

**PARTNERSHIP INTERESTS OWNED BY TRUSTS AND ESTATES:
UNDERSTANDING THE RULES
AND
OPTIMIZING THE OPPORTUNITIES**

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I. INTRODUCTION

The rise of the family partnership or limited liability company (LLC) as an estate planning vehicle has been fueled by taxpayer successes with valuation discounts. LLCs are also becoming increasingly popular as the entity of choice for newly formed businesses. The combination of limited liability for all of the LLC's members and the income tax benefits of partnerships (as compared to corporations) provides advantages not available with other forms of business. Many of these businesses formed as LLCs will be family owned.

Partners of family partnerships will likely have significant influence over the decisions of the entity, as well as access to the accounting records and other information about the entity. This influence and access lends itself to a greater opportunity for tax planning.

As a result of the convergence of the trend toward the use of family partnerships and LLCs with the common use of trusts in estate planning, a trust often ends up owning an interest in a partnership or LLC. Dealing with these situations requires knowledge of a number of topics, including:

- Estate and gift tax laws
- Partnership and limited liability company statutes
- Partnership and LLC income taxation¹
- Fiduciary income taxation
- Revised Uniform Principal and Income Act (RUIA)²

This outline focuses on the accounting and income tax aspects of family partnerships owned by trusts and estates, highlighting the important connection between the rules of RUIA and the rules governing fiduciary income taxation, as well as RUIA's influence on beneficiary rights.

In the remainder of this outline "family partnership" will refer to both family partnerships and family LLCs.

II. RUIA – STATUTORY ACCOUNTING RULES

The Uniform Principal and Income Act of 1931 was revised in 1962 ("RUIA 1962") and again in 1997 ("RUIA") by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Currently, 43 states and the District of Columbia have adopted RUIA and five states continue under RUIA 1962. Vermont is the only state still operating under the original 1931 law.

¹ Limited liability companies with two or more members will be treated as partnerships for federal income tax purposes, unless an election is made to the IRS to be treated as a corporation. Accordingly, by default, LLCs will generally be taxed the same as partnerships for federal income tax purposes. Treas. Reg. § 301.7701-3(b)(1).

²Unif. Principal and Income Act. (1997, amended 2000), 7A U.L.A. 363 (Supp. 2008).

A. RUIA ANSWERS THE “WHO GETS WHAT” QUESTION FOR BENEFICIARIES

Trusts and estates have two classes of owners: one class consisting of the income beneficiaries who have an interest in the entity’s income; the other class consisting of the principal beneficiaries who have an interest in the principal. Stated in accounting terminology, trusts and estates have two different equity interests – income and principal. Each of these equity interests represents the claim of the income or principal beneficiary(s) on the total trust property.

It is sometimes said that RUIA governs the accounting for trusts and estates. This statement is overly broad. RUIA is for the most part confined to one important aspect of trust and estate accounting: determining what is income versus what is principal.

Specifically, RUIA provides rules to classify a trust’s receipts and disbursements as between income or principal. Receipts classified as income benefit the income beneficiary, and disbursements classified as income reduce the income beneficiary’s equity interest. Likewise, receipts and disbursements classified as principal increase or reduce the principal beneficiary’s equity interest.

These rules create an inherent conflict. If a receipt is determined under RUIA to be income, the income beneficiary will benefit to the detriment of the principal beneficiary, and vice versa. Thus beneficiaries should be sensitive to determinations of receipts and disbursements as between income or principal because these determinations (along with the distribution requirements of the trust agreement) control “who gets what” from the trust’s property.

B. INCOME VERSUS PRINCIPAL FOR TRUSTS OWNING PARTNERSHIP INTERESTS

The RUIA rules for determining “who gets what” for beneficiaries of trusts that own partnership interests mark a significant change from RUIA 1962.

Under RUIA, the trust/partner accounts for its ownership of a partnership interest based on the entity theory. That is, the trust/partner views itself as owner of a single asset – the partnership interest – and treats distributions from the partnership the same as a trust would treat dividends received from a corporation. In contrast, under RUIA 1962, the trust/partner accounts for its ownership of a partnership interest based on the aggregate theory; the trust viewing itself as owning a pro-rata share of the partnership’s assets, liabilities, and income and expense items. As described below, these two different theories of ownership result in different income versus principal determinations for the trust/partner.

1. RUIA Rules

Under RUIA, the general rule is that distributions from a partnership (sometimes erroneously referred to as dividends) are considered income. However, partnership *or* corporate distributions that are “greater than 20 percent of the entity’s gross assets” are classified as principal. In addition, liquidating distributions are classified as principal. Overall, partnership

distributions are treated the same as corporate distributions. In fact, the rules for both are contained in the same section of RUIA.³

2. RUIA 1962 Rules

Under RUIA 1962, a trust's income from a partnership is the trust's share of the partnership's net profits, computed in accordance with generally accepted accounting principles ("GAAP").⁴

If the trustee uses any part of the principal in the continuance of a business of which the settler was a sole proprietor or partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income.⁵

In this GAAP-based model, a trust/partner accounts for its interest in a partnership (including its share of the income derived from a partnership) based on the aggregate theory of ownership. These GAAP-based rules for determining income from a partnership for fiduciary accounting purposes parallel the partnership income tax rules. For example, if a partnership's only income is \$100,000 of ordinary income, a 10% partner's Schedule K-1 would reflect \$10,000 of ordinary income, which would be included in the taxable income of the partner, regardless of distributions the partnership made to the partner. Distributions from a partnership to a partner are generally irrelevant for tax purposes except that the distributions reduce the partner's adjusted tax basis in his or her partnership interest.

Similarly, a partner's share of income under GAAP is its share of the partnership's GAAP income. For example, if the partnership's GAAP income were \$100,000, a 10% partner's share of income under GAAP would be \$10,000. Thus, under RUIA 1962, this \$10,000 would also be the trust/partner's income for fiduciary accounting purposes. Under GAAP and RUIA 1962, distributions from the partnership do not affect the partner's share of GAAP income. Instead, such distributions reduce the partner's balance sheet account, *investment in partnership*.

Although the two examples above assumed \$100,000 of both partnership taxable income and GAAP income, often a partnership's taxable income is different from its GAAP income. In addition, a partner's income tax basis in its partnership interest is often different from its *investment in partnership* account under GAAP. Nonetheless, both models are based on the aggregate theory of ownership, and in uncomplicated fact situations both the income tax basis of the partnership interest and the GAAP account *investment in partnership* could be the same (or not materially different) and both the fiduciary income from the partnership and taxable income from the partnership could also be the same (or not materially different).

³ Unif. Principal and Income Act. § 401 (1997, amended 2000), 7A U.L.A. 489 (Supp. 2008).

⁴ Statement of Financial Accounting Standards No. 94 (*Consolidation of All Majority-Owned Subsidiaries*); Interpretation No. 2 of Accounting Principles Board Opinion No. 18 (*Investments in Partnerships and Ventures*); and AICPA Statement of Position 78-9 (*Accounting for Investments in Real Estate Ventures*). See David Keene and Dean V. Butler, *Accounting for Partnership Interests Held by Estates and Trusts: Planning to Avoid Pitfalls*, TAXES – THE TAX MAGAZINE (April 2002), for an analysis of these accounting pronouncements governing the accounting of partners.

⁵ Unif. Principal and Income Act. § 8 (1962), 7A U.L.A. 576 (Supp. 2008).

Finally, it is worth mentioning that unlike RUIA, RUIA 1962's rules for determining the income or principal derived from corporate distributions are distinct from the rules determining the income derived from owning a partnership interest.⁶

3. Cash Flow Issues Under Both RUIA and RUIA 1962

Both the RUIA and the RUIA 1962 rules for determining the income from a partnership interest can cause cash flow issues when the partnership's taxable income ("K-1 income") is greater than the distributions from the partnership to the trust/partner. Examples of the potential issues are reflected in Illustrations 1 and 2 below. For both illustrations, the following facts and assumptions apply:

- The trust is a simple trust; *i.e.*, the trust is required to distribute income to the income beneficiary and no other distributions are required or made during the year.
- All distributions from the partnership are properly classified as income, rather than principal.
- The partnership's taxable income is equal to its GAAP income and the taxable income is all ordinary income.
- A flat 35% income tax rate is assumed and the trust's exemption deduction is ignored.
- The trust's only asset is its interest in the partnership.

Illustration 1		
Trust Governed by RUIA		
<i>Description</i>	<i>Details</i>	<i>Trust's Cash Flow</i>
Share of Partnership Taxable Income	\$100,000	N/A
Distributions From Partnership	\$30,000	\$30,000
Distribution Required to Income Beneficiary	\$30,000	\$(30,000)
Taxable Income After Distribution Deduction	\$70,000	N/A
Trust's Income Tax (@ 35%)	\$24,500	\$(24,500)
Net Cash Flow/(Shortfall)		\$(24,500)

⁶ See Unif. Principal and Income Act. § 6 (1962), 7A U.L.A. 572 (Supp. 2008) for the rules governing corporate distributions.

Illustration 2		
Trust Governed by RUIA 1962		
<i>Description</i>	<i>Details</i>	<i>Trust's Cash Flow</i>
Share of Partnership Taxable Income	\$100,000	N/A
Distributions From Partnership	\$30,000	\$30,000
Distribution Required to Income Beneficiary	\$100,000	\$(100,000)
Taxable Income After Distribution Deduction	\$0	N/A
Trust's Income Tax (@ 35%)	\$0	\$0
Net Cash Flow/(Shortfall)		\$(70,000)

Under RUIA, the cash shortfall leaves the trust with insufficient funds to pay the IRS. Under RUIA 1962, the cash shortfall leaves the trust with insufficient funds to pay the income beneficiary. Under both RUIA and RUIA 1962, a cash shortfall problem will only occur when the partnership's taxable income exceeds the distributions it makes to the trust.

Such problems would be avoided if the partnership agrees to always distribute an amount equal to or greater than its income. But such a policy would likely be viewed as financially irresponsible for the partnership and with which, depending upon the circumstance year-to-year, the partnership may find impossible to consistently adhere to in any case.

Practice Recommendation
Fund the trust with liquid assets in addition to the (generally illiquid) partnership interest. And work with the partnership in agreeing to a reasonable distribution policy.

III. FIDUCIARY INCOME TAXATION

A. BASIC SCHEME OF FIDUCIARY INCOME TAXATION

The basic scheme of income taxation for estates and trusts (*i.e.*, fiduciary income taxation) is as follows.

1. Taxable income is determined in the same way as for individuals.⁷
2. The estate or trust gets a deduction for distributions to beneficiaries (the distribution deduction). This deduction does not necessarily *equal* the amount of actual distributions; it is however determined by a formula *based upon* distributions made or

⁷ I.R.C. § 641(b).

required to be made. There are two such formulas for determining the distribution deduction; one for simple trusts,⁸ another for complex trusts and estates.⁹

3. The beneficiaries include the amount of this distribution deduction in their taxable income. The income to the beneficiary retains the same character (capital versus ordinary, etc.) as the character of the income at the fiduciary level.¹⁰
4. The income left after the distribution deduction will be the taxable income of the estate or trust.¹¹
5. The estate or trust pays tax on this taxable income.

B. DISTRIBUTION DEDUCTION: THE RUIA/INCOME TAX CONNECTION

Once the taxable income at the fiduciary level is initially determined (sometimes called the *tentative taxable income*), the next step is to determine if there will be a distribution deduction, and if so, the amount of this deduction.

If a trust has the following characteristics, I.R.C. § 651 will control the amount of this deduction:

- the trust instrument provides that all income is required to be distributed currently;
- the trust instrument does not provide for charitable gifts; and
- the trust does not (during the current tax year) make a distribution of principal.

Trusts described under I.R.C. § 651 are referred to as “simple trusts”. If the distribution deduction is based on I.R.C. § 651 the deduction will be the lesser of: 1) the trust’s accounting income, or 2) taxable distributable net income (DNI). Accounting income is the income determined by the trust instrument and by state law. For most states, this law is the Uniform Principal and Income Act which could be RUIA, RUIA 1962 or the original 1931 RUIA. DNI is taxable income with certain modifications. In most cases, the significant modifications are the distributions deduction and capital gains and losses.¹²

An estate and any trust not fitting the definition of a simple trust in I.R.C. § 651 will look to I.R.C. § 661 for determining the distribution deduction. Trusts defined under I.R.C. § 661 are referred to as “complex trusts.” If the distribution deduction is based on I.R.C. § 661, it will be the lesser of: 1) the amount of accounting income required to be distributed plus “any other amounts properly paid or credited or required to be distributed for such taxable year” or 2) taxable DNI.

⁸ I.R.C. § 651.

⁹ I.R.C. § 661.

¹⁰ I.R.C. § 652 for simple trusts; I.R.C. § 662 for estate and complex trusts.

¹¹ There may be some modifications to this taxable income after the distribution deduction such as the exemption amount and occasionally a deduction for estate tax paid on income in respect of a decedent.

¹² I.R.C. § 643(a).

Note the accrual concept for the distribution deduction. Under both I.R.C. §§ 651 and 661, a deduction is allowed for income “*required to be distributed currently*” whether distributed or not.

“[T]he amount of income for the taxable year required to be distributed currently by a trust as described in section 651 shall be included in the gross income of the beneficiaries to whom the income is required to be distributed, *whether distributed or not.*”¹³ (emphasis added)

“It should be noted that under section 651 a trust qualifies as a simple trust in a taxable year in which it is required to distribute all its income currently ...*whether or not distributions of current income are in fact made.*”¹⁴ (emphasis added)

I.R.C. §§ 652 and 662 complete the distribution deduction/pass-through loop by requiring the amount of the trust’s or estate’s distribution deduction to be included in the taxable income of the beneficiary(s).

C. ILLUSTRATIONS OF RUPIA’S EFFECT ON THE INCOME BENEFICIARY’S AND TRUST’S CASH FLOW

The distribution deduction formula is based in part on the income determined under RUPIA. Accordingly, one must correctly apply RUPIA not only to determine the correct amount each beneficiary should receive from a trust holding a partnership interest, but also to determine the correct distribution deduction amount.

The illustrations below of trusts holding partnership interests demonstrate the connection between RUPIA and the income tax and cash flow results for both a trust and its beneficiaries. The same assumptions as used for Illustrations 1 and 2 are used for each of the illustrations below.

Illustration 3
No Partnership Distributions
Partnership K-1 Income \$100,000

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$0	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$100,000

¹³ I.R.C. § 652

¹⁴ Treas. Reg. § 1.651(a)-1(b).

C) RUIPIA Income/Trust Distribution to Beneficiary	\$0	N/A	\$0	N/A
Trust Distribution Deduction (Lesser of B or C)	N/A	\$0	N/A	\$0
Before Tax Totals	\$0	\$0	\$0	\$100,000
Tax (35%)	\$0	\$0	\$(35,000)	\$35,000
After Tax Cash Flow	\$0	N/A	\$(35,000)	N/A

Illustration 4
Partnership Distribution \$35,000
Partnership K-1 Income \$100,000

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$35,000	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$100,000
C) RUIPIA Income/Trust Distribution to Beneficiary	\$35,000	N/A	\$(35,000)	N/A
Trust Distribution Deduction (Lesser of B or C)	N/A	\$35,000	N/A	\$(35,000)
Before Tax Totals	\$35,000	\$35,000	\$0	\$65,000
Tax (35%)	\$(12,250)	\$12,250	\$(22,750)	\$22,750
After Tax Cash Flow	\$22,750	N/A	\$(22,750)	N/A

Illustration 5
Partnership Distribution \$50,000
Partnership K-1 Income \$100,000

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$50,000	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$100,000
C) RUIA Income/Trust Distribution to Beneficiary	\$50,000	N/A	\$(50,000)	N/A
Trust Distribution Deduction (Lesser of B or C)	N/A	\$50,000	N/A	\$(50,000)
Before Tax Totals	\$50,000	\$50,000	\$0	\$50,000
Tax (35%)	\$(17,500)	\$17,500	\$(17,500)	\$17,500
After Tax Cash Flow	\$32,500	N/A	\$(17,500)	N/A

Illustration 6
Partnership Distribution \$100,000
Partnership K-1 Income \$100,000

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$100,000	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$100,000
C) RUIA Income/Trust Distribution to Beneficiary	\$100,000	N/A	\$(100,000)	N/A

Trust Distribution Deduction (Lesser of B or C)	N/A	\$100,000	N/A	\$(100,000)
Before Tax Totals	\$100,000	\$100,000	\$0	\$0
Tax (35%)	\$(35,000)	\$35,000	\$0	\$0
After Tax Cash Flow	\$65,000	N/A	\$0	N/A

Illustration 7
Partnership Distribution \$150,000
Partnership K-1 Income \$100,000

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$150,000	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$100,000
C) RUIA Income/Trust Distribution to Beneficiary	\$150,000	N/A	\$(150,000)	N/A
Trust Distribution Deduction (Lesser of B or C)	N/A	\$100,000	N/A	\$(100,000)
Before Tax Totals	\$150,000	\$100,000	\$0	\$0
Tax (35%)	\$(35,000)	\$35,000	\$0	\$0
After Tax Cash Flow	\$115,000	N/A	\$0	N/A

Illustration 8
Partnership Distribution \$50,000
Partnership K-1 Loss (\$100,000)¹⁵

<i>Description</i>	<i>Income Beneficiary</i>		<i>Trust</i>	
	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>	<i>Cash Flow</i>	<i>Taxable Income/Tax</i>
A) Partnership Distribution	N/A	N/A	\$50,000	N/A
B) Partnership K-1/DNI	N/A	N/A	N/A	\$(100,000)
C) RUIPA Income/Trust Distribution to Beneficiary	\$50,000	N/A	\$(50,000)	N/A
Trust Distribution Deduction (Lesser of B or C)	N/A	\$0	N/A	\$(0)
Before Tax Totals	\$50,000	\$0	\$0	\$(100,000)
Tax (35%)	\$0	\$0	\$35,000	\$(35,000)
After Tax Cash Flow	\$50,000	N/A	\$35,000	N/A

D. OBSERVATIONS

Given the assumptions made in the illustrations above, we can make some observations about a simple trust holding a partnership interest.

- The distribution deduction is equal to the lesser of the partnership's K-1 income (which will be the DNI) or distributions from the partnership (which will be the trust accounting income under RUIPA).
- When the partnership distributions are less than the partnership's K-1 income (Illustrations 3, 4 and 5) the trust has a net outflow of cash. The outflow is equal to the income tax on the K-1 income of the partnership reduced by the partnership's distributions. This is because the distributions from the partnership are required to be paid to the income beneficiary but a portion of the partnership's K-1 income remains taxable to the trust after this distribution deduction. The income beneficiary receives a

¹⁵ The partnership loss passed through to the trust is assumed to be a business loss, qualifying as a net operating loss.

trust distribution equal to the partnership's distribution to the trust and pays tax on the entire amount distributed to him or her.

- When the partnership distributions are equal to or greater than the partnership's K-1 income (Illustrations 6 and 7) the net cash flow for the trust is zero. This is because the distributions from the partnership are required to be paid to the income beneficiary and the distribution deduction exactly equals the partnership K-1 income, resulting in no income tax liability for the trust (the taxable income of the trust being reduced to zero by the distribution deduction). When partnership distributions equal partnership K-1 income as in Illustration 6, the income beneficiary receives a trust distribution equal to the partnership's distribution to the trust and pays tax on the entire amount distributed to him or her. However, when the partnership distributions exceed partnership income as in Illustration 7, the beneficiary receives a portion of his or her distributions from the trust free of tax.
- When the partnership's K-1 reflects a taxable loss, the trust's cash flow is increased by the resulting income tax refund as in Illustration 8, which assumes the taxable loss is a deductible net operating loss. The income beneficiary receives an amount equal to the partnership's distributions to the trust, entirely tax-free.
- The illustrations show that if a trust is funded exclusively with a partnership interest, cash flow problems are likely. Even if the trust owns other assets, the partnership's distribution policy will be critical to the ongoing cash management for the trust.

E. PARTNERSHIP K-1 INCLUDES CAPITAL GAIN: A CLOSER LOOK AT THE DEFINITION OF DNI

Generally, DNI excludes capital gains. Accordingly, if the partnership's K-1 reflects a capital gain the initial reaction might be to exclude the gain from DNI. Excluding the capital gain from DNI reduces the distribution deduction and results in the gain being included in the trust's taxable income upon which the trust would pay the associated tax. However, a closer look at the definition of DNI produces a different outcome.

I.R.C. § 643(a) defines DNI to be taxable income with various modifications. One such modification is the exclusion of “[g]ains from the sale or exchange of capital assets ... *to the extent that such gains are allocated to corpus...*” (emphasis added)

Under RUIA, it is only the partnership's distributions that are classified as either income or principal. Thus, a trust/partner's share of capital gains as reflected on the partnership's K-1 is *not* subject to allocation to corpus (or income) by the trust. Accordingly, partnership capital gains passed through to a trust *are* included in DNI.¹⁶ Therefore, if distributions from the partnership which are properly classified as income under RUIA are also greater than or equal to DNI (*including* the partnership's capital gain), then that capital gain will be included in the beneficiary's taxable income rather than the trust's taxable income.¹⁷

IV. RECENT DEVELOPMENT: RUIA'S TAX ALLOCATION RULES

A. CURRENT TAX ALLOCATION RULES UNDER RUIA

Section 505¹⁸ of RUIA provides income tax allocation rules for trusts as follows:

Section 505. Income Taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(A) receipts from the entity are allocated to principal; and

(B) the trust's share of the entity's taxable income exceeds the total receipts described in paragraphs (1) and (2)(A).

¹⁶ However, under RUIA 1962 – where the trust's income from a partnership is based on the trust's pro-rata share of the partnership's income/expense items – such a capital gain amount would be treated as the trust's income of the same character and thus be excluded from DNI (absent some other exception under the trust instrument or I.R.C. § 643(a)). As result, under RUIA 1962, capital gain passed through from a partnership would be subject to tax at the fiduciary level and would not be passed on to a beneficiary.

¹⁷ *Crisp v. U.S.*, 34 Fed. Cl. 112, 116 (1995).

¹⁸ Unif. Principal and Income Act. § 505 (1997, amended 2000), 7A U.L.A. 539 (Supp. 2008).

(d) For purposes of this section, receipts allocated to principal or income must be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

Sections 505(c) and 505(d) apply to the allocation of tax due on partnership income (as well as the income of S corporations for which the trust has not made the Electing Small Business Trust (ESBT) election under I.R.C. § 1361(e)).

B. ILLUSTRATIONS COMPARING TWO INTERPRETATIONS OF SECTION 505

When distributions from the partnership are less than the partnership's K-1 income James Gamble, a co-reporter of RUIA, interpreted RUIA Sections 505(c) and 505(d) to require the trustee to calculate the tax liability on the partnership's taxable income and subtract all or a portion of the tax liability from income before making the trust's distribution to the income beneficiary.¹⁹ An alternate approach to allocating the tax²⁰ was used in the illustrations in this outline.

The charts below illustrate the solution under both approaches and compare the trust's cash flow under each approach using the assumptions made in Illustrations 4 through 7 above. The difference between the two different tax allocation methods is significant.

1. Partnership Distributions Less Than K-1 Income of Partnership

In Illustrations 4 and 5 above, the partnership distributions are less than the K-1 income of the partnership. As shown in the chart below, under Gamble's method, in any case where the partnership distributions are less than the tax that would be due on K-1 income (before taking into account distributions to the income beneficiary), the entire distribution amount is applied against the income beneficiary's potential distribution from the trust, reducing it to zero. That is, the entire partnership distribution amount is left in the trust to be used to pay the income tax on the K-1 income.

¹⁹ E. James Gamble, *Trust Accounting and Income Taxes*, AICPA Advanced Estate Planning Conference (July 2005).

²⁰ Carol Cantrell, *Handling Partnership Interests in Estate and Trust Administration*, Seattle 51st Annual Estate Planning Seminar (November 2006).

Illustration 9
Comparison of Gamble and Alternate Tax Allocation Methods
Partnership Distributions Less Than K-1 Income of Partnership

	<i>Illustration 4</i>		<i>Illustration 5</i>	
	<i>Gamble</i>	<i>Alternate</i>	<i>Gamble</i>	<i>Alternate</i>
Partnership Distribution Received	\$35,000	\$35,000	\$50,000	\$50,000
Distribution to Income Beneficiary	\$0	\$(35,000)	\$(23,076.92)	\$(50,000)
Trust's Income Tax	\$(35,000)	\$(22,750)	\$(26,923.08)	\$(17,500)
Remaining Funds, after Distributions and Taxes	\$0	\$(22,750)	\$0	\$(17,500)

Gamble's solution for Illustration 4 uses the following iterative process.

Step 1: Trustee calculates the trust's tax liability by assuming that the \$35,000 is distributed to the income beneficiary, but sees that the trust will be required to pay \$22,750 in tax. (Note that the alternate method stops here.) The tax must be charged to income, which reduces the trust accounting net income to \$12,250.

Step 2: Trustee recalculates the trust's tax liability by assuming that only \$12,250 is distributed to the income beneficiary, which in turn reduces the trust accounting income.

Step 3: Trustee continues to do iterative computations, concluding that the entire \$35,000 must be used to pay the trust's tax bill.

Rather than making Gamble's iterative computations, the following algebraic formula provides the algorithm for a more elegant (and expeditious) solution using his method:²¹

²¹ Cantrell, *Handling Partnership Interests*"), *supra* at 9-46.

$D = (C - R \times K) / (1 - R)$ where;

D is the distribution to the income beneficiary from the trust

C is the distribution from the partnership to the trust

R is the income tax rate of the trust

K is the K-1 income of the partnership

2. Partnership Distributions Equal to or Greater Than K-1 Income of Partnership

In Illustrations 6 and 7 above, the partnership distributions equal or exceed the partnership K-1 income. As shown in the chart below, the results are identical under either the Gamble or alternate tax allocation methods.

Illustration 10
Comparison of Gamble and Alternate Tax Allocation Methods
Partnership Distributions Equal to or Greater Than
K-1 Income of Partnership

	<i>Illustration 6</i>		<i>Illustration 7</i>	
	<i>Gamble</i>	<i>Alternate</i>	<i>Gamble</i>	<i>Alternate</i>
Partnership Distribution Received	\$100,000	\$100,000	\$150,000	\$150,000
Distribution to Income Beneficiary	\$(100,000)	\$(100,000)	\$(150,000)	\$(150,000)
Trust's Income Tax	\$0	\$0	\$0	\$0
Remaining Funds, after Distributions and Taxes	\$0	\$0	\$0	\$0

C. OBSERVATIONS ABOUT GAMBLE METHOD

Mr. Gamble's interpretation produces different results from the alternate interpretation only when the trust's share of partnership taxable income is greater than partnership distributions. The key difference between the Gamble interpretation and the alternate approach is that the Gamble method reduces the income beneficiary's distribution by all or a portion of the income tax resulting from partnership taxable income whereas the alternate approach does not require

such a reduction of the beneficiary's distribution. Under the alternate interpretation, the full amount of the partnership distribution would "pass through" to the income beneficiary, unreduced by taxes, when the trust is a simple trust.

When using the Gamble method:

- Do not apply the algebraic formula when partnership distributions are less than the tax on partnership income as its use will produce an incorrect answer. Instead, no distribution will be made to the income beneficiary.
- Do not apply the algebraic formula when partnership distributions equal or exceed partnership K-1 income as its use will produce an incorrect answer. Instead, the entire distribution from the partnership should be passed, unreduced, on to the income beneficiary.

Some of the problems associated with the Gamble tax allocation method are:

- Few partnerships would be willing to make or be able to afford distributions equal to or exceeding partnership income on a year-to-year basis. Such a policy would likely result in an ever-shrinking entity. Accordingly, a trust holding a partnership interest would likely receive distributions less than the partnership's K-1 income fairly often. As result, some or all of the distributions from the partnership would be applied (by Gamble's formula) toward taxes, reducing the trust's distribution to the income beneficiary substantially.
 - This method requires the income beneficiary to pay the income tax on the undistributed partnership income during a year. Yet the principal beneficiary will be the final benefactor of the cache of income retained by the partnership. Such a result is inequitable to the income beneficiary.
 - It would seem difficult for a trustee to justify acquiring or retaining an investment in a partnership interest – considering the trustee's duty of impartiality in general, and under the Uniform Prudent Investor Act²² specifically – when the trustee realizes the likely shortcomings to the income beneficiary of the Gamble method.
- Few non-professional trustees are likely to be aware of this rather complicated tax allocation method. Even if they are, they may not be able to implement it correctly.
 - For those trustees who would be able to implement this tax allocation method correctly, the calculations could not be accomplished until after each tax year-end. The calculations require the K-1 from the partnership as well as knowledge of the trust's income tax rate, which would not likely be available until the tax preparer was in the process of completing the trust's Form 1041.

²² Unif. Prudent Investor Act (1994), 7B U.L.A. 1 (Supp. 2008).

- Because the final calculations could not be made until after a tax year was completed, ongoing adjustments to the previous year’s actual distributions to the income beneficiary would be necessary.
- A principal argument offered by supporters of the Gamble method is that any inequities can be corrected by applying RUIPA Section 506, Adjustments Between Principal and Income Because of Taxes²³ (discussed below). Nonetheless, it would seem a better solution to change the method in the instrument so as to avoid the arduous and ongoing calculations the Gamble method requires, rather than correct the final result under Section 506.

D. PROPOSED TECHNICAL AMENDMENT TO SECTION 505 THAT ADOPTS GAMBLE METHOD

Apparently even Mr. Gamble acknowledged that a plain reading of Sections 505(c) and 505(d) of RUIPA do not support his interpretation, which has prompted NCCUSL to propose a “technical” amendment to Section 505 intended to adopt Mr. Gamble’s approach. The technical amendment would revise the sections to read as follows.

(c) A tax required to be paid by a trustee on the trust’s share of an entity’s taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated only to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal;

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a)-(c) of this section, the trustee must adjust income or principal receipts to the extent that its taxes are reduced because it receives a deduction for payments made to a beneficiary.

E. EQUITABLE ADJUSTMENTS

RUIPA Section 506 authorizes the trustees to cure perceived inequities in the sharing of the tax burden. Under this section, a trustee “...*may* make adjustments between principal and income” including those resulting from “[t]he ownership by an estate or trust of an interest in an entity

²³ Unif. Principal and Income Act. § 506 (1997, amended 2000), 7A U.L.A. 540 (Supp. 2008).

whose taxable income, whether or not distributed, is includible in the taxable income of the estate, trust, or a beneficiary.”

However, this statute provides no specific formula; it only allows the trustee the discretion to make an adjustment. Such an adjustment would necessarily be fashioned to take into account the specific situation at hand, including recognizing the intent of the trustor and also factoring in the operations of the partnership as well as the sometimes fluid circumstances of the beneficiaries. The trustees would be left to provide their own solution for such adjustments.

Regardless of whether the trustee applies the Gamble or the alternate interpretation of the tax allocation rules of RUIA Section 505, inequities in the sharing of the income tax burden can occur when partnership distributions are out of synch with partnership K-1 income.

Under both the alternate and the Gamble methods of tax allocation, in cases where no partnership distributions are made but K-1 income exists, the entire tax burden will be borne by the trust itself (*i.e.*, charged to principal). This outcome is equitable in that the principal beneficiary will be the eventual benefactor of the partnership interest which has been augmented by retaining the income.

But how about those cases where minimal distributions occur along with a much more significant amount of K-1 income? Under the alternate approach, the income beneficiary will receive the partnership distribution as a pass-through and pay tax on it. And the trust will pay the tax on the K-1 income reduced by the distribution deduction (equal to the beneficiary’s pass-through of the partnership distribution). So, for both the income as well as the principal beneficiary, there appears to be equity for this tax allocation in that each bears responsibility for taxes in proportion to what each has received in benefits. Under the Gamble method, the income beneficiary will receive a much-reduced distribution or no distribution. In effect this beneficiary will be paying some portion of the tax on the income retained by the partnership and this retained income will eventually inure to the benefit of the principal beneficiary.

However, under either the Gamble or alternate methods, if in a later year the partnership has minimal income but based on its previous earnings is able to make a substantial distribution, the income beneficiary will receive a significant amount with little or no associated tax liability as the tax would have been previously paid. For these situations a special allocation under RUIA Section 506 would be justified.

F. ARGUMENT IN FAVOR OF ALTERNATE METHOD

The authors believe that the alternate method creates a more equitable and practical approach to tax allocation. Further, applying the alternate method would seem to reduce the possibility for disputes and litigation when compared to the Gamble method. Rather than adopting the proposed technical amendment to RUIA Sections 505(c) and 505(d), states might instead consider revising these sections so as to comply with the alternate method. An example of revised language for Sections 505(c) and 505(d) so as to employ the alternate method is set forth below.

**Sample Statutory Language that Adopts
Alternate Tax Allocation Method**

(c) A tax required to be paid by the trustee on the trust's share of an entity's taxable income:

(1) Will not be applied to reduce a distribution of either income or principal from the trust; but

(2) Will be charged to income after income is reduced by distributions of income in the same proportion that receipts from the entity for the trust's tax-year are classified as income, after taking into account any reductions in such tax liability due to the trust's distribution deduction; and

(3) Will be charged to principal after principal is reduced by distributions of principal in the same proportion that receipts from the entity for the trust's tax-year are classified as principal, after taking into account any reductions in such tax liability due to the trust's distribution deduction; and

(4) Any remaining tax not charged to income or principal after the application of parts (1), (2) and (3) above will be charged to principal.

d) [omit]

If a trustor lives in a state that adopts the technical amendment to Section 505, thus adopting the Gamble method of tax allocation, a trustor might consider affirmatively rejecting that method by revising the trust agreement to depart from the state law and replace the state provision with a method (such as the alternate method) of their own choosing.²⁴

V. PARTNERSHIP INCOME TAX ISSUES

The general rules of federal partnership income taxation provide for tax-free formation when cash or property is contributed in exchange for a partnership interest, a sharing of partnership income based on each partner's relative ownership interest and the recognition of capital gain when a partnership interest is sold. These general rules may initially be reassuring; however, partnership income taxation is replete with exceptions which sometime seem to apply more often than the general rules.

The general rules and several of the exceptions most relevant to family partnerships are discussed below. As a fair warning to the reader – there are exceptions to the general rules of partnership income taxation that are not included in the following discussion.

²⁴ Unif. Principal and Income Act. § 103(a)(1) (1997, amended 2000), 7A U.L.A. 428 (Supp. 2008) and comparable provisions under RUIA 1962 and UIA (1931). Instructions in the controlling instrument can override state statutes, allowing trustors to fashion their own accounting rules contrary to the statutes.

A. GENERAL RULES OF PARTNERSHIP INCOME TAXATION

In the basic scheme of partnership income taxation, taxable income/loss is determined at the partnership level.²⁵ Pursuant to I.R.C. § 702, each partner's share of income/loss is allocated to the partner and reported on the partner's income tax return. This income/loss is reported via Schedule K-1 of Form 1065. Keep in mind that a partner may receive no distributions yet have taxable income from the partnership.

Generally, neither a partner nor the partnership will recognize a taxable gain or loss when a partner contributes property to a partnership in exchange for an interest in the partnership.²⁶ The contributed property will have an income tax basis to the partnership equal to the basis it had in the hands of the contributing partner ("carryover basis").²⁷

Generally, each partner's share of the partnership's income is proportional to his interest in the partnership; *e.g.*, a 1/3 partner will be allocated 1/3 of all the partnership's taxable income, deductions, tax credits and other tax items.²⁸

Generally, neither the partner nor the partnership will recognize a taxable gain or loss when the partnership makes a current or liquidating distribution to a partner, except to the extent cash received by a partner exceeds his basis in the partnership.²⁹

A partner's basis in a partnership interest is increased by contributions and income allocated to the partner and decreased by distributions and losses allocated to the partner.³⁰

Generally, a partner will recognize a capital gain from the sale of a partnership interest.³¹

B. EXCEPTIONS TO GENERAL RULES OF PARTNERSHIP INCOME TAXATION

An important exception to the general rule that each partner will be allocated partnership taxable income in proportion to that partner's interest in the partnership occurs when property is

²⁵ I.R.C. § 701.

²⁶ I.R.C. § 721. However, I.R.C. § 721(b) requires gain to be recognized when a partnership falls under the definition of an investment company pursuant to I.R.C. § 351. To trigger such gain, the pooling of stocks and securities must result in "diversification" as described in Treas. Reg. § 1.351-1(c); which is *not* attained unless two or more persons contribute non-identical assets. Accordingly, if only one person was the sole contributor of securities at formation, this rule would not apply to cause gain; nor would it apply if two (or more) persons contributed already diversified portfolios.

²⁷ I.R.C. § 723.

²⁸ I.R.C. § 704.

²⁹ I.R.C. § 731.

³⁰ I.R.C. § 705.

³¹ I.R.C. § 741. However, to the extent the partnership owns property that would result in ordinary gain or loss if sold (as opposed to capital gain or loss), then I.R.C. § 741 and I.R.C. § 751 operate to characterize a portion of the total gain or loss from the sale of the partnership interest as ordinary.

contributed to the partnership with a fair market value different from its income tax basis.³² This difference between fair market value and tax basis is referred to as built-in gain or loss. If the contributed property is sold by the partnership, the built-in gain or loss will be allocated entirely to the contributing partner.³³ Any additional gain or loss (*i.e.*, the result of increases or decreases in value *after* the date of contribution) is allocated to all partners under their usual sharing arrangement.

Illustration 11 **Built-in Gain**

A and B form a 50/50 partnership with A contributing \$50,000 in cash and B contributing land worth (fair market value) \$50,000 but with a basis of \$30,000. The \$20,000 disparity between the basis and fair market value of the land is referred to as built-in gain. Because the *partnership's* basis in the land will be its carryover basis of \$30,000, if the land were immediately sold by the partnership for \$50,000 a gain of \$20,000 would result. However, under I.R.C. § 704(c)(1)(A) this built-in gain would be allocated entirely to partner B as opposed to the standard 50/50 allocation of taxable income to each of A and B.

If the land were sold later for \$60,000 (thus yielding a total gain of \$30,000), the first \$20,000 of gain (the built-in gain) would be allocated to partner B, but the remaining \$10,000 of gain would be allocated \$5,000 to A and \$5,000 to B under the usual sharing arrangement for this 50/50 partnership.

Allocating taxable income in a family partnership follows a special rule under I.R.C. § 704(e)(2), “Family Partnerships – Distributive Share of Donee Includible in Gross Income.” Some practitioners believe that following the rules provided in I.R.C. § 704(b), in general, and the substantial economic effect guidelines for the maintenance of the capital accounts contained in Treas. Reg. § 1.704(b)(2)(iv) are sufficient for the family partnership. However, this is not the case. Specifically, the stricter rules of I.R.C. § 704(e)(2) take precedence, as described below.

The allocation of income in a family partnership agreement will not be recognized “to the extent that the portion of such a distributive share attributable to donated capital is proportionately greater than the distributive share attributable to the donor’s capital.” For example, if A (the donor) and B (the donee) are bona fide members of the equal AB family partnership with each having contributed an initial capital account of \$1,000, B’s interest having been acquired by gift from A, an income allocation of 40% of the partnership income to A (after appropriate compensation for services) and the remaining 60% to B would not be valid. Even if the allocation complies with the substantial economic effect rules of §704(b)(2),

³² I.R.C. § 704(c)(1)(A).

³³ For partnership interests that are gifted by the contributing partner, this statute requires the built-in gain potential (but generally not built-in loss potential) to carryover to the donee; thus the donee may end up being allocated all or a portion of the built-in gain inherent in the gifted interest.

the requirements of §704(e)(2) would assume priority and mandate a reallocation in keeping with the donor's and donee's relative interests in partnership capital.³⁴

In short, I.R.C. § 704(e)(2) requires that taxable income be allocated lock-step with the relative capital ownership of each partner (after allowing for reasonable compensation for services the donor performs for the partnership) – and so-called special allocations would likely violate I.R.C. § 704(e)(2).³⁵ Because this higher standard applies, the notion of requiring a family partnership to maintain its capital accounts as provided by Treas. Reg. § 1.704(b)(2)(iv) (and the lower standards of I.R.C. § 704(b) in general) would likely be a needless expenditure of accounting fees. (Complying with Treas. Reg. § 1.704(b)(2)(iv) is tedious and time consuming in even the simplest fact situations, and in any case such compliance is discretionary – as the regulation is a safe harbor intended to avoid having the IRS argue against a taxpayer's allocations.)

Practice Recommendation

For family partnership agreements, consider omitting the *requirement* to maintain accounting for the capital accounts pursuant to Treas. Reg. § 1.704(b)(2)(iv). The agreement provisions could either omit mention of this altogether or give the partnership's management the option of pursuing this accounting or not, presumably based on consultation with the partnership's tax or accounting advisers.

There are also exceptions to the general rule allowing a tax-free pass for partners receiving either current or liquidating distributions. Many of these exceptions to the general rule were designed to curb perceived abuses; however, taxpayers with innocent intentions can find themselves facing an unexpected tax by inadvertently running afoul of these exceptions to tax-free treatment for distributions. Some of these exceptions can occur for family partnerships, as described below.

Under I.R.C. § 704(c)(1)(B), the *contributing* partner will recognize the built-in gain or loss when the property is distributed to *another partner* if that occurs within 7 years of the contribution. (This does *not* apply if the contributed property is distributed back to the original contributor.)

Under I.R.C. § 737(a), gain is recognized (no loss being allowed) when a partner contributes property with a built-in gain and then receives a distribution of other property *and* the distributed property's fair market value exceeds the partner's basis in his partnership interest. As with I.R.C. § 704(c)(1)(B), the potential gain under I.R.C. § 737(a) is time limited; it exists for 7 years after a partner contributes built-in gain property. The gain under this rule (if any) is the lesser of:

³⁴ Arthur B. Willis, John S. Pennell & Philip F. Postlewaite, *Partnership Taxation* (6th ed. 1997).

³⁵ However, because the language of the statute applies to "distributive share," one could argue that individual items included in the distributive share may be allocated other than proportionately with capital just as long as the total share is allocated proportionately. Such special allocations are not recommended by the authors.

- the excess of the fair market value of the property (other than money) received by the partner over the adjusted basis of the partner's interest in the partnership immediately before the distribution; or,
- the partner's net built-in gain. And net built-in gain is equal to the gain that would be recognized under I.R.C. § 704(c)(1)(B) by the partner if the property he contributed were distributed to other partners. However, if the distributee partner receives some of his own originally contributed property, this will not be factored into the partner's net built-in gain.

Finally, pursuant to I.R.C. § 731(c), a partner may be forced to recognize gain when marketable securities are distributed to the partner. This section applies a formula for figuring the gain as well as the basis of the property received by the partner receiving the distribution. The overall theory is to treat the distribution of marketable securities as a sale at fair market value and the gain determined under the formula is then taxed to the partner receiving the distribution.

In summary, although the general income tax rules governing partners and partnerships appear relatively simple and taxpayer-friendly on the surface, a number of exceptions to these general rules exist. Because these exceptions cover such a broad range of common partnership activities, many family partnerships will confront them. However, advisors who are aware of the significant exceptions will be able to navigate clients through the formation, operation and exiting stages for partners and partnerships, either avoiding these exceptions or minimizing their effect.

C. PLANNING AROUND THE EXCEPTIONS TO GENERAL RULES OF PARTNERSHIP INCOME TAXATION

I.R.C. § 704(c)(1)(A) requires built-in gains or losses to be allocated back to the contributing partner, contrary to the general rule of allocating income based upon the relative interests of the partners. There is no tax planning strategy to circumvent this exception, other than avoiding the problem by not contributing property with built-in gain or loss or not later selling such property. These are probably not practical solutions for most family partnerships.³⁶ Because transactions involving built-in loss versus built-in gain properties will have different consequences to the contributing partner and other partners, let us look at these separately. For each we will assume a family partnership where the older generation members formed the partnership exclusively with their assets and then gifted significant interests in the partnership to the younger generation. To further simplify the discussion, we will also presume built-in gain property continues to appreciate after contribution, and built-in loss property does not change in value or continues to depreciate after contribution.

³⁶ Because of this rule, the accountant must track both the fair market value as well as the income tax basis of contributed property. For partnerships funded with securities, sympathetic investment advisors aware of this necessity will hopefully provide fair market value information to the accountant who must manage the additional record-keeping duties required to track these fair market value/income tax basis differences for contributed property.

Practice Recommendation

Avoid contributing built-in loss property.

- If built-in gain property is sold by the partnership, the gain inherent at the date of contribution will be allocated exclusively to the contributing partner. Any gain above this amount will be allocated to all partners under their usual sharing arrangement. (See Illustration 11). Also, as previously mentioned, the built-in gain allocation potential shifts from the donor to a donee partner when gifts are made of partnership interests by the contributing partner. Therefore, to the extent the contributing partner retains his original partnership interest (*i.e.*, has not gifted it) he will pay any tax associated with the pre-contribution gain. From an estate planning perspective, imposing this tax burden on the older generation is beneficial.
- If built-in loss property is sold by the partnership, the loss inherent at the date of contribution will be allocated exclusively to the contributing partner. However, for property contributed after October 22, 2004, the built-in loss potential does *not* carry over to partners having received their interest by gift.³⁷

The potential gains under I.R.C. § 704(c)(1)(B), § 737(a) and § 731(c) are often avoidable. Because these sections require the recognition of gain when the partnership distributes *property* – by avoiding property distributions partners will not be harmed by these exceptions to the general rule of tax-free distributions. And in those cases where reasonable alternatives to distributions of property are not available, careful consideration of the property to be distributed and which partner will receive the property may allow the tax burden to be ameliorated.³⁸

I.R.C. § 704(c)(1)(B) and § 737(a) are time-limited; 7 years after a partner contributes property these sections no longer apply. Accordingly, 7 years after a partner contributes property the partnership *could* distribute property without these statutes causing gain to be recognized. I.R.C. § 731(c) has no such time limit.

Practice Recommendation

Avoid distributing property. However, should there be a compelling reason to distribute property, consider waiting if the 7-year period for I.R.C. § 704(c)(1)(B) and § 737(a) may soon expire.

³⁷ I.R.C. § 704(c)(1)(C). The basis of the contributed property in the hands of the partnership will be treated as equal to fair market value at the time of contribution for purposes of determining the amounts of items allocated to other (noncontributing) partners. I.R.C. § 704(c)(1)(C)(ii).

³⁸ For example, I.R.C. §§ 704(c)(1)(B) and 737(a) do not operate to require gain recognition when the original contributor of the property receives it in a later distribution.

VI. CONCLUSION

If each member of the client's team of advisors has a better understanding of the accounting and income tax aspects of family partnerships owned by trusts and estates, the advisors can better guide the family through the formation of family partnerships and trusts, as well as the day-to-day operations of the entities, the administration of decedents' estates and the winding down of these entities. The team will be better able not only to avoid problems, but also to seize opportunities.