imputed underpayment that may be determined during the partnership examination.

Part II

I hereby designate the following partnership representative as defined in IRC Section 6223 as amended by the BBA:

Partnership representative's name	Taxpayer Identification Number		
Address	City	State	Zip code
Daytime telephone number			
Other information			

Part III

Under penalties of perjury, I declare that I am duly authorized to make this election, and that to the best of my knowledge and belief, this statement is true, correct and complete.

Name (print/type)	Taxpayer Identification Number		
Address	City	State	Zip code
Daytime telephone number			
Signature	Date		

Either the Tax Matters Partner or an individual authorized to sign the partnership return for the taxable year under examination is authorized to make this election for any partnership return filed for taxable years beginning after November 2, 2015 and before January

“The [election in] statement must include representations that the partnership ... does not reasonably anticipate becoming insolvent, ... and **reasonably anticipates having sufficient assets, to pay the potential imputed underpayment**

Reg. 301.9100-22T(b)(ii)(E)(1)&(4)

*Draft Form 1065X
(Oct. 4, 2017)*

Draft Form Explains How,
with an AAR, to Elect Into
the Centralized Audit
Regime

169

“In no event may an AAR
be filed for a partnership
taxable year after a
**notice of administrative
proceeding** with respect
to such taxable year has
been **mailed by the IRS
under section 6231.**”
(Prop. Reg. 1.6227-1(b))

170

Eligible partnerships “may elect to have the new centralized partnership audit regime apply to a return filed for an eligible tax year when filing an AAR under section 6227 (as amended by BBA).”

(Draft Form 1065X
Instructions)

171

PSP not eligible if:

- AAR filed on behalf of a TEFRA PSP under pre-BBA law.
- An amended return for a nonTEFRA PSP has been filed.

172

- An eligible tax year is any tax period beginning after November 2, 2015, and before January 1, 2018.
- The election cannot be made in this manner before January 1, 2018.
- Once made, an election may only be revoked with the consent of the IRS.

173

“To make the election, the partnership must write across the **top of the Form 1065X used to file the AAR, “Election under Section 1101(g)(4)”** and attach a statement to the AAR with” specified information.

174

PSP must represent:

- Does not anticipate insolvency.
- Has not filed for bankruptcy.
- Does not anticipate filing for bankruptcy.
- Has sufficient assets to pay the imputed underpayment.
- TMP (pre BBA) signs under penalties of perjury.

175

Form 1065X (1-2018) Page **3**

Part II Amended or Administrative Adjustment Request (AAR) Items for ELPs and REMICs Only

(a) **Form 1065X Part II** Correct amount

BBA Imputed Underpayment + Interest + Penalty goes on line 10

Tax and payments (see instructions)		
6	ELPs ONLY: Tax and other payments	6
7	REMICs ONLY: Tax on net income from prohibited transactions	7
8	REMICs ONLY: Tax on net income from foreclosure property	8
9	REMICs ONLY: Tax on contributions after the startup day	9
10	Total tax BBA Imputed Underpayment	10
11	Tax paid with Form 1065	11
12	Tax paid with (or after) the filing of the original return	12
13	Add lines 11 and 12, column (d)	13
14	Overpayment, if any, as shown on original return or as later adjusted	14
15	Subtract line 14 from line 13	15
Tax Due or Overpayments (see instructions)		
16	Tax Due. Subtract line 15 from line 10, column (d). For details on how to pay, see instructions	16
17	Overpayment. Subtract line 10, column (d), from line 15	17

Note. Amended Schedules K-1 or Schedules Q. File amended Schedules K-1 or Schedules Q with Form 1065X. If the ELP or REMIC is filing Form 1065X for an administrative adjustment request (AAR), do not furnish the amended Schedules K-1 or Schedules Q to the partners or residual interest holders. If the REMIC is not filing for an AAR and is not subject to the rules for consolidated audit proceedings under sections 6221 through 6231, the REMIC must furnish the amended Schedules Q to its residual interest holders. See instructions for details.

176

Push-Out Method:

The partnership will furnish each partner and file with the AAR, a statement of the partner's share of any adjustments. (Section 6226)

177

"Statement Required to
be furnished by a
Partnership electing the
Alternative to Payment
of an Imputed
Underpayment"

178

The additional 2 percentage points of interest imposed on audit adjustments under section 6226 does not apply to AARs.
(Section 6227(b)(2))

179

Before 2018, the PSP Agreement should be amended to address the centralized audit regime.

180

- Qualifications for the partnership representative;
- Obligations of the partnership representative and partners

181

- Obligation of the former partners (reviewed year PTRs) to provide needed information to the PSP.

182

- Limits on partnership representative decision making and assurance of partner participation.

183

- Whether or not the partnership will, if eligible, opt out of the Centralized Audit Rules.
- **Require the push-out election** unless the imputed underpayment is below a specified dollar amount.

184

- Address when amended returns must be filed by partners.
- Establish obligation of partners to respond to the partnership representative's requests for information.

185

- How will the imputed underpayment be paid, tracked, and collected from the partners?
- Sellers need to consider who controls the push-out.

186

- Buyers must consider downside of paying seller's tax liability.

Consider obligation for push-out election in sales contract.