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Stefan F. Tucker

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DEATH OR RETIREMENT OF A PARTNER

By Stefan F. Tucker

Various problems and concerns may arise on the death or retirement of a partner from a partnership. Those partners who anticipate the problems and concerns recognize the need for and importance of a written partnership agreement. For example, in the absence of such an agreement among the partners, the death or retirement of a partner terminates the partnership. The surviving or remaining partners could then find their activities narrowed to selling or otherwise disposing of the partnership assets, paying creditors and transferring to the estate of the deceased partner or to the retiring partner its or his share of cash, cash equivalents or partnership assets. Despite results such as these, partners often appear to prefer not to have a written partnership agreement, whether from visions of immortality, in hopes of saving legal fees or out of fear of an inability to resolve issues. Not surprisingly, however, experience with both commercial partnerships and professional partnerships has shown that a written partnership agreement is essential. A partnership is like a marriage; breaking up is hard to do.

Just as business problems and issues relating to the death or retirement of a partner require careful thought and planning, the impact that Federal income tax consequences can have on such partnership events encourages careful consideration and planning as well. The need for a written partnership agreement to resolve potential tax issues is equally as important as in the business context. In fact, the anticipated business problems and Federal tax issues relating to the death or retirement of a partner often merge, not unlike other circumstances where business and tax considerations blend together in their desired results.

While the business problems and issues relating to the death or retirement of a partner are fascinating and deserve careful attention, this article will concentrate specifically on the Federal income tax aspects associated with such events. The purpose of this article is to highlight and discuss some of the tax considerations and to focus upon the importance of proper tax planning associated with the death or retirement of a partner in the valuation of the partnership interest, in the impact of such events on the payment of estate taxes, in evaluating the income tax impact of the death of a partner and in structuring the buyout of the retiring or deceased partner's interest.

1The term "retirement" covers not only retirement by reason of attainment of a normal retirement age, but also withdrawal from the partnership, retirement because of permanent disability and expulsion from the partnership.
2The term "partnership" includes both general partnerships and limited partnerships, although, for purposes of this article, it should be assumed that only the general partner of a limited partnership is being considered. This is basically because the death of a limited partner does not impact the limited partnership or the general or other limited partners, in the absence of any provision to the contrary in the partnership agreement.
3A written partnership agreement would generally govern the arrangements of the partners, both during the ongoing business operations and on the death or retirement of a partner.
4See Uniform Partnership Act (hereinafter referred to as the "UPA") §31; and Uniform Limited Partnership Act (hereinafter referred to as the "ULPA") §20.
5See UPA, supra note 4, §§33, 37, 41; and ULPA, supra note 4, §23.
6See infra notes 83, 85, 115-18, 130-31, 133 and 138 and accompanying text.
INCLUSION OF PARTNERSHIP INTEREST
IN DECEDENT'S ESTATE

Valuation of Partnership Interest Generally

For estate tax purposes, partnership interests are generally valued in the same manner as interests in other business enterprises. Accordingly, the position of the Service is that a partnership interest is to be valued generally in the same manner as closely-held stock.\(^7\)

The fair market value of an interest in a partnership is, under the Estate Tax Regulations, “the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.”\(^8\) For estate tax purposes, the “net amount” takes into account a “fair appraisal as of the applicable valuation date of all the assets of the business, tangible and intangible, including goodwill”, and the “demonstrated earning capacity of the business”.\(^9\) A proper valuation also includes such factors as (i) “the economic outlook in the particular industry”; (ii) “the company’s position in the industry and its management”; (iii) “the degree of control of business represented by” the interest to be valued; and (iv) “non-operating assets, including proceeds of life insurance policies payable to or for the benefit of the company, to the extent such non-operating assets have not been taken into account in the determination of net worth (and) prospective earning power”.\(^10\) Finally, under the Regulations, if the decedent fails to provide that his interest passes at his death to his surviving partner(s), “for an adequate and full consideration in money or money’s worth”, special attention must be given to determine an adequate value for the goodwill of the business. In this regard, the Federal estate tax return should be accompanied by complete financial and other data upon which the valuation is based.\(^11\)

For state law purposes, there are three different rights of a partner in a partnership. First, the partner has a right to specific partnership property, unless otherwise stated in the partnership agreement.\(^12\) This right, which cannot be assigned without the consent of the other partners, vests in the surviving partners upon the death of a partner.\(^13\)

Second, the partner has a right to an interest in the partnership (that is, a right to distributions of profits and surplus of the partnership).\(^14\) Under state

\(^8\)Est. Tax Reg. §20.2031-3.
\(^9\)Ibid.
\(^10\)Ibid. Tax Reg. §20.2031-3(c) and -2(f).
\(^11\)See Est. Tax Reg. §20.2031-3. See, generally, Rev. Rul. 59-60, 1959-1 C.B. 237 (which sets forth the general approach of the Service to the valuation of closely-held interests, as well as methods and factors to be considered in any such valuation).
\(^12\)See UPS, supra note 4, §§24, 25(2)(a).
\(^13\)See UPA, supra note 4, §§23(2)(b), (d).
\(^14\)See UPS, supra note 4, §§24, 26.
law, this right may be assigned, but, unless otherwise stated in the partnership agreement, the assignee does not become a partner or acquire any right to the partnership property merely by reason of such an assignment.\(^{15}\) The Service, however, treats the assignment of a partnership interest differently for Federal income tax purposes. The Service has held that an assignee of a limited partnership interest must be treated as a partner, even though there has been no consent to his substitution as a limited partner in the partnership.\(^{16}\) In fact, a person who cannot be a partner under state law may nonetheless be considered a member of a partnership for Federal income tax purposes.\(^{17}\) The Service has noted further, in language that has yet to have its full (and potentially adverse) impact, that "the standards for determining who is a partner, for Federal tax purposes, must be made under Federal law."\(^{18}\)

The third right of a partner in a partnership is the right to participate in the management of the partnership business. This right, however, is not assignable.\(^{19}\)

Clearly, state law considerations should be factored into any valuation of the partnership interest for Federal estate tax purposes. For example, state law would be used to enforce a restriction in a partnership agreement on the lifetime assignment or transfer of a partnership interest (focusing on a partnership interest as a package of the rights referred to above). It would therefore appear that such a restriction in the partnership agreement, combined with a grant to the surviving partners of an option to purchase the decedent's partnership interest after his death at a price less than the fair market value of the partnership net assets on the date of the decedent's death, would limit the value of the decedent's partnership interest for Federal estate tax purposes to the option price.\(^{20}\) However, the Service's position, which is inconsistent with the Tax Court's view, is clearly to the contrary.\(^{21}\)

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\(^{15}\)See UPA, supra note 4, §27(1).


\(^{17}\)See Rev. Rul. 77-332, 1977-2 C.B. 484 (involving a "principal" in a certified public accounting firm who was not a certified public accountant).

\(^{18}\)Id. at 485.

\(^{19}\)See UPA, supra note 4, §§24, 27(1).

\(^{20}\)See Fiorito v. Comm'r. 33 T.C. 440 (1959). In Weil's Estate v. Comm'r. 22 T.C. 1267 (1954), the Tax Court, in determining the value of a partnership interest for estate tax purposes, considered the effect on value of a restrictive agreement. The court stated the rules governing valuation of property subject to a restrictive agreement as follows:

It now seems well established that the value of property may be limited for estate tax purposes by an enforceable agreement which fixes the price to be paid therefor, and where the seller if he desires to sell during his lifetime can receive only the price fixed by the contract and at his death his estate can receive only the price theretofore agreed on. Estate of Albert L. Salt, 17 T.C. 92; Lomb v. Sugden, 82 F.2d 166; Wilson v. Bowers, 57 F.2d 682.

On the other hand, it has been held where the agreement made by the decedent and the prospective purchaser of his property fixed the price to be received therefor by his estate at the time of his death, but carried no restriction on the decedent's right to dispose of his property at the best price he could get during his lifetime, the property owned by decedent at the time of his death would be included as a part of his estate at its then fair market value. City Bank Farmers Trust Co., Executor, 23 B.T.A. 663; Claire Giannini Hoffman, 2 T.C. 1160; Estate of George Marshall Trammell, 18 T.C. 662.

\(^{21}\)Id. at 1273. Similarly, in Est. Tax Reg. §20.2031-2(b), which is made applicable to partnership interests by Est. Tax Reg. §20.2031-3(c), it is provided that:

Another person may hold an option or a contract to purchase securities owned by a decedent at the time of
Valuation of the Partnership Interest under Internal Revenue Code Section 2032A

Under Section 2032A, an executor may elect to value real property used for farming or a closely-held business based on its value as such, rather than on the basis of its potential highest and best use. To qualify for special use valuation under this Section, the decedent must have been a citizen or resident of the United States at the time of his death. In addition, the real property must have been used for a "qualified use" on the date of the decedent's death. The property must have been devoted to use as a farm for farming purposes or to use in a trade or business other than farming. The use "must be a trade or business use", so that the mere passive rental of property will not qualify. The General Explanation of the Tax Reform Act
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of 1976 does note, however, that "where a related party leases the property and conducts farming or other business activities on the property, the real property may qualify for special use valuation".26

To qualify for special use valuation, property being used for a "qualified use" on the date of the decedent's death also must be located in the United States and must meet the three criteria which will characterize it as "qualified real property".27 The first of the three criteria requires that at least 50 percent of the adjusted value of the gross estate consists of real or personal property which, on the date of the decedent's death, was being used for a "qualified use" by the decedent or a member of the decedent's family.28 In addition, the property must have been acquired or passed from the decedent to a "qualified heir"29 of the decedent.30 The second criterion requires that at least 25 percent of the adjusted value of the gross estate consists of the adjusted value of real property, passing to a "qualified heir", as to which, during the eight-year period ending on the date of the decedent's death, there have been periods aggregating five years or more during which such real property was owned by the decedent or a member of the decedent's family in the operation of the farm or other business.31 Finally, the real property must be designated in an agreement filed with the Service,32 whereunder all persons in being who have an interest (whether or not in possession) in any property designated in the agreement consent to additional tax33 upon the disposition of any interest in qualified real property or the failure to use the same for a qualified use.34

The special use valuation under Section 2032A is optional, and so the executor of the decedent's estate must make an election on the estate tax return in order to have "qualified real property" valued as such for estate tax purposes.35 The Regulations provide, however, for a protective election, to be made by a notice of election filed with a timely estate tax return, stating that a protective election under Section 2032A is being made pending final

26General Explanation, supra note 25, at 538.
27See I.R.C. Sec. 2032A(b)(1).
29Section 2032A(e)(1) defines a "qualified heir" as follows:
The term "qualified heir" means, with respect to any property, a member of the decedent's family who acquired such property (or to whom such property passed) from the decedent. If a qualified heir disposes of any interest in qualified real property to any member of his family, such member shall thereafter be treated as the qualified heir with respect to such interest.
Section 2032A(e)(2) defines "member of the family" as follows:
The term "member of the family" means, with respect to any individual, only—
(A) an ancestor of such individual,
(B) the spouse of such individual,
(C) a lineal descendant of such individual, of such individual's spouse, or of a parent of such individual, or
(D) the spouse of any lineal descendant described in subparagraph (C).
For purposes of the preceding sentence, a legally adopted child of an individual shall be treated as the child of such individual by blood.
30See I.R.C. Sec. 2032A(b)(1)(A).
31See I.R.C. Sec. 2032A(b)(1)(B) and (C).
32See I.R.C. Sec. 2032A(d)(2).
33See I.R.C. Sec. 2032A(c). See infra notes 42-43 and accompanying text.
34See I.R.C. Sec. 2032A(b)(1)(D).
The availability of special use valuation is then contingent upon the values as finally determined meeting the requirements of Section 2032A. In addition, the Tax Reform Act of 1984 amended Section 2032A to authorize the Secretary to prescribe procedures which allow estates to correct certain defects in a timely-filled election. As set forth in Section 2032A(d)(3), in any case in which the executor makes a timely-filled election under Section 2032A and substantially complies with the regulations prescribed by the Secretary, but the filed notice of election does not contain all required information, or the special use valuation agreement, as filed, does not include all the signatures of persons required to enter into the agreement, or the agreement does not contain all required information, then the executor will have a reasonable period of time (not exceeding 90 days), after notification, to cure the minor defects.

The special use valuations for all qualified real property in the estate cannot reduce the gross estate of a decedent dying in 1983 or thereafter by an aggregate amount of more than $750,000. Further, the disposition of an interest in the qualified real property by a qualified heir (otherwise than to a member of his family) or the failure of the qualified heir to continue to use the qualified real property for the qualified use results in the imposition of additional estate tax. The qualified heir is then personally liable for the additional tax to the extent attributable to qualified real property inherited by him from the decedent, and a special lien is imposed on the qualified real property itself in favor of the United States for the additional estate tax due.

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36See Est. Tax Reg. §20.2032A-8(b).
38See I.R.C. Sec. 2032A(d)(3). Prior to the enactment of Section 2032A(d)(3), the Service would deny special use valuation for technical errors in the election. Even where the election was timely made and the estate had exercised good faith in filing, the Service would disallow special use valuation to the estate. See Analysis of the Tax Reform Act of 1984, §215 (Matthew Bender 1984). The legislative history, in full support of the special use valuation and critical of the Service's position of denying special use valuation for technical errors in making the election, cited the following example of the Service's actions under prior law: The Service denied an attempted Section 2032A election, even though timely filed, where a mother had signed for her minor children without first having a court appoint her as their guardian. Further, the Service would not permit the election to be perfected when the woman, having been made aware of the error, went to a judge to grant her a court-appointed guardianship. See Senate floor amendment, 130 Cong. Rec. S. 4318 (April 11, 1984). In so doing, it was concluded that "where there is no intent to do anything other than comply with the law, . . . there should be an opportunity to correct mistakes and perfect the filing." Accordingly, "clarification of congressional intent by amending the section (was) therefore necessary." Id.
39See supra notes 32-34 and accompanying text.
40See I.R.C. Sec. 2032A(d)(3), effective for estates of decedents dying after December 31, 1976. A claim for credit or refund of overpayment of estate tax, which arises from the correction of a previously defective special use valuation election, may be filed by any person at any time within the one-year period beginning on July 18, 1984. TRA 1984, supra note 37, §1025(b).
41See I.R.C. Sec. 2032A(a)(2). For decedents dying in 1981, the applicable limit was $600,000 and for decedents dying in 1982, the applicable limit was $700,000.
42See I.R.C. Sec. 2032A(c). This additional estate tax may be imposed within 10 years after the decedent's death and before the death of the qualified heir.
43See I.R.C. Sec. 2032A(c)(5). A bond may be furnished in order to discharge such personal liability. See I.R.C. Sec. 2032A(e)(11).
44See I.R.C. Secs. 2032A(g) and 6324B.
No additional estate tax will be imposed, however, if there is an involuntary conversion of an interest in qualified real property and the cost of the qualified replacement property equals or exceeds the amount realized on the conversion.\textsuperscript{45} Similarly, if an interest in qualified real property is exchanged solely for an interest in other qualified real property in a transaction governed by Section 1031,\textsuperscript{46} under Section 2032A(c) no tax is imposed.\textsuperscript{47} 

The value of a farm is determined for purposes of the special use valuation election as follows: The excess of the average gross cash rental for comparable land used for farming purposes and located in the same locality over the average annual state and local real estate taxes for such comparable land is to be divided by the average annual effective interest for all new Federal Land Bank loans.\textsuperscript{48} This formula is not to be used, however, where there is no comparable land from which the average annual gross cash rental may be determined, but there is comparable land from which the average annual net share rental may be determined. In such case, "average annual net share rental" will be substituted for "average annual gross cash rental" in the above formula.\textsuperscript{49} Neither formula is to be used where there is no comparable land from which the average annual gross cash rental or the average annual net share rental may be determined, or the executor elects to have the value of the farm for farming purposes determined in the same manner as other closely-held business interests.\textsuperscript{50} Where either of the two statutory formulas is used, the average annual computation is to be made on the basis of the five most recent calendar years ending before the date of the decedent's death.\textsuperscript{51} 

Section 2032A also provides rules for determining the value of a closely-held business interest which owns "qualified real property".\textsuperscript{52} The value of a closely-held business interest is determined by applying the following factors: (1) the capitalization of income which the property can be expected to yield for farming or closely-held business purposes over a reasonable period of time under prudent management using traditional cropping patterns for the

\textsuperscript{45}See I.R.C. Sec. 2032A(h).
\textsuperscript{46}Under Section 1031, no gain or loss is recognized on the exchange of property held for productive use or for investment if it is exchanged solely for like-kind property also to be held for productive use or for investment.
\textsuperscript{47}See I.R.C. Sec. 2032A(i). See Section 2032A(i)(1)(B) for exchanges where other property is received in an otherwise qualified exchange.
\textsuperscript{48}See I.R.C. Sec. 2032A(e)(7)(A).
\textsuperscript{49}See I.R.C. Sec. 2032A(e)(7)(B). "Average annual net share rental" is defined as the value of the produce received by the lessor of the land on which the produce is grown minus the cash operating expenses of growing such produce which, under the lease, are paid by the lessor.
\textsuperscript{50}See I.R.C. Sec. 2032A(e)(7)(C). See I.R.C. Sec. 2032A(e)(8) for the rules governing the valuation of closely-held business interests, infra notes 52-54 and accompanying text.
\textsuperscript{51}See I.R.C. Sec. 2032A(e)(7)(A).
\textsuperscript{52}See I.R.C. Sec. 2032A(e)(8). According to the General Explanation, supra note 25, at 539, "Congress intended that a decedent's estate generally should be able to utilize the benefits of special use valuation where he held the qualifying real property indirectly, that is, through his interest in a partnership, corporation, or trust, but only if the business in which such property is used constitutes a closely-held business (as defined in Section 6166, as added by the (1976 Tax Reform) and the real property would qualify for special use valuation if it had been held directly by the decedent." See, generally, Deferral of Federal Estate Tax, Report of the Committee on Tax and Estate Planning—Post Death, of the ABA Section of Real Property, Probate and Trust Law, 13 R. Prop., Prob. and Trust J. 328 (1978).
area, taking into account soil capacity, terrain configuration and similar factors, \(^5\) and (2) the capitalization of the fair rental value of the land for farmland or closely-held business purposes.\(^4\)

**Section 6166: Extensions of Time to Pay Estate Tax**

In addition to the special use valuation election under Section 2032A, the Code provides for an extension of up to 15 years for the payment of Federal estate tax attributable to an interest in a closely-held business.\(^5\) Section 6166 defines an “interest in a closely-held business” as follows: (1) an interest in a sole proprietorship carrying on a trade or business; (2) an interest in a partnership carrying on a trade or business if 20 percent or more of the total capital interest in the partnership is included in the decedent’s gross estate, or there are 15 or fewer partners; or (3) stock in a corporation carrying on a trade or business if 20 percent or more in the value of the voting stock is included in the decedent’s gross estate, or there are 15 or fewer shareholders.\(^5\)

When valuing an interest in a closely-held business for estate tax purposes, the value of the interest cannot include the value of that portion of the interest which is attributable to “passive assets” held by the business.\(^5\) In order to qualify for the special treatment under Section 6166, the value of the interest in the closely-held business must exceed 35 percent of the value of the decedent’s gross estate;\(^5\) Section 6166 also provides that interests in two or more businesses may be combined and treated as an interest in a single closely-held business if 20 percent or more of the value of each such business is included in the decedent’s gross estate.\(^5\)

The election to extend the time for payment of estate tax allows the executor, if he so elects,\(^6\) to pay the Federal estate tax attributable to the closely-held interest in up to 10 equal annual installments, with the first such installment deferred for up to five years from the due date of the estate tax return.\(^6\)

The election also provides for the annual payment of interest during

\(^{59}\)See I.R.C. Sec. 2032A(e)(3)(A).
\(^{60}\)See I.R.C. Sec. 2032A(e)(4)(B).
\(^{62}\)I.R.C. Sec. 6166(b)(1). Effective for estates of decedents dying after July 18, 1984, and subject to certain restrictions, the portion of the stock of any holding company which represents ownership by such company in a business company (i.e., a corporation carrying on a trade or business) is deemed to be stock in the business company for purposes of Section 6166(b)(1)(C), if the executor so elects. See I.R.C. Sec. 6166(b)(3). See also Temp. Reg. §5h-4, regarding the extension of time for payment of estate tax for interests in certain holding companies.
\(^{63}\)See I.R.C. Sec. 6166(b)(9)(A). A “passive asset” is any asset other than an asset used in carrying on a trade or business, which may include, under certain circumstances, stock in another corporation. See I.R.C. Sec. 6166(b)(9)(B).
\(^{64}\)See I.R.C. Sec. 6166(a)(1).
\(^{65}\)See I.R.C. Sec. 6166(c).
\(^{66}\)See Est. Tax Reg. §20.6166-1 with regard to the election of an extension of time for the payment of estate tax where the estate consists largely of an interest in a closely-held business; *infra* note 65 and accompanying text.
\(^{67}\)See I.R.C. Sec. 6166(a)(1) and (3).
the deferral period with interest for the first five years reduced to four percent for a portion of the Federal estate tax due.

Not unlike Section 2032A, the Estate Tax Regulations provide for a protective election, to be made by a notice of election filed with a timely estate tax return, stating that a protective election under Section 6166 is being made pending a final determination of values. The availability of an extension of time for the payment of estate tax is then contingent upon the values as finally determined meeting the requirements of Section 6166. Within 60 days after values are finally determined, a final notice of election must be filed with the Service.

Despite the benefits attributable to Section 6166, the Service, in interpreting the concept of "trade or business" with respect to real property, has severely limited its scope and applicability. For example, the Service has held that the "mere grouping together of income-producing assets" from which income is obtained only through ownership of the property rather than from the conduct of a business does not constitute a "trade or business". The Service so held even though the decedent, prior to his death, maintained a fully-equipped business office to collect rental payments on the properties, receive payments on notes receivable, negotiate leases, make occasional loans, and by contract direct the maintenance of his properties, and even though the decedent maintained records and kept regular office hours for collection of the amounts involved and the maintenance of his properties. The Service concluded that "the decedent's relationship to the various assets described was merely that of an owner managing investment assets to obtain the income ordinarily expected from them". The Service has similarly concluded that a "trade or business" for purposes of Section 6166 does not include the "mere ownership" of royalty interests in oil property nor does it include the ownership and rental of investment homes.

The Service has also provided guidance as to its position on what activities do qualify as a "trade or business" under Section 6166. For example, the Service has held that the ownership of farm real estate leased to tenant

\[62\] See I.R.C. Sec. 6166(f).
\[63\] Interest for the first five years is reduced to four percent of the lesser of (i) the Federal estate tax attributable to the interest in the closely-held business qualifying under Section 6166 or (ii) $345,800 less the remaining unified Federal estate and gift tax credit (see I.R.C. Sec. 2010) allowable to the estate. See I.R.C. Sec. 6601(j).
\[64\] See supra note 36 and accompanying text.
\[65\] See Est. Tax Reg. §20.6166-1(d).
\[68\] Id.
\[70\] See Rev. Rul. 75-367, 1975-2 C.B. 472 (Section 6166 treatment disallowed even though the decedent collected the rents, made the mortgage payments and made the necessary repairs and maintenance).
farmers under agreements whereby the decedent received 40 percent of the crops and bore 40 percent of the expenses, and where the decedent participated in important management decisions and made almost daily visits to inspect the farms and discuss operations, although he lived several miles from the farms, constituted a “trade or business”.71 Accordingly,

[a]n individual is engaged in the business of farming if he cultivates, operates, or manages a farm for gain or profit, either as owner or tenant, and if he receives a rental based upon farm production rather than a fixed rental. Farming under these circumstances is a productive enterprise which is like a manufacturing enterprise as distinguished from management of investment assets.72

Similarly, the ownership of stock in an S corporation which built homes on land owned and developed by the decedent; land owned by the decedent which was held for the purpose of building homes by such corporation; and a business office and warehouse owned by decedent but used by both the decedent and the corporation in the home building and landholding operations constitutes a “trade or business”.73 In reaching its conclusion, the Service asserted that Section 6166 (as in effect in 1975),

was not intended to protect continued management of income-producing properties or to permit deferral of tax merely because the payment of the tax might make necessary the sale of income-producing assets, except where (such assets) formed a part of an active enterprise producing business income rather than income solely from the ownership of property.74

Thus, the Service has attempted, through the various examples cited above, to distinguish active business operations from “mere” investment activities in its effort to determine what constitutes a “trade or business” under Section 6166. Not surprisingly, the Service’s position under Section 6166 should similarly affect what activities qualify as a “trade or business” under Section 2032A as well.75

INCOME TAX IMPACT OF DEATH OF PARTNER

Continuation of the Partnership on the Partner’s Death

Section 708, which describes the events that trigger the termination of a partnership for income tax purposes,76 provides that

A partnership shall be considered as terminated only if—

(A) no part of any business continues to be carried on by any of its partners in a partnership, or

72Id. at 472.
74Id. at 473. See also Rev. Rul. 61-55, 1961-1 C.B. 713 (ownership, exploration and development of oil and gas properties constituted a “trade or business” under Section 6166).
75See supra note 66 and accompanying text.
76See I.R.C. Sec. 708. Consistent therewith, Section 708(a) provides that “an existing partnership shall be considered as continuing if it is not terminated.”
(B) within a 12-month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.\(^77\)

Thus, where the deceased partner was a member of a partnership comprised of more than two partners, his death or retirement will not affect the partnership income for tax purposes, so long as neither of the events enumerated in Section 708(b) occurs. Further, so long as the estate or other successor in interest of a deceased partner continues as a partner in its own right under local law, the usual partnership income taxation rules apply to distributions to the estate or other successor in interest.\(^78\)

Payments made in liquidation of the interest of a deceased partner may take any one of the following forms: (i) a distributive share to the recipient of partnership income if the amount thereof is determined with regard to the income of the partnership\(^79\); (ii) a guaranteed payment under Section 707(c)\(^80\) if the amount thereof is determined without regard to the income of the partnership\(^81\); or (iii) a payment in exchange for the interest of the partner in the partnership property, and thus a distribution by the partnership, rather than either a distributive share or a guaranteed payment.\(^82\) The partners may choose, through arm’s-length negotiations, which of the three forms of payment best suits their needs, and thus the partners are essentially left to allocate the tax burdens and benefits among themselves.\(^83\)

The last return of a decedent partner includes only his share of partnership income for any partnership year or years ending with or within his last taxable year (which is the year ending with his death). On the other hand, the distributive share of partnership taxable income for a partnership taxable year ending after the decedent’s last taxable year is includible in the return of his estate or other successor in interest.\(^84\) In addition, a partner is granted the flexibility to designate a person in the partnership agreement who will succeed to his interest in the partnership after his death as his successor in interest,\(^85\)

\(^77\)I.R.C. Sec. 708(b). If the deceased partner was a member of a partnership comprised of two partners, the partnership is not considered as terminated if the estate or other successor in interest of the deceased continues to share in the profits or losses of the partnership business. See Treas. Reg. §1.708-l(b)(1)(i); Maxcy v. Comm’r. 59 T.C. 716 (1973); and Haines v. United States, 37 AFTR 2d 76-768 (D.N.J. 1976).


\(^79\)See I.R.C. Sec. 736(a)(1).

\(^80\)Section 707(c) defines a “guaranteed payment” as a payment to a partner for services or the use of capital, determined without regard to the income of the partnership, which is considered as made to one who is not a member of the partnership. See I.R.C. Sec. 707(c).

\(^81\)See I.R.C. Sec. 736(a)(2).

\(^82\)See I.R.C. Sec. 736(b). However, in the event that the payment for the interest of the deceased partner is characterized as a payment in exchange for the interest of the partner in the partnership property, then the payments associated with the deceased partner’s share of unrealized receivables of the partnership (as defined in I.R.C. Sec. 751(c)) will not be considered as in exchange for the deceased partner’s interest; see I.R.C. Sec. 736(b)(2)(A); nor will payments for goodwill of the partnership be so considered, “except to the extent that the partnership agreement provides for a payment with respect to goodwill.” I.R.C. Sec. 736(b)(2)(B).

\(^83\)See Cooney v. Comm’r, 65 T.C. 101 (1975); and Foxman v. Comm’r, 41 T.C. 535 (1964), aff’d 352 F.2d 466 (3rd Cir. 1965). See also Nash, How To Evaluate the Tax Consequences When a Partner Retires or Sells His Interest, 4 Tax. Lawyers 28 (1975).

\(^84\)See Treas. Reg. §1.706-1(c)(3)(ii). See also Applebaum v. Comm’r, 724 F.2d 375 (3rd Cir. 1984).
altering the income tax consequences associated with his death. As such, the partner’s effective use of the partnership agreement can have a significant impact on the income tax consequences resulting from his death.

**Income in Respect of a Decedent**

Upon the death of a partner, income in respect of a decedent may arise and may take many forms. For example, where the estate or other successor in interest receives payments in liquidation of the deceased partner’s interest in the partnership (either as a distributive share of partnership income or as a guaranteed payment) such payments are considered income in respect of a decedent under Section 691. Similarly, the estate or other successor in interest is considered to have received income in respect of a decedent to the extent that a third person makes payments to it in exchange for rights to future payments from the partnership. Further, when a partner receiving income from a partnership under Section 736(a) dies, any remaining payments under Section 736(a) to his estate or other successor in interest are considered income in respect of a decedent. Moreover, when a partner dies, the entire portion of the distributive share attributable to the period ending with the date of his death and which is taxable to his estate or other successor in interest constitutes income in respect of a decedent. This is so even though that part of the distributive share for the period prior to death which the decedent withdrew is not included in the value of the decedent’s partnership interest for estate tax purposes. To the extent, however, that any part of the distributive share is attributable to the portion of the partnership taxable year ending after the date of death of the decedent, such part of the distributive share is not income in respect of a decedent.

Finally, the courts consider payments attributable to accounts receivable of the partnership which are characterized as “unrealized receivables” under Section 751(c) as income in respect of a decedent. For example, in *Woodhall v. Comm'r*, 28 TCM 1438 (1969), aff’d 454 F.2d 226 (9th Cir. 1972); and *Quick Trust v. Comm'r*, 54 T.C. 1336 (1970), aff’d per curiam 444 F.2d 90 (8th Cir. 1971).
v. Comm'r, payments made by a surviving partner to the decedent's executrix (and surviving spouse) under a written buy-sell agreement, which were attributable to the decedent's share of accounts receivable, were considered income in respect of a decedent. As the partnership was on the cash basis, the decedent had never taken the receivables into account in deriving his taxable income in prior years; thus, such payments gave rise to income in respect of a decedent.

**Basis for the Partnership Interest**

Generally, the basis of property included in a decedent's estate is its fair market value at the date of death. If the alternative valuation date is used for Federal estate tax purposes, however, the value at such date will become the basis of the property. In addition, the basis adjustments under Section 1014 do not apply to income in respect of a decedent. Thus, an adverse effect of the treatment of payments attributable to the partnership's accounts receivable as income in respect of a decedent is that there is no step-up in basis on death under Section 1014. Finally, if the executor or administrator acquires property for the estate after the decedent's death, then the cost or other basis of such property to the executor or administrator, rather than the fair market value of the property at the date of the decedent's death, will constitute the basis of such property.

**Adjustments to Basis of Partnership Property for Successor in Interest to Deceased Partner**

Generally, the basis of a partnership interest acquired from a decedent is the fair market value of the interest at the date of his death (or at the alternative valuation date) increased by the estate's or other successor's share of

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928 TCM 1438 (1969), aff'd 454 F.2d 226 (9th Cir. 1972).
9See id; and Quick Trust v. Comm'r, 54 T.C. 1336 (1970), aff'd per curiam 444 F.2d 90 (8th Cir. 1971) (payments to the estate of a decedent partner which were attributable to his interest in accounts receivable were held to be income in respect of a decedent where the partnership was on the cash basis). See also Pennell and Harnack, The Quick Trust Decision: An Analysis of Its Effect On Partnership Taxation, 37 J.Tax. 284 (1972); and Balleisin, How Unrealized Receivables, 37 J.Tax. 46 (1972).
It is also important to note that where the estate or another person has income in respect of a decedent, it is allowed the deduction against such taxable income under Section 691(c) with respect to any Federal estate taxes attributable to such income. See Treas. Reg. §§1.691(c)-1(a) and -2(a).
9See I.R.C. Sec. 1014(a); and Treas. Reg. §1.1014-1(a). In determining the value of a partnership interest to be included in the decedent's estate, the valuation rules discussed above shall apply. See supra notes 7-54 and accompanying text.
As to property passing or acquired from a decedent dying after December 31, 1976 and before November 7, 1978, a special election could be made to enable the executor or administrator of the estate to use the carryover basis rules, under which the basis of property passing from a decedent was the same as the decedent's basis immediately before his death. See Section 401(d) of the Crude Oil Windfall Profit Tax Act of 1980.
Under I.R.C. Sec. 2032, the value of the decedent's gross estate may be determined, if the executor so elects, up to six months after the date of decedent's death. See I.R.C. §2032(a).
90See I.R.C. Sec. 1014(a); and Treas. Reg. §1.1014-1(a).
91See I.R.C. Sec. 1014(c); and Treas. Reg. §1.1014-1(c)(1).
92See Treas. Reg. §1.1014-3(c).
partnership liabilities, if any, on that date and decreased by any of such value attributable to items of income in respect of a decedent.\textsuperscript{103} Section 754 provides for an election to have the basis of the partnership property adjusted in the event of a distribution of partnership property or a transfer of a partnership interest.\textsuperscript{104} If the election under Section 754 is then in effect as to the partnership, the basis of partnership property is adjusted in the case of a transfer of a partnership interest by reason of the death of a partner.\textsuperscript{105} In such event, the adjusted basis of the partnership property, as to the transferee partner, is \textit{increased} by the excess of (i) the transferee's basis for his partnership interest over (ii) the transferee's share of the adjusted basis to the partnership of all partnership property or \textit{decreased} by the excess of (i) the transferee's share of the adjusted basis of all partnership property over (ii) the transferee's basis for his partnership property.\textsuperscript{106} Furthermore, the transferee partner, as to whom the basis of partnership property has been adjusted, will have a "special basis" for purposes of depreciation, depletion gain or loss and distributions.\textsuperscript{107}

The effect of the rules under Section 743(b) on the transferee partner's basis may be illustrated by the following example: Assume that, at the time of a partner's death, the partnership assets have a fair market value of $1,000,000 including substantially appreciated depreciable real property with a fair market value of $720,000 and an adjusted cost basis of $360,000. Assume further that the partnership has liabilities totaling $600,000 and that the deceased partner owned a 25\% partnership interest with a fair market value of $100,000 at the time of his death. Under these facts, the deceased partner's successor-in-interest (SI) would have a basis in the partnership of $250,000 representing the fair market value of the transferred interest plus the successor's share of partnership liabilities of $150,000. If the election under Section 754 is then in effect as to the partnership, the basis of the partnership real property would be increased from $360,000 to $450,000, representing SI's 25\% share of the unrealized appreciation of the depreciable real property.

\textsuperscript{103}See Treas. Reg. §1.742-1.
\textsuperscript{104}See I.R.C. Sec. 754.
\textsuperscript{105}See I.R.C. Sec. 743(b) and Treas. Reg. §1.743-1(a).
\textsuperscript{106}See Treas. Reg. §1.743-1(b)(1).
\textsuperscript{107}See Treas. Reg. §1.743-1(b)(1), (2)(ii). The "special basis" is equal to such transferee partner's share of the common partnership basis (that is, the adjusted basis of the partnership properties to the partnership without regard to any special basis adjustments of such transferee) plus or minus any special basis adjustments of such transferee. However, where an agreement with respect to contributed property is in effect under Section 704(c)(2) (as in effect prior to TRA 1984, supra note 37), such agreement is taken into account in determining a partner's share of the adjusted basis of partnership property. See Treas. Reg. §1.743-1(b)(1), (2).

If a partnership interest acquired from a decedent is required to be treated as a sale or exchange for tax purposes, a second Section 743(b) adjustment should occur. For example, the use of appreciated property to satisfy the distribution of a pecuniary bequest or the distribution of property subject to liabilities in excess of basis results in taxable gain to the estate. The basis of the partnership interest distributed to the beneficiary is increased by the amount of the gain recognized by the estate. Thus, this sale or exchange treatment should require a new Section 743(b) adjustment at the partnership level. See Chillag, \textit{Section 743(b): A Second Basis Adjustment Following the Death of a Partner}, 62 \textit{Taxes} 156, 158-59 (1984). It is equally important to note, however, that the bequest of a partnership interest is not treated as a sale or exchange. See Treas. Reg. §1.706-1(c)(3)(iv), (v).
Accordingly, SI will have a “special basis” in the real property for purposes of depreciation and gain or loss of $90,000. If we further assume that the depreciable real property had an annual depreciation of $30,000 before the deceased partner’s death, then SI’s share of the depreciation at the end of the partnership taxable year would be $7,500 plus all of the first year depreciation attributable to his “special basis” of $90,000. Thus, if the real property depreciation in the year following the deceased partner’s death was $34,000, SI’s share of such depreciation would be $11,500 ($7,500 plus $4,000 attributable to his “special basis”). Similarly, if the partnership sold the real property immediately following the deceased partner’s death, then the partnership would have a gain of $270,000, none of which would be attributable to SI because of the offset associated with his “special basis” in the real property.

Alternatively, where the election under Section 754 is not then in effect as to the partnership, then the transferee may (but is not required to) make an election to treat as the adjusted partnership basis of any property (other than money) distributed to him within two years after he acquired his partnership interest that adjusted basis which such property would have had if the election under Section 754 had been in effect and the adjustment under Section 743(b) had been made. Unlike the combination of the election under Section 754 and optional adjustment under Section 743(b), however, the election under Section 732(d) does not require any decrease because of depletion or depreciation. This is because depletion or depreciation is not allowed or allowable for the period prior to distribution under Section 732(d), whereas each is allowable under Section 743(b). Furthermore, there is no adjustment allowable under Section 732(d) for purposes of gain or loss on the disposition of partnership property. The adjustment under Section 732(d) is, accordingly, applicable only for purposes of distributions of partnership property (other than money) in fact distributed to a partner.

As an illustration, assume that, at the time of a partner’s death, the partnership assets have a fair market value of $1,000,000, including substantially appreciated land with a fair market value of $200,000 and a cost basis of $100,000. Assume further that the deceased partner owned a 25% partnership interest with a fair market value of $225,000 at the time of his death and the partnership had outstanding liabilities at such time of $100,000, none of which were attributable to the land. Accordingly, the deceased partner’s successor-in-interest (SI) would have an initial basis of $250,000. If the partnership distributes the land to SI within two years after he acquired his
partnership interest when the land has a fair market value of $225,000 and the election under Section 754 was not in effect at the time of the deceased partner's death, SI may elect to have a special basis adjustment added to the basis in the land equal to the share of the unrealized appreciation of the land attributable to him when he acquired his partnership interest. Thus, SI would have a basis in the land of $125,000 upon its distribution to him (assuming his basis in his partnership interest exceeds $125,000 at the time of the distribution) and the basis in his partnership interest would be reduced by the fair market value of the land of $125,000.

The election under Section 732(d) is made either with the tax return for the year of distribution, if the distribution includes any property subject to the allowance for depreciation, depletion or amortization, or with the tax return for any taxable year no later than the first taxable year in which the basis of any of the distributed property is pertinent in determining the transferee partner's income tax, if the distribution does not include any property subject to the allowance for depreciation, depletion or amortization.112 The appropriate tax return is accompanied by a schedule stating that the election under Section 732(d) is made, and showing the computation of the special basis adjustment and the properties to which the adjustment is allocated.113

Finally, where the election under Section 754 is not in effect as to the partnership, a transferee partner is required to apply the rules of Section 732(d) for any distribution made to him (whether or not within two years after the acquisition of his partnership interest) if all of the following conditions exist at the time he acquires his interest: (i) the fair market value of all partnership property (other than money) exceeds 110 percent of its adjusted basis to the partnership; (ii) an allocation of basis under Section 732(c) on a liquidation of the transferee's interest immediately after his acquisition of the interest would result in a shift of basis from property not subject to an allowance for depreciation, depletion or amortization, to property subject to such an allowance; and (iii) the special basis adjustment under Section 743(b) would change the basis to the transferee partner of the property actually distributed.114

**Structuring the Buyout of the Interest of the Retiring Partner or Decedent - Section 736**

The written partnership agreement can play a vital role in the buyout of the interest of a retiring or deceased partner and its importance here cannot be overemphasized. As one commentator has suggested, "[t]he key to utilization of Section 736 is in accurately classifying, in the partnership agreement, the nature of the payments to be made by the partnership to the retiring

113See Treas. Reg. §1.732-1(d)(3). I.R.C. Sec. 755 establishes the rules for allocating basis among partnership assets for the optional adjustments under Sections 732(d) and 743(b).
partner. This follows because Section 736 has been structured so as to offer the partners the maximum flexibility in allocating the tax burdens and benefits associated with the liquidation of the interest of a retiring or deceased partner. As such, it enables the partners to allocate payments in liquidation of such interest between that portion which is ordinary income to the recipient and is either deductible as a guaranteed payment (under Section 707(c)) by the partnership or treated as a reduction of the other partners' distributive shares of partnership income and that portion which is treated as in exchange for a partnership interest. Accordingly, consistent with the intent of Section 736, the courts have generally been willing to accept the characterization of the transaction and the allocation of the tax incidents by the parties in their partnership agreement or other documentation as a Section 736 liquidation or a sale.

As discussed previously, the payments in liquidation of the interest of the retired or deceased partner which are not in exchange for his interest in partnership assets may be characterized in the partnership agreement as either a distributive share of partnership income or a guaranteed payment under Section 707 if determined without regard to the income of the partnership. As a distributive share of partnership income, the payment reduces the distributive shares of the remaining partners and is either ordinary income or capital gain, depending on the character of the income to the partnership. Alternatively, as a guaranteed payment, the payment is deductible by the partnership and is taxable as ordinary income to the recipient. In either case, the amount of any payment under Section 736(a) is included in the recipient's income for his taxable year with or within which ends the partnership taxable year for which the payment is a distributable share, or in which the partnership is entitled to deduct such amount as a guaranteed payment.


116 See I.R.C. Sec. 736(a) and (b). See also supra notes 78-82 and accompanying text discussing the application of Section 736. Section 736 can only apply where the interest of the retiring or deceased partner is "liquidated." See Treas. Reg. §1.736-1(a)(1). As such, "liquidation of a partner's interest" is defined under the Code as the termination of the partner's entire interest in the partnership. As a distributive share of partnership income, the payment reduces the distributive shares of the remaining partners and is either ordinary income or capital gain, depending on the character of the income to the partnership. Alternatively, as a guaranteed payment, the payment is deductible by the partnership and is taxable as ordinary income to the recipient. In either case, the amount of any payment under Section 736(a) is included in the recipient's income for his taxable year with or within which ends the partnership taxable year for which the payment is a distributable share, or in which the partnership is entitled to deduct such amount as a guaranteed payment.

117 See supra notes 78-82 and 116 and accompanying text.


Section 736(b) governs payments made in liquidation of a retired or deceased partner's interest which are considered as made in exchange for his interest in partnership property. Such payments are considered as a distribution by the partnership, so that gain or loss is recognized to the distributee under Section 731, except to the extent that Section 751 is applicable. Accordingly, under Section 731(a)(1) a distributee recognizes gain to the extent that the amount of the distribution to him exceeds his adjusted basis in his partnership interest. Loss is generally not recognized to a distributee partner, except that loss is recognized if the distributee partner's basis exceeds the amount of payments he receives under Section 736(b). In addition, the only items which may be distributed and result in a loss being recognized to the distributee are money, unrealized receivables and inventory items. If any other items whatsoever are distributed to the retiring partner or deceased partner's successors in interest, no loss may be recognized. Further, a question also remains whether a loss may be recognized under Section 731(a)(2) where the total Section 736 payments exceed the retiring or deceased partner's basis in his partnership interest.

Section 736(b) excludes from its application two types of partnership property. First, it excludes those amounts paid for the value of unrealized receivables, which are deemed to fall under the provisions of Section 736(a). Second, the provisions of Section 736(b) exclude amounts paid for goodwill "except to the extent that the partnership agreement provides for a payment with respect to goodwill". Thus, in further support for the importance of a written partnership agreement, where the partnership agreement does so provide for a payment with respect to goodwill, the valuation placed on goodwill in an arms'-length partnership agreement, whether specific in amount or determined by a formula, is generally regarded as correct.

As the Code provides for differing tax treatment for payments under Section 736(a) and 736(b), where Section 736 payments are received during a taxable year the portions under Sections 736(a) and 736(b) must be

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122See I.R.C. Sec. 736(b)(1).
123Section 731 governs the extent of recognition of gain or loss in the case of a distribution by the partnership.
124See I.R.C. Sec. 736(b). The amount of any payment under Section 736(b) is taken into account by the recipient for his taxable year in which such payments are made. See Treas. Reg. §1.736-1(a)(5).
125I.R.C. Sec. 731(a)(1).
126See I.R.C. Sec. 731(a)(2).
127See Treas. Reg. §1.731-1(a)(2). See also supra note 94, which defines "unrealized receivables" under Section 751(c); and Sec. 751(d)(2) (defining "inventory" as Section 1221(1) property or any other property of the partnership which would be considered property other than a capital asset and other than Section 1231 property).
129See Treas. Reg. §1.736-1(b)(2). Interestingly enough, however, substantially appreciated inventory items, which are also Section 751 assets, do fall under the provisions of Section 736(b). See Treas. Reg. §1.736-1(b)(4).
130I.R.C. Sec. 736(b)(2); and Treas. Reg. §1.736-1(b)(3). The regulations speak in terms of a "reasonable" payment for goodwill. See Treas. Reg. §1.736-1(b)(3).
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Subject to any overriding agreement among the partners, the allocation of such payments is as follows: If a fixed amount is to be received over a fixed number of years (whether or not supplemented by any additional payments), then, the Section 736(b) portion bears the same ratio to the total fixed agreed payments (as distinguished from the amount actually received) as the total fixed agreed payments under Section 736(b) bear to the total fixed agreed payments under both Sections 736(a) and 736(b). The balance of the amount, if any, received in the taxable year is treated as received under Section 736(a). In addition, if the total amount actually received in any year is less than the amount considered as the Section 736(b) portion, then that amount is added to the Section 736(b) portions for the following year or years and comes out before distributions under Section 736(a). Notwithstanding the foregoing, a retiring partner or deceased partner's successor in interest may elect (in his tax return for the first taxable year for which he receives payments) to measure gain or loss under Section 731 by the difference between the Section 736(b) distribution in the taxable year and the portion of his adjusted basis for his partnership interest attributable to such distribution.

The following example illustrates the allocation of Section 736 payments between Sections 736(a) and (b) where a fixed amount is to be received over a fixed number of years: Retiring partner R is entitled to an annual minimum payment of $10,000 for 10 years, $8,000 a year (80%) of which is to be attributable to payments under Section 736(b). If in year one he actually receives $11,000, $8,800 is attributable to Section 736(b) and $2,200 is attributable to Section 736(a). If we suppose, however, that he only receives $7,000 in year one and $11,000 in year two, then all $7,000 of the payment in year one represents a Section 736(b) payment with an additional $1,000 of the Section 736(b) payment carried over to year two. Thus, $9,000 of the total payment in year two is attributable to Section 736(b) and only $2,000 of such payment is attributable to Section 736(a).

Alternatively, if the Section 736 payments are not fixed in amount as in the above example, then, first, the payments are considered as paid under Section 736(b) to the full extent due thereunder and then the payments are considered as made under Section 736(a). Accordingly, the following example illustrates the allocation of Section 736 payments between Sections 736(a) and (b) where no fixed amount is to be received by the retired partner or the deceased partner's successor in interest: Retiring Partner R is entitled to total Section 736(b) payments of $1000,000. If in each of years one through five, R receives payments of $22,000 per year, then the payments for each of years one through four totalling $88,000 are Section 736(b) payments.

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132 See Treas. Reg. §1.736-1(b)(5).
133 See Treas. Reg. §1.736-1(b)(5)(i).
134 See id.
135 See id.
136 See Treas. Reg. §1.736-1(b)(6).
137 See Treas. Reg. §1.736-1(b)(5)(ii).
In year five, $12,000 constitutes a Section 736(b) payment and the remaining $10,000 is treated as a Section 736(a) payment. Thereafter, additional payments received by R in subsequent years, if any, would be characterized as payments under Section 736(a).

Alternatively, in lieu of the rules stated above, the parties may agree among themselves as to the allocation of any payments, provided that the allocation to distributions under Section 736(b) does not exceed the fair market value of the relevant property at the date of retirement or death. As elsewhere, the partnership agreement can play a significant role in the treatment of distributions under Section 736.

Conclusion

Proper tax planning, as well as the desired allocation among the partners of the tax burdens and benefits caused by the death or retirement of a partner, is highly dependent upon the written partnership agreement. Advance planning for the income tax consequences of the death or retirement of a partner through the use of the partnership agreement should provide to the partners an added degree of certainty and comfort. Unfortunately, the partners all too often choose not to confront the various tax issues associated with the partnership relationship and, consequently, will just as often ignore the various measures available for resolving the potential problems and concerns awaiting them. Through a better understanding of these problems and concerns, particularly with respect to the various tax consequences, the partners hopefully will realize that, through intelligent use of the partnership agreement, breaking up is not always hard to do.