CHAPTER 28 – PARTNERSHIP LEVEL ISSUES

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28-1. No. A partnership for tax purposes requires two or more partners. Because the assets of a disregarded entity are treated as owned by the entity's owner, P has a single owner and so itself a disregarded entity.

28-2. For individual X, this is treated as a direct transfer of Blackacre because LLC-B is a disregarded entity. Further, under Rev. Rul. 99-6, X is treated as acquiring the assets of LLC-W from X and Y. Thus, as to X this transaction should be a good like-kind exchange. Note that under Rev. Rul. 99-5, LLC-B is treated as becoming a partnership immediately after it is acquired by Y and Z.

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28-3. If it is a disguised sale, there is no real contribution by Y. There is only one partner, and, therefore, no partnership. One might think that §707(a)(2)(B) was not meant to affect partnership status, because if there is no partnership, §707 cannot apply. On this theory, Y must include capital gain of $80,000 and reduce her outside basis and capital account to $0.

Further, Reg. §1.707-3(a)(3) provides that application of the disguised sale rules can have the result that "no partnership exists because the property actually was sold." However, because X and Y have agreed to divide equally all profits and losses from the venture, presumably there is a partnership in which Y's capital account begins at $0. In addition, because of the deferral charge under the disguised sales rule, the property will be treated as mostly sold and a little bit contributed, and that little bit of contribution should ensure that a partnership was formed.

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28-4a. Under §706(b), we first determine whether any group of partners with a combined interest of more than 50% share a taxable year. Here, they do not. We then determine if the partnership's principal partners (those with more than 5 percent interest in capital or profits) share a taxable year. Here, they do not. Therefore, the partnership must adopt the calendar year as its taxable year, or another taxable year prescribed by the regulations.

Under the regulations, the partnership must adopt that taxable year of one of its partners which minimizes the aggregate deferral of its partners (taking into account the partners' relative interests in the partnership). Reg. §1.706-1(b)(2)(i)(C). Thus, the two possible years are: the year ending January 31 (i.e., X's taxable year) and the year ending June 30 (i.e., Y's taxable year). The taxable year minimizing aggregate deferral ends January 31, as can be determined by reference to the following chart:

Deferral In Months

Year Ending	X	Y	Weighted Total
January 31	0	5	2.5
June 30	7	0	3.5

Note: Deferral to each partner is equal to the number of months from the end of the partnership's taxable year forward to the end of the partner's taxable year. Reg. §1.706-1(b)(3)(i).

28-4b. The partnership must use the taxable year ending January 31 (that is, Z's taxable year).

Deferral In Months

Year Ending	X	Y	Z	Weighted Total
January 31	0	5	11	4.2
June 30	7	0	6	4.0
Dec. 31	1	6	0	2.8

28-5a. The XZ partnership must use X's taxable year under §706(b)(1)(B)(i) because x owns more than 50% of capital and profits in XZ. XYZ must use the XZ's taxable year because XZ owns a majority of capital and profit in XYZ. Thus, XYZ uses X's taxable year.

28-5b. Using the same analysis as in part (a), XYZ must use Y's taxable year.

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28-6. This structure is a common way for an existing REIT to acquire new assets in a tax-efficient manner. In that context, the structure is called an "UPREIT" for Umbrella Partnership-REIT. The REIT holds some or all of its real estate assets through the umbrella partnership. Owners of real estate assets can contribute their property to the umbrella partnership tax-free (so long as a taxable liability shift is avoided) and the conversion feature of the partnership units ensures that the partnership interests are in effect marketable; while conversion of an UP-interest is a taxable event, conversion can be postponed until the partner wishes to exit the venture. (Securities law generally requires that the conversion right be deferred for at least one year.) Note that this structure is particularly advantageous for real estate owned by multiple individuals (perhaps through a partnership) because it allows each owner of the real estate to determine the best time to cash out. Reg. §1.701-2(d) (example 4) indicates the UPREIT structure does not run afoul of the partnership anti-abuse rule.

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28-7. The $8,500 of expenditures for registration and formation, to transfer title and to open the checking account, appear to be organization expenses under §709(b)(2). If so, then $5,000 of that amount can be expensed and the remaining $3,500 must be recovered

ratably over 15 years. R should be able to deduct these expenditures under §212 or exclude the reimbursements.