

Problem 25-8. Under Rev. Rul. 99-6, when X and Y transfer their partnership interests to a single owner, they are taxed in accordance with the actual form (i.e., a taxable exchange of their partnership interests) while the transferee is treated as if the partnership's assets were distributed pro rata to X and Y and then the assets were transferred to Z.

Under Rev. Rul. 99-5, when the owner of a disregarded entity transfers a portion of the ownership of the entity to another person, that transaction is treated as an exchange for a portion of the disregarded entity's assets followed by a joint formation of a new partnership by the transferor and the transferee. Accordingly, Z should be treated as transferring half of Whiteacre to X and half of Whiteacre to Y, with X and Y then treated as forming a new partnership by contributing the two halves of Whiteacre.

Putting these two Rulings together, X and Y are each taxed on an exchange of a partnership interest for a half interest in Whiteacre. Gain or loss is recognized, and each takes a cost basis in half of Whiteacre. The two halves of Whiteacre are then treated as contributed to a newly-formed partnership (Z-LLC).

Z is treated as exchanging Whiteacre for Blackacre. Assuming Whiteacre was held for productive use in a trade or business or for investment and Blackacre will be held by Z for productive use in a trade or business or for investment, this will constitute a tax-free like-kind exchange under section 1031 (assuming each parcel of real estate is located in the US).

Problem 28-9. Under Rev. Rul. 84-111, there are three ways to incorporate a partnership's assets. First, there is an *assets-over transfer* in which a partnership ("P") transfers its assets to a corporation ("C") in exchange for all the stock of C. This incorporation should be tax-free under section 351. The partnership then liquidates, distributing the C stock to the partners in cancellation of their interests in P. Of course, no liquidation is required: the partners in P can continue to hold their interests in P, and P's only asset is the stock of C.

Second, there is an *interests-over* transfer. The partners in P transfer their interests in P to C in a transaction described in section 351. The partnership then immediately liquidates because it has only one partner, distributing its assets to C in cancellation of C's partnership; interests. Is this pattern consistent with Rev. Rul. 99-6?

Third, there is an *assets-up transfer* in which P liquidates, distributing its assets pro rata to its partners. These partners then transfer the distributed assets to C in exchange for C stock in a transaction described in section 351. Note that the first step in this pattern potentially implicates sections 707(a)(2)(B) (disguised sale), 704(c)(1)(B) and 737.