TAXATION OF BUSINESS ENTERPRISES

COURSE SYLLABUS: SPRING 2009

Tax Professor 1: “Why is teaching tax so hard?”

Tax Professor 2: “Try teaching torts to someone who has never seen a car.”

We spend lots of time in this course talking about cars – that is, talking about the transactions that business people do. I aim this class not at tax wonks or accountants but rather at all prospective lawyers who will have business clients or individual clients who own businesses. As you know, most income tax rules apply the same regardless of whether the earner is an individual or a corporation. Thus, the real concerns of corporate tax are the rules that apply to the transactions between shareholders and their corporations. We are particularly concerned with the small or closely-held business, typically run as a partnership, limited liability company, or S corporation. The tax rules governing partnerships (and LLCs) and S corporations also focus on transactions between entity and owners; however, these organizational forms are “tax conduits” and so their owners very much care about how they share the tax burden for the enterprise's income.

Class Assignments:

For this course, you will need:


   Note: We will cover this material in a different order from the order in the book. Rather than looking at each type of entity (corporations, S corporations, partnerships) as we cover each topic, we will do corporations in their entirety, then partnerships, and then S corporations. However, we study all three types of business entity in the same course because of the benefits of comparison – we begin with an overview of all three business regimes, and draw comparisons as we work through the material. We conclude with comprehensive comparisons.

2. Statutes and regulations: the latest edition of West’s or CCH’s Selected Federal Taxation Statutes and Regulations. I note below the Code and Regulations sections to read for each class – if you have an older version that lacks one or more of these sections, make a photocopy or download the current version.
Beware: Some of the regulations no longer conform to the current statute! I have attempted in the syllabus to include only valid current regulations, but, as we will discuss in class, sometimes only a part of a reg is still good.

Moreover, because statutory and regulatory drafting has gotten so complicated, you need learn only the general meaning of each section we discuss; however, you will be required to cite to the general statutory authority in your answers on the exam.

3. A set of Handout Examples and Supplemental Material: Each assignment is numbered, and the Handout Examples and Supplemental pages are numbered to track the assignments. Where the example asks questions, try to prepare answers. Kwall’s casebook contains questions and problems, which you should work through before class.

Buddy System:

To make tax classes both less threatening and more of a cooperative effort, you must form into groups of two or three. Pick your own co-counsel, or, if you wish, come to me and I’ll pair you off. Finish your sorting out this week, so that you can be sitting next to your co-counsel for the seating chart. Give me the names of your team in writing, too, so that I can always be calling on the team as a whole. You should also work throughout the semester with your co-counsel on the examples and problems.

Assignments, Attendance, Preparation, Exam, and Grade:

We meet on Mondays and Wednesdays, from 12:50-2:40. Unless otherwise designated, each assignment is designed to take up a single class hour (thus, we’ll generally cover two assignments each day). We might cover the material faster or slower. The reading assignments might appear short, but this is tricky stuff. Many of the regulations make particularly tough reading. Spend time on the material, especially the Code.

The grade will be based entirely on your exam. The exam will be 3 hours long, and completely open-book. You may take this course pass/fail.

Class participation will not count in your grade, nor will I take attendance. However, I expect all you to attend class in the absence of an emergency, and to be ready and willing to discuss the day’s assignment. We can all – especially me – benefit from your questions and observations. Be careful not to fall behind. If you’re unprepared, at least come to class; and come to me with questions.

Get organized; keep up (the material builds, so don’t deprive yourself of the foundation); and call, e-mail [EBRODY], or come to me with questions (preferably with your co-counsel).
NOTE THAT WE COVER THE MATERIAL IN THE FOLLOWING ORDER (unless otherwise indicated below):

Chapter 1: Perspective
Chapter 2: C Corporation Operations
Chapter 8: C Corporation Contributions
Chapter 5: C Corporation Distributions
Chapter 4: Partnership Classification
Chapter 10: Partnership Contributions
Chapter 4: Partnership Operations
Chapter 7: Partnership Distributions
Chapter 3: S Corporation Operations
Chapter 9: S Corporation Contributions
Chapter 6: S Corporation Distributions

1. **Introduction: Choice of Entity**

   Text: Both prefaces to the casebook (pp. v-x).

2. **Chapter 1: Perspective**

   Code: § 1(h).
   Text: Introduction, page 1; pages 3-10.

   Note: In 2007 (the most recent tax year available), there were approximately 2.2 million C corporation tax returns, 4.2 million S corporation tax returns, and 3.1 million partnership returns. LLCs with more than one member tend to choose partnership treatment; unlike wholly-owned S corporations, single-member LLCs are typically disregarded for tax purposes (see Assignment 27).

   Example: Handout Example 2-1, Comparison of Entities (3 pages).
C CORPORATIONS

Chapter 2: C Corporation Operations

3. Corporate Income Tax Rates

Code: §§ 11, 61(a)(7), 1561(a)(1), and 1366(a) (S corporations).
Text: Page 17; pages 19-22 (but see Supp. for IRS Form 1120). The 2004 Act eliminated the 80% requirement from § 1563(a)(2) (see n.1 on pp. 21-22).
Supp.: CBO, Tax All Corporate Income at a 35-Percent Rate; tax professors’ discussion of 15% dividend rate on small corps; Form 1120 (prop. 2008); Drucker, Tax Data Highlight Corp Loopholes; Tandon, Economists Favor Lowering Corp Rates.
Example: Handout Examples 3-1 and 3-2.

4. Scope of Corporate Gross Income:

Inclusionary Aspects – Income from Services

Code: § 61(a)(1) & (2); §§ 11(b)(2), 269A, and 482.
Text: Pages 22-29 (Haag).
Supp.: IRS Announcement 97-88 (Personal Service Corporations).

Consequences of Operating Loss; Corporate Alternative Minimum Tax

Code: § 172.
Text: Pages 86-88; pages 65-66.

5. Inclusionary Aspects – Income from Property

Text: Pages 29-33 (General Utilities); pages 89-94 (Bollinger).
Examples: Handout Examples 5-1 through 5-4.

6. Exclusionary Aspects

Code: §§ 118, 362(a)(2), and 1032.
Text: Pages 33-36 (Castner Garage); pages 36-38 (through note 5).
Corporate Deductions: Reducing Double Taxation by Paying Compensation

Code: § 162(a).
Text: Pages 38-39; 45-46 (notes).
Supp.: *Exacto Spring Corp.*

7. Corporate Deductions: Reducing Double Taxation by Paying Interest and Deductible Claims

Code: §§ 163(a) & (l), and 385.
Text: Pages 49-59 (*Fin Hay Realty; Maxwell*).
Supp.: *Indmar Products Co.*

8. Inhibiting Triple Taxation

Code: §§ 243, 246(c), and 1059(a).
Text: Pages 59-64 (*Litton Industries*).
Supp.: See the second page of Form 1120 (Supp. page 3-4) for the percentages; Joint Committee on Taxation, *Options* (extraordinary dividends).
Examples: Handout Example 8-1.

Chapter 8: Contributions to Corporation

9. Overview of Nonrecognition – Transfer of Property for Stock; Basis as a Gain/Loss Preservation Mechanism

Code: §§ 351(a), 358(a)(1); §§ 1032 and 362(a) & (e)(2).
Text: Pages 363-64; pages 365-66; pages 379 (bottom) to page 381 [note that in light of the 2004 Jobs Act enactment of § 362(e)(2), Example 8-B’s treatment of Brenda and her asset is wrong; skip Problem 8-2]; page 383 (bottom) to page 384 (notes 1, 3 & 4).
Examples: Handout Examples 9-1 and 9-2.

10. Deferral of Gain or Loss

Code: § 351(a) & (d) and 368(c).
Regs: § 1.351-1(a).
Text: Pages 376-79 (*James*) (through notes); and pages 366-72 (*Kamborian*).
11. **Transfer of Property for Other Consideration: "Boot"**

   **Code:** §§ 351(b), 358(a), and 362(a).
   **Text:** Pages 384-85.
   **Examples:** Handout Examples 11-1 through 11-7.

12. **Relief from Liabilities**

   **Code:** §§ 357 and 358(d).
   **Regs:** § 1.1001-2; § 1.357-1 (good example in (b)) & -2; § 1.358-3.
   **Text:** Pages 387-89; page 397-98 (Problem 8-5, parts (b), (a), and (c) only and in that order); page 404 (note).
   **Supp.:** *Seggerman Farms*.
   **Examples:** Handout Examples 12-1 through 12-3.

**Chapter 5: Distributions from C Corporations**

13. **"One-Sided Distribution" versus "Dividend"**

   [Assignment 13 will take almost two class hours, and Assignment 14 will take about 10 minutes.]

   **Code:** §§ 301 (except (e)), 317(a), and 316(a); skim § 312(a) through (c), 312(f)(1).
   **Reg.:** § 1.312-6(b).
   **Note:** Reg. § 1.312-1(a) through (c) and Reg. § 1.316-1(a)(3) (Example) are now wrong: Since 1986, the distribution of appreciated property produces gain that increases e & p (don’t forget that the tax paid on the gain reduces e & p!).
   **Text:** Page 195; pages 197-99; pages 201-03 (skip note 1; skip Problem 5-1, and in Problem 5-2 (page 203), do only part (a)); pages 203-04 (through note – but not Problem 5-3).
   **Supp.:** *Form 1099-DIV*.
   **Example:** Handout Examples 13-1 through 13-5.
14. **Camouflaged One-Sided Distributions ("Constructive" or "Disguised" Dividends).**

*We will spend just a few minutes on this assignment – think about how the strategy of taxpayers and the government might change in response to the 2003 cut in the dividends tax rate. Might we instead see taxpayers try to disguise compensation as dividends?*

**Loan or Distribution:**

- **Code:** § 7872.
- **Regs:** § 1.301-1(m).
- **Text:** Pages 204-10 (*Jaques*).

**Personal Use of Corporate Property:**

- **Regs:** § 301(d); § 1.301-1(j) (first two sentences).
- **Text:** Pages 210-15 (through notes) (*Resenhoeft*).

15. **Introduction to Redemptions: Discharge of Corporate or Personal Obligation.**

**Text:** Pages 219 (bottom) - 221 (top); pages 216 (bottom) - 219 (*Rev. Rul. 69-608*).

**Examples:** Handout Examples 15-1 and 15-2 (don’t worry about not understanding the redemption rules yet; we study them next).

16. **Redemptions Incident to a Divorce**

**Text:** Pages 240-46 (through notes) (both *Arnes* cases).


**Example:** Handout Example 16-1.

**Attribution Rules**

*To understand the redemption rules to come, you have to know how much stock the redeemed shareholder "owns." Where shareholders are related to each other, you can have more than 100% ownership when you add up all ownership percentages (both direct and indirect)!*

- **Code:** Skim § 318.
- **Regs:** §§ 1.318-1, -2(a) & (b), and -4.
- **Examples:** Handout Examples 16-2 and 16-3.
17. & 18. **Redemptions**

[Note: These three topics will take two class hours, possibly spilling over to next class.]

**Effect of a Redemption; "Not Essentially Equivalent to a Dividend"**

- **Code:** § 302(a), (b)(1), (c)(1) & (d); § 317.
- **Regs:** §§ 1.302-2(a) and (b). Ignore references to section 306 stock.
- **Text:** Pages 221-26 (through note 1) (*Davis; Rev. Rul. 81-289*); pages 226-28 (through paragraph (a) of Problem 5-5).

**Safe Harbor for Substantially Disproportionate Redemptions**

- **Code:** § 302(a), (b)(2) & (c)(1).
- **Reg.:** § 1.302-3(b) (Example).
- **Text:** Page 229 (intro paragraph to part c. only); pages 236 (starting with the second paragraph of note 5) through 237.
- **Example:** Handout Examples 17-1 and 17-2.

**Redemption: Complete Termination of an Interest**

- **Code:** §§ 302(b)(3) and (c)(2).
- **Regs:** § 1.302-4 (except (c)).
- **Text:** Pages 246 (bottom) - 253 (*Lynch*) (skim notes on pages 251-53); pages 258-59 (notes 2 through 5).
- **Pages 238-40 (*Zenz*) (note: Sale treatment was critical here because of the widow Zenz’s high basis in the inherited stock).
- **Examples:** Handout Examples 18-1 and 18-2.

19. **Effect of a Redemption on e&p** [This topic will take half an hour.]

- **Code:** § 312(n)(7).
- **Text:** Pages 261-63 (through Note 1, and note 2 and Problem 5-11 (just skim part (b) – the corporation shouldn’t do this!).
20. **Tax Treatment of a Failed Redemption**

[Read in the following order]

Code: § 302(d).
Regs: § 1.302-2(c).

Note: Proposed Regs issued in 2002 would have treated the stock basis in a failed redemption as a suspended loss of the redeemed shareholder, instead of shifting the basis to the stock of the related party. The IRS withdrew this proposal in 2006.

Example: Handout Example 20-1.
Text: Page 226 (note 2 and Problem 5-4).

21. **Liquidation of the Corporation**

Code: §§ 331, 334(a), 336, and 6901.
Text: Pages 271-76 (*Rendina*).
Examples: Handout Examples 21-1 and 21-2.

22. **Liquidation of Corporate Subsidiary**

Code: §§ 332, 334(b), 337, and skim the headings of § 381(c).
Regs: § 1.332-2.
Text: Pages 283-90 (*Riggs; Rev. Rul. 70-106*) (through Problem 5-15).
Examples: Handout Examples 22-1 and 22-2.

23. **Reduced Tax on Dividends**

[Prepare this and the next assignment together – they’ll take two class hours.]

Note: We address “corporate integration” more fundamentally in Assignment 53.

Example: Handout Example 23-1.
24. **Selected Additional Shareholder-Level Rules**

Note: President-elect Obama’s website describes the following pledge: “Barack Obama understands that small businesses are the engines of our economy, and he will eliminate all capital gains taxes on investments in small and start up firms.”

**Stock Dividends**

- **Code:** §§ 305 & 307 (we’ll review these briefly and generally).
- **Text:** Skim pages 723-26.
- **Supp.:** Kim, *AT&T Investors Face Tax Headache*.
- **Examples:** Handout Example 24-1 (discussing new Code § 6045(g)(2)(A)).

**Small Business Investment Incentives: § 1244 Stock & Qualified Business Stock**

- **Code:** §§ 165(g), 166(d), & 1244. See also § 6045(g), described in Handout Example 24-1.
- **Regs:** § 1.1244(a)-1.
- **Text:** Pages 290-91.

**Short Sales and Constructive Sales**

- **Code:** Skim § 1259.
- **Examples:** Handout Examples 24-2 through 24-4.

25. **Subchapter C Review Problems**

- **Supp.:** I set out here Subchapter C review problems. I will assign you to groups to prepare and present these problems to the class. (At the end of the Supplement, I provide three of my old exams for you to practice on.)


- **Note:** If time, we will transition to partnerships (and S corporations) by reviewing *Types of Business Entities* at the beginning of the Supplement for Assignment 27.

**PARTNERSHIPS**

**Chapter 4: Distinguishing a Partnership from Other Entities**
27. **Classification of the Entity**  
*[This topic will take two class hours.]*

**Overview**

- **Text:** Page 145 (introduction).
- **Supp:** Buzgate Illinois, *Types of Business Entities*.

**Distinguishing a Partnership from a Proprietorship**

- **Code:** §§ 761(a) and 703(b).
- **Regs:** § 301.7701-1(a)(2).
- **Text:** Pages 184-88 (*Rev. Rul. 75-374*; *Barron*).
- **Examples:** Handout Examples 27-1 through 27-3.

**Distinguishing a Partnership from a Taxpaying Entity (Corporation)**

- **Code:** § 7701(a)(3); skim § 7704.
- **Regs:** §§ 301.7701-1, -2 & -3.
  
  **Note:** An unincorporated entity that elects to be treated as a corporation may also elect Subchapter S status, if eligible. Reg. § 1.1361-1(c).
- **Text:** Pages 188-91 [in note 2, the reference to 75 should be to 100, with the other refinements discussed in Assignment 47]; pages 193-94.

**Chapter 10: Contributions to Partnerships**

28. **Transfer of Property for Partnership Interest**  
*[This topic will take two class hours.]*

- **Code:** §§ 721; 351(e) (this is the same “investment company” definition referred to in Code section 721); § 722; and § 723.
- **Regs [Supp.]:** Preamble to Proposed Regs, and examples (1) and (2) from the proposed Revenue Procedure.
- **Text:** Pages 411-12 (stop before *Stafford*); pages 416-17 (notes); pages 428 (note) - 29 (*Rev. Proc. 93-27*); skim pages 191-93 (*Rev. Rul. 99-5*).
- **Supp.:** Sheppard, *Official Discusses Partnership Compensatory Interests Regs*; stories and testimony on taxation of “carried interest” in hedge funds.
  
  **Note:** President-elect Barack Obama’s tax plan pledges to close corporate tax loopholes, “including taxing carried interest as ordinary income, and closing the CEO pay loophole.”
- **Examples:** Handout Examples 28-1 through 28-4.
29. **Computation of Gross Income and Deductions**

   **Code:** §§ 701, 702, 703, 705, 721(a), and 761(a).
   **Text:** Pages 145-49 (through notes – although we’ll discuss Note 2 in Assignment 30) (but see Supp. for **IRS Form 1065**); pages 100-02 (Knott) (this is an S corporation case, but the same principle – and lesson – applies to partnerships).
   **Supp.:** **Form 1065 and Schedule K-1** (proposed for 2008).
   **Examples:** Handout Examples 29-1 through 29-4.

30. **Basis as a Gain/Loss Preservation Mechanism**

   **Code:** §§ 722, 723, and 706. Skim §§ 731(a)(1) & (b), 704(c)(1)(A), 732(a) & (b), 733, and 752 (to which we return in subsequent classes).
   **Regs:** §§ 1.722-1 & 1.705-1 (through Example 1).
   **Text:** Pages 430-31.
   **Note:** just skim Problems 10-1 and 10-2 on page 431; we cover partnership distributions and sales of partnership interests in later assignments. Pages 430-31 are still correct, despite the 2004 Jobs Act: As we will see in Assignment 44, Brenda’s building does not have enough of a built-in loss to trigger mandatory basis adjustment.
   **Page 149 (note 2) re taxable year.
   **Examples:** Handout Examples 30-1 through 30-8.

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**Chapter 4: Partnership Operations**

31. **Debt Interlude – A (Re)view** [This will take less than 1 class hour.]

   **Code:** § 108(d)(6); § 7701(g).
   **Regs.:** § 1.1001-2.
   **Examples:** Handout Examples 31-1 through 31-4.

32. **Allocation of Tax Items to Partners: Introduction**

   [Assignments 32 and 33 will take 1 class hour.]
33. When Allocated Deductions are Allowed [See note to Assignment 32.]

Code: §§ 704(d), 705(a)(2)(A), 722, and 752(a).
Text: Page 170, first paragraph (we finish this in Assignment 34); pages 176-77 (notes 6 and 7).
Example: Handout Example 33-1.

34. Sharing in Partnership Liabilities, Recourse and Nonrecourse

Code: § 752.
Regs: § 1.752-1(a); skim § 1.752-2(a) through (f) (Example 2) and (k)(6) (Examples 1 & 2).
Text: Pages 170 (beginning with second paragraph) through 173 (stop before Example 4-H); pages 175-76 (notes 2, 4 & 5). Note: You are not responsible for the § 1.752 regs beyond our discussion.
Examples: Handout Examples 34-1 through 34-9.

35. & 36. Allocations: The Economic Effect Regulations

[As indicated, this topic will take two class hours – see below for the order we’ll follow.]

The worst part about the section 704(b) rules is that the Treasury Department decided to put them all into a single regulation. Thus, you get cites like "§ 1.704-1(b)(2)(iv)(h)"! Just try to get a sense for the rules; don't worry about the details.

Text: Pages 158-61.
Examples: Handout Examples 35-1 through 35-4.
Text: Pages 158-61; skim pages 161-63 (top); pages 168-69 (“f. Partner’s Interest in Partnership,” stopping before Note).
Supp.: Goldfine.
Regs: Skim the “economic effect” rules of § 1.704-1(b)(2)(i) & (ii)(a) & (b); the rules defining “partnership agreement” in § 1.704-1(b)(2)(ii)(h); the “maintenance of capital account” rules of §1.704-1(b)(2)(iv)(a) through (h); and “partners’ interests in the partnership” rules of § 1.704-1(b)(3).
37. **Allocations: Substantiality; Nonrecourse Debt**

Regs: § 1.704-1(b)(2)(iii). (Note: You are not responsible for proposed amendments to the substantiality regs (Nov. 2005).)

Text: Page 163-68; page 169 (note).

Examples: Handout Examples 37-1 and 37-2.

38. **Allocation of Pre- Contribution Gain or Loss**

Code: § 704(c)(1)(A).

Reg.: Skim § 1.704-3(a)(1) through (3); -3(b)(1) & (2) (Example 1(i)).

Text: Pages 438-39 (through Problem 10-3, which you should just skim).

Examples: Handout Examples 38-1 through 38-3 (skim the text after the balance sheet).

**Chapter 7: Partnership Distributions**

39. & 40. **Distributions to Partners**

[Note: As indicated, these three topics will take two hours.]

**Introduction; Current Distributions of Money and Property**

Code: §§ 731(a) & (b), 732(a) (and skim (c)), 733.

Note: Section 731 treats distributions of "marketable securities" like money. I will describe this rule in class, but you are not responsible for it.


**Liquidating Distributions**

Code: §§ 731(a), 732(b).


Text: Pages 324-25.

Treatment of Debt As Money

Code: §§ 731(a), 733(1), 752(b).

Text: Pages 313-17 (Rev. Rul. 84-52; Rev. Rul. 94-4).

Examples: Handout Examples 40-1 through 40-3.

41. Transfer of Property for Other Consideration: "Disguised Sales"

[This will take more than one class hour.]


Regs: § 1.731-1(c)(3); and § 1.707-3, through (f) Example 2.

Text: Pages 442-47 (Otey) (stop before Problem 10-6).

Supp.: Jones, Black Letter Subchapter K.

Examples: Handout Examples 41-1 through 41-3; skim 41-4 through 41-6.

42. Sale of a Partnership Interest; Sale Compared With Admission of New Partner

Code: § 741; § 706(c); § 742; § 752(d).

Regs: § 1.741-1.

§§ 1.1(h)-1; § 1.1223-3(a) and (f), Example 4 only.

Text: Page 329 (middle paragraph); pages 359-61 (Rev. Rul. 99-6) (through note 1).

Supp.: Treasury announcement on proposed regs on disguised sales of partnership interest (Dec. 2004).

Examples: Handout Examples 42-1 and 42-2; Examples 42-3 and 42-4.

43. Impact of § 751 ("Hot") Assets: Sale of Partnership Interest

Code: § 751(a), (c) & (d); § 743(a).

Regs: §§ 1.751-1(a) and -1(g) Example 1.

Text: Pages 344-45 (top) [note: this is not a clear example, because there’s no ordinary loss].

Examples: Handout Examples 43-1 through 43-3.

44. Partnership-Level Adjustments

Code: §§ 734(b), 743(b), and 754; skim § 755.
Text: Pages 350-51 [note that the 2004 Jobs Act imposes mandatory basis reduction under §§ 734 and 743 to prevent (temporary) loss duplication of at least $250,000]. Return to Problems 10-1 and 10-2 on page 431.

Regs.: Skim Reg. §§ 1.734-1; 1.743-1(a) through (e); 1.754-1.


Examples: Handout Examples 44-1 through 44-4.

45. **Subchapter K Review Questions**

   **Supp.** I will break you into groups, and assign the groups to present the questions from the Partnership Tax exams I gave when I taught at Penn and Duke.


**S CORPORATIONS**

**Chapter 3: S Corporation Operations**

47. **Introduction; Computation of Gross Income and Deductions; Basis as a Gain/Loss Preservation Mechanism; Distributions**

   **Code:** Basically, skim most of Subchapter S, as follows: §§ 1361(a) & (b), 1363, 1366(a) & (b), 1367(a) & (b), 1368(a) & (b), and 1371(a).

   **Text:** Pages 95-97 ([IRS Form 1120S](#)); pages 99-100 (notes); pages 293-96 (through note 3); pages 405-07 (skip notes 1 and 2 on page 405; and on pp. 406-07, recall the effect of § 362(e) on the contribution of loss property!).

   **Supp.:** JCT, *Major Tax Differences Between Partnerships and S Corps*.

48. **Rigid Allocation Rules; Assignment of Income; Camouflaged Salary**

   *This will take less than one class hour.*

   **Code:** § 1361(b)(1)(D) and § 1377(a).

   **Text:** Pages 102-03 (stop before Example 3-C); pages 299-301 (*Radke*).


   **Examples:** Example 48-1.
49. **Consequences of Operating Loss**  
*This will take less than one class hour.*

- **Code:** §§ 1366(d), 1367(a)(2) & (b)(2), and 1368(d).
- **Regs:** Reg. §§ 1.1366-2 and 1.1367-1(f), (g) & (h) (Example 2).
- **Text:** Pages 106-08; pages 116-18 (notes 2 through 7); page 296 note 4.

  - [In note 5 on p. 117, the 2004 Jobs Act permits suspended losses to be transferred between spouses in a divorce – they used to vanish (as at death).]
- **Supp.:** *Brooks.* Note: In 2005, the Joint Committee on Taxation proposed conforming the treatment of partnership nonrecourse debt to the treatment of S corporation debt, by excluding NR debt from partners’ outside bases.

50. **Distinguishing an S Corporation from a C Corporation; One Class of Stock Rule**

- **Code:** §§ 1361(b), (c)(4) and (c)(5).
- **Regs:** § 1.1361-1(l) – just skim (l)(4).
- **Text:** Pages 120-22 (*Rev. Rul. 94-43*). [The 2004 Jobs Act, permitting all members of a family to elect to be treated as a single shareholder, has been superseded by the Gulf Opportunity Zone Act of 2005, which eliminates the requirement of an election.] Pages 124-25 (notes 2 through 5 – just skim 5); pages 125-30 (*Paige*).

51. **The S Election**

- **Code:** § 1362 (except (d)(3)).
- **Regs:** § 1.1362-6(a)(2) & (b)(2) (consents); § 1.1362-4 (inadvertent terminations).
- **Text:** Pages 122-24 (through note 1); and pages 130-34 (*Leather*).
- **Supp.:** *PLR 200333017*. Also read: *PLR 9731027 and PLR 9236033*.

52. **Transitional Problems: Existing C Corporation Makes the S Election**  
*IF TIME*

- **Code:** Skim §§ 1368(c) and 1374. Skim §§ 1375(a) and 1362(d)(3); § 1371(b).
- **Text:** Pages 134-35 (middle); page 137, Problem 3-4; pages 296-97 (stop before Example 6-C); pages 137-39 (top) (through Example 3-J); pages 140-41 (notes); and pages 141-44 (*Rosenberg*).
- **Supp.:** CBO, *Repeal Tax-Free Conversions of Large C to S Corps*. 
53. **The Partnership "Anti-Abuse Reg" Controversy; Fundamental Tax Reform**

**Anti-Abuse Regulations:**

- **Code:** § 1260.
- **Regs.:** § 1.701-2. In (d), read Examples 1, 2, 5, 8 and 9.
- **Supp.:** *ILM 2006-50-014; AM 2007-002.*

**Tax Reform Proposals:**

- **Text:** Pages 10-16.
- **Supp.:** Aron-Dine, *Corporate Tax Reform* (CBPP 2008)

54. **Review Problems for Subchapter S Corporations**

You will present questions from my old exams: the 1999 exam, Q. I.A and Q. II.B; and the 1997 exam, Q. III.a. If time, Q.II.B from 2005 exam.

**EXAM**

The exam will be on Wednesday, May 13, 2009, at 1:15 p.m. The exam will be 3 hours, fully open-book (bring a calculator), but you may not use email or do an electronic search.