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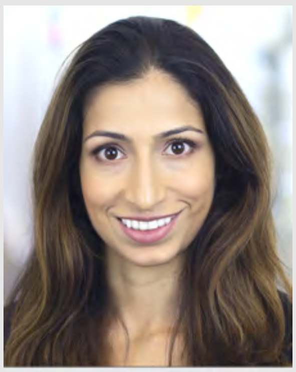

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In this article, Santamaria and Tucker analyze potential subchapter K changes and the likelihood that they will become law before some provisions of the Tax Cuts and Jobs Act expire.

The 2025 tax debate — prompted by a looming tax cliff — is underway.[1] Many tax provisions will expire at the end of 2025, generally resulting from the sunsetting of most individual tax provisions and some business provisions in the Tax Cuts and Jobs Act.[2] The Joint Committee on Taxation projects that extending the TCJA would increase deficits by about $4 trillion over 10 years.[3] Most of that cost (about $3.3 trillion) is associated with the individual tax provisions.[4] If those provisions are allowed to expire, individual income tax collections are predicted to surge by double digits (by 4 percent in 2025, 11 percent in 2026, and 10 percent in 2027)[5] — a result that has been described by the likes of *Forbes* as a "tax doomsday."[6] Lawmakers want to avoid that

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[1] Doug Sword and Cady Stanton, "Senate Democrats Assembling Tax Menu for 2025 Talks," *Tax Notes Federal*, June 24, 2024, p. 2393; Sword, "Biden's Economic Adviser Previews 2025 Tax Fight," *Tax Notes Federal*, May 20, 2024, p. 1441; Erica York et al., "Options for Navigating the 2025 Tax Cuts and Jobs Act Expirations," Tax Foundation (May 2024); Kimberly Clausing and Natasha Sarin, "The Coming Fiscal Cliff: A Blueprint for Tax Reform in 2025," Brookings Institution (Sept. 27, 2023); Howard Gleckman, "Buckle Up. 2025 Promises to Be an Historic Year in Tax and Budget Policy," Tax Policy Center (June 7, 2023); Caitlin Reilly, "House Republicans Shift Message on Extending 2017 Tax Cuts," Roll Call (June 21, 2024).

[2] For a list of expiring federal tax provisions in 2024 through 2034, see Joint Committee on Taxation, "List of Expiring Federal Tax Provisions 2024-2034," JCX-1-24 (Jan. 11, 2024). Thirty-four of the 74 expiring tax provisions listed (*i.e.*, 46 percent) expire in 2025. *Id.*

[3] Congressional Budget Office, "Budgetary Outcomes Under Alternative Assumptions About Spending and Revenues," at 5, Table 2 (May 8, 2024).

[4] *Id.* Note that individual income tax collections are projected to make up 50 percent of federal receipts in 2024. *See* JCT, "Overview of the Federal Tax System as in Effect for 2024," JCX-26-24, at 34, Figure A-3 (May 23, 2024).

[5] Sword, "Individual Taxes Would Surge 10 Percent if TCJA Expires, CBO Says," *Tax Notes Federal*, June 24, 2024, p. 2395.

[6] Lynn Mucenski Keck, "Federal Income Taxes Are Set to Skyrocket," *Forbes*, May 31, 2024.

outcome for individuals and families in their districts,[7] so creating ways to pay for extending some (or all) of the expiring TCJA provisions is front of mind.[8]

Further, the presidential nominees of both parties are championing the use of the code for ambitious (and expensive) social policies.[9] Regardless of the election results, it is widely understood that Congress will be looking for revenue raisers to offset at least some of those costs. To that end, Senate Finance Committee Chair Ron Wyden, D-Ore., has indicated that he will present a menu of revenue-raising options for a possible 2025 overhaul of the code,[10] and House Ways and Means Committee Chair Jason Smith, R-Mo., has announced the creation of 10 tax teams.[11]

While the mix of revenue raisers, if any,[12] that will be enacted to address the 2025 tax cliff is unknown, many of the menu options can and should be studied by taxpayers and advisers now. Numerous areas of the code could be altered — including parts that have recently been modified and those that have remained relatively static for decades.

We focus on one of many areas that should be studied and advise early engagement regarding the taxation of partnerships — an area of the code that has generally seen little change in recent years[13] — in the 2025 tax debate.

This article is divided into three parts, each a public service announcement directed at taxpayers and tax advisers. Section I explains how a menu of revenue raisers to address the 2025 tax cliff may come together, emphasizing that some proposals already in the public domain are likely candidates for revenue offsets, especially when any policy flaws or rough edges have not attracted criticism from taxpayers and tax advisers. Section II explains why taxpayers and tax advisers should study potential changes to subchapter K and other tax provisions affecting partnerships and their partners. Section III lays out prior legislative proposals to change subchapter K (and other provisions affecting the taxation of partnerships and partners).

This menu of proposals is drawn from existing proposals, particularly those with drafted legislative language, as almost all ideas to "reform" subchapter K have been previously considered, and the existence of draft language increases the chances of inclusion in legislation addressing the looming tax cliff.

By way of background, on December 11, 2014, then-Republican Ways and Means Committee Chair Dave Camp officially introduced H.R. 1, the Tax Reform Act of 2014, which formalized his tax reform discussion draft released on February 26, 2014, without modifications (the Camp discussion draft).[14] On September 10, 2021, Wyden released a discussion draft of legislation intended to reform the taxation of passthrough entities (the Wyden discussion draft). He also released a one-page summary and a section-by-section summary of

[7] Kate Dore, "Trump vs. Biden: What a Presidential Election Rematch May Mean for Your Taxes," CNBC, Mar. 27, 2024; Andrew Duehren, "Washington Prepares for the 'Super Bowl of Tax,'" *The New York Times*, July 31, 2024.

[8] Neil Irwin, "Next Year's Battle Royale Over Tax Policy Will Shape America's Fiscal Future," MSN, May 30, 2024.

[9] Both Trump and Harris have put forth additional tax proposals (*e.g.*, versions of a child tax credit and promises to exempt tipped wages from tax) that could cost trillions; however, there may be a willingness to use deficit financing to pay for these proposals. Gregory Korte, "Trump, Harris Duel for Voters With Budget-Busting Tax Proposals," Bloomberg Tax, Aug. 13, 2024; Harris-Walz campaign, "Vice President Harris Lays Out Agenda to Lower Costs for American Families" (Aug. 16, 2024).

[10] Sword and Stanton, *supra* note 1; Chris Cioffi and Samantha Handler, "Senate Democrats Start Developing Priorities for 2025 Tax Cliff," Daily Tax Report, June 20, 2024. In September 2021 Wyden also shared a menu of revenue raisers. *See* document circulated on Capitol Hill listing potential revenue provisions for the Senate's budget reconciliation legislation (2021). One menu option was "pass-through reforms," and the description read, "Reduce optionality and close various partnership tax loopholes."

[11] Stanton, "Ways and Means Launches Tax Teams Ahead of 2025 TCJA Expirations," *Tax Notes Federal*, Apr. 29, 2024, p. 902; Cioffi and Handler, "GOP Panel's Tax Teams Set Busy Summer Agenda in Run-Up to 2025," Daily Tax Report, May 3, 2024. Details of the Ways and Means tax teams and latest activities are available at Ways and Means Committee, "Averting the Biden-Harris 2025 Tax Hike" (last accessed Oct. 14, 2024). Senate Republican tax writers have announced similar efforts. Sword and Stanton, *supra* note 1.

[12] Legislation addressing the 2025 tax cliff could be entirely debt financed.

[13] Subchapter K was established by the Internal Revenue Code of 1954, and the most recent time the subchapter saw significant change was in 1984. Some have posited that "subchapter K has not undergone a comprehensive legislative examination since the Revenue Act of 1954." William B. Brannan, "The Subchapter K Reform Act of 1997," *Tax Notes*, Apr. 7, 1997, p. 121.

[14] H.R. 1, the Tax Reform Act of 2014, 113th Cong., 2d Sess. *See also* Ways and Means Committee, "Camp Formally Introduces the Tax Reform Act of 2014" (Dec. 11, 2014); JCT, "Technical Explanation, Estimated Revenue Effects, Distribution Analysis, and Macroeconomic Analysis of the Tax Reform Act of 2014, a Discussion Draft of the Chairman of the House Committee on Ways and Means to Reform the Internal Revenue Code," JCS-1-14 (Nov. 18, 2014).

the draft proposed legislation. While the Wyden discussion draft has not been rereleased (or introduced as legislation) this Congress, Wyden has made statements that he is continuing to work on it.[15]

President Biden has released multiple green books — which contain ideas for legislation.[16]

The unenacted Build Back Better Act (BBBA) was considered by Congress in 2021.[17]

The menu options discussed in this article are generally drawn from the Camp discussion draft, the Wyden discussion draft, Biden's green books, and the unenacted BBBA.

I. Revenue Raisers on 2025 Tax Cliff Menu

While the complete menu of revenue-raising options that will enter the 2025 tax debate is not knowable now, there is an extensive menu of previously proposed revenue-raising options that taxpayers and tax advisers should study now, both to model their effect and as a necessary precursor to active and productive engagement during the legislative process in 2025.[18] When Congress considers changing the code, the starting point generally is not a blank page. Instead, congressional tax staffers, often working for the Senate Finance Committee, the House Ways and Means Committee, or the JCT, frequently start with preexisting legislative proposals.[19]

A good rule of thumb is that if legislative text has been released by a member of one of the taxwriting committees (on Congress.gov or that member's website), has a revenue score, and the proposal has not been enacted, the change could be on (or added to) the menu and should be evaluated by affected, or potentially affected, taxpayers and their tax advisers.[20] A treasure trove of tax proposals exists in the public domain, many of which could be added to the 2025 tax cliff menu and become law (without change, with minor modifications, or with major alterations) — especially if comments have not been received.

Those without firsthand exposure to the tax legislative process may believe that some preexisting proposals are unlikely to be considered. While some proposals (or categories of proposals) are more or less likely to be selected from the menu — often based on campaign promises — there are some assumptions with intuitive appeal that are, simply put, dangerous to use. At least three dangerous assumptions are worth highlighting:

- *Dangerous Assumption 1: Politicians will draw only from proposals put forth by the same party.* That a proposal was originally proposed by one party does not mean it will not be considered for inclusion in legislation put forward by the other party. As one of many examples, the repeal of section 958(b)(4), concerning some stock ownership attribution rules, was first suggested in an Obama green book.[21] The proposal attracted little scrutiny, presumably because it was proposed when Democrats did not control

[15] *See* Senate Finance Committee, "Wyden Unveils Proposal to Close Loopholes Allowing Wealthy Investors, Mega-Corporations to Use Partnerships to Avoid Paying Tax" (Sept. 10, 2021). *See* Senate Finance Committee, "Wyden Statement on New IRS Effort to Address Tax Abuses by Large Partnerships" (June 17, 2024).

[16] Treasury, "General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals" (Mar. 11, 2024); Treasury, "General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals" (Mar. 9, 2023). *See also* Office of Management and Budget, "Budget of the United States Government, Fiscal Year 2025" (Mar. 11, 2024). Green book proposals do not contain drafted legislative language. However, draft legislative language may exist for some green book proposals because of congressional action before or after the proposal was made.

[17] H.R. 5376, 117th Cong., 1st Sess., as reported in the House September 27, 2021, and as engrossed in the House November 19, 2021 (before being substantially modified by the Senate in August 2022).

[18] For example, then-House Speaker Paul Ryan announced the House GOP blueprint for broad income tax reform in June of 2016, but the Ways and Means Committee did not begin the markup process of the initial version of the TCJA until November 2017 (after multiple tax reform hearings were held throughout 2017). The final version of the TCJA (after being modified by the Senate and then amended at conference) was enacted on December 22, 2017.

[19] For example, some of the provisions proposed in the Tax Reform Act of 2014 were considered and enacted as part of the TCJA. *See also* Erin Schilling, "Hill Tax Brief: Companies Weigh Their Weaknesses to Model 2025 Tax Cliff Impact," Daily Tax Report, Sept. 9, 2024 ("'We don't know who's going to win the election, but what clients have at their disposal is a treasure trove of legislative proposals that have been released in the tax space,' [Jennifer Acuña, a KPMG LLP principal in the federal legislative and regulatory services group and a former Hill tax staffer for Republicans,] said. 'My rule of thumb is that if it's been released and hasn't passed, then it's on the table.'").

[20] Of course, a proposal released by a member who is not on a taxwriting committee could also be enacted, particularly based on seniority or whether the member is up for reelection.

[21] Treasury, "General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals" (Mar. 2014).

Congress. A few years later, it was enacted without a single Democratic vote as part of the TCJA, greatly affecting the operation of some international provisions in the code. As another example, proposed section 163(n), concerning the deductibility of interest, was developed in an Obama green book and then proposed by Republicans as part of the TCJA legislative process, and subsequently by Democrats as part of the BBBA process.[22]

- *Dangerous Assumption 2: Proposals that are "complex" are less likely to become law.* Recent history includes several examples of proposals that on their face sound relatively simple and tailored to a compelling policy concern, but are in reality exceedingly complex. While tax practitioners may be concerned — and rightly so — with complex changes to the code that politicians can only explain in general terms, such complexity is not necessarily a detriment in the tax legislative process and may even be a virtue when it precludes the development of pithy talking points against the ideas. The enactment of the corporate alternative minimum tax can be viewed as a recent example.[23] Further, the fact that a proposal may produce collateral damage is not determinative. The repeal of section 958(b)(4) — one of the Democratic-turned-Republican ideas mentioned above — caused significant "collateral damage."[24] Congressional tax staffers, rightly or wrongly, believe it is incumbent on taxpayers and tax advisers to bring to light unintended consequences of publicly released proposals early in the legislative process, and it is not sufficient merely to point out the general undesirability or complexity of a proposal — that is, the tax community must get specific about any unintended harms that could result from a proposal's adoption and suggest less harmful alternatives.
- *Dangerous Assumption 3: The fact that the current tax rules are long-standing and make sense (to tax advisers and taxpayers alike) means that they won't be changed.* The primary goal of the legislative process regarding revenue raisers is first to raise revenue in a way that is consistent with other economic or social policy goals. While taxpayers use the status quo as the baseline, that is not the baseline for members of Congress seeking to raise a fixed amount of revenue to offset a portion of the cost of other proposals. In such a setting, the baseline is change, as Congress compares different revenue raisers with the scaling back of desired expenditures. The enactment of changes to section 174 (governing the deductibility of research and experimentation expenditures) by the TCJA with a deferred effective date can be viewed as a recent example.[25]

II. Subchapter K Changes on the Menu?

The menu options that taxpayers and tax advisers should be studying now include several changes to subchapter K and other tax provisions affecting partnerships and their partners. Partnerships, partners, and their tax advisers may ask why. Most importantly, such proposals have already been developed into legislative text (see dangerous assumption 1) — notably in the Camp discussion draft, the Wyden discussion draft, and the unenacted BBBA — and are readily available for inclusion in a larger bill or as an amendment

[22] Section 14221 of the TCJA, as passed by the Senate; section 138111 of the BBBA, as passed by the House.

[23] The corporate alternative minimum tax could also be viewed as falling under the first assumption — while it was initially included in the BBBA and then modified and enacted as part of the Inflation Reduction Act, both Democratic bills, the idea was not new. *See*, *e.g.*, the book untaxed reported profits adjustment to a corporation's alternative minimum taxable income that was enacted by the Tax Reform Act of 1986 (heralded as a bipartisan bill and signed into law by a Republican president) and applied to corporations for tax years beginning after 1986 and before 1990. *See* section 701 of P.L. 99-514, the Tax Reform Act of 1986. The Omnibus Reconciliation Act of 1990 repealed the book untaxed reported profits adjustment as part of the repeal of expired or obsolete provisions. *See* section 11801(a)(3) of P.L. 101-508.

[24] Amanda Pedvin Varma and Lauren Azebu, "Repeal of the Limitation on Downward Attribution: Three Years Later," *Tax Notes Federal*, Feb. 8, 2021, p. 891.

[25] While the TCJA was generally effective beginning in 2018, the changes to section 174 did not become effective until 2022. Since the enactment of the TCJA, many proposals have been offered to undo the changes made to section 174, with one as recent as this year (*see*, *e.g.*, H.R. 7024, the Tax Relief for American Families and Workers Act, which proposes reinstating the current deductibility of domestic R&E expenditures through 2025 (among other proposals)). While H.R. 7024 overwhelmingly passed the House on a bipartisan basis, it is stalled in the Senate.

during the legislative process.[26] Many proposals have been introduced more than once, with more than a handful included in both the Camp discussion draft and the Wyden discussion draft — seemingly increasing the chance of entering the 2025 tax cliff menu. That the workings of subchapter K and proposals to change it are generally too complex to be a dinner table conversation (even around Capitol Hill) does not rule out the changes and might make them more resilient to the legislative process (see dangerous assumption 2). Further, the fact that partners, partnerships, and tax advisers "like" the current rules and can articulate reasons for maintaining the status quo does not rule out changes to subchapter K and the taxation of partnerships and partners (see dangerous assumption 3). Thus, the three assumptions indicate that taxpayers and tax advisers would be well advised to study preexisting legislative text and raise any policy and technical concerns they have early in the 2025 tax debate.

There is another reason partnerships should be paying attention: After the recent Supreme Court decisions in *Loper Bright*,[27] *Relentless*,[28] and *Corner Post*,[29] concerns about Treasury's ability to promulgate and enforce rules under the famously succinct subchapter K provisions and a taxpayer's ability to challenge regulations, including long-standing ones, promulgated under subchapter K may be front of mind for policymakers. *Loper Bright*, in overruling *Chevron*,[30] holds that courts cannot defer to an agency interpretation of the law simply because a statute is ambiguous; they instead need to exercise independent judgment in construing statutory language because ambiguities in statutory language are not delegations to executive agencies.[31] Because subchapter K is terse and principles-based (and thus arguably ambiguous), *Loper Bright* may provide an avenue to challenge, perhaps successfully, subchapter K regulations.

Corner Post holds that an Administrative Procedure Act claim "accrues" when the specific plaintiff is injured by final agency action under the six-year statute of limitations set forth in 28 U.S.C. section 2401(a), even when the government action being challenged (for example, the promulgation of a final regulation) occurred much earlier. That appears to allow challenges to decades-old regulations because, as explained by the dissent, "the Court has effectively eliminated any limitations period for APA lawsuits . . . [meaning] that, from this day forward, administrative agencies can be sued in perpetuity over every final decision they make."[32] Thus, the fact that the regulations under subchapter K are generally old does not provide protection from *Loper Bright* challenges.

As such, the recent Supreme Court decisions could result in numerous challenges to subchapter K regulations. Indeed, a challenge has already been made.[33]

Also, a cursory scan of the news illustrates that some politicians and policymakers believe that the taxation of partnerships and partners should be on the 2025 menu and that changes to

[26] On the Senate side, for example, when a bill is being considered for floor action, the Senate majority leader will often "fill the tree" with amendments based on member priorities. *See, e.g.*, Christopher M. Davis, "Filling the Amendment Tree in the Senate," CRS Report RS22854 (Aug. 14, 2015).

[27] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

[28] *Relentless Inc. v. Department of Commerce*, 62 F.4th 621 (1st Cir. 2023).

[29] *Corner Post Inc. v. Board of Governors of the Federal Reserve System*, 144 S. Ct. 2440 (2024).

[30] *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984).

[31] *Loper Bright*, 144 S. Ct. 2244. Most of subchapter K's provisions do not contain explicit delegations. Policymakers could revisit this. *See, e.g.*, Monte A. Jackel, "More Considerations for Partnership Tax Reform," *Tax Notes Federal*, July 8, 2024, p. 273.

[32] *Corner Post*, 144 S. Ct. at 2480 (Jackson, J., dissenting). The *Corner Post* dissent issued a warning about the "tsunami of lawsuits against agencies that the Court's holdings in this case and *Loper Bright* have authorized" but noted that "Congress still has a chance to address this absurdity and forestall the coming chaos" through statutory amendments. *Id.* at 2482. However, some posit that *Corner Post* may have a relatively circumscribed effect on tax regulations. Susan C. Morse, "How Late Is Too Late to Challenge Old Tax Regs?" *Tax Notes Federal*, Aug. 12, 2024, p. 1235.

[33] Kristen A. Parillo, "Tribune: *Loper Bright* Merits Review of Partnership Antiabuse Reg," *Tax Notes Federal*, July 15, 2024, p. 579.

the taxation of partnerships may help with revenue needs.[34] Politicians and government officials speak frequently about subchapter K's "loopholes" inviting "tax avoidance" and its complexities resulting in an "outgunned" IRS. Wyden, a Democrat and the current chair of the Senate Finance Committee, has argued that subchapter K is the "preferred tax avoidance tool for those at the top" and has put forth a proposal to fix "partnership tax loopholes." The last Republican-appointed IRS commissioner told Congress that the agency is "outgunned" by private sector experts when it comes to partnerships, citing partnership tax complexity.[35]

Equally important, politicians and the mainstream media have picked up on the potential revenue to be raised from amending the tax treatment of partnerships and their partners. Policymakers have expressed concerns that partnerships cause a significant portion of the tax gap[36] and argue that any tax gap attributable to the use of partnerships can't be fixed unless the IRS can understand and apply the laws addressing partnership taxation.[37] Further, there is a sense that partnership changes — ones described as loopholes closers (which may or may not be fair) and which generally can only be explained at a high level by politicians — can raise significant revenue. For example, subregulatory and regulatory actions regarding an asset basis loophole — one "understood only by subchapter K specialists" — were widely reported to likely raise $50 billion (or more) over the 10-year budget window.[38]

III. Partnership Revenue Raisers Potentially on Menu

As noted, publicly released revenue raisers that have not been enacted (no matter the vintage) may be on the 2025 tax cliff menu, and taxpayers and tax advisers would be wise to study the legislative text. Below is a menu for partnership and partnership-related revenue-raising proposals that have been publicly released in the past and therefore could be considered as part of the 2025 tax debate. The menu options highlighted are drawn from the Camp discussion draft, the Wyden discussion draft, President Biden's green books, and the unenacted BBBA.

While any released revenue raiser may end up on the menu, all proposals are not equally likely to be seriously considered and not equally likely to be enacted. The menu consists of an "all day" menu and a "late night" menu, each of which is arranged by the predicted size of the change (big, medium, and small). The all-day menu consists of proposals that may be featured (perhaps prominently) in the 2025 tax debate, could be politically viable for inclusion in legislation addressing the impending tax cliff, and could be viewed, at least by some, as leaving the fabric of subchapter K intact. The late-night menu consists of proposals that do meet at least one of the criteria for inclusion on the all-day menu — for

[34] In 2019 passthrough business income made up at least 25 percent of the pretax income of individuals who were in the top 1 percent of the income distribution group. *See* JCT, "Present Law and Background on the Income Taxation of High Income and High Wealth Taxpayers," JCX-47-24, at 7, Table 2 (Sept. 10, 2024). Individuals in the top 0.01 percent of the income distribution group had 35 percent of the passthrough business income. *Id.* For 2024, individuals in the income category of $1 million and over are projected to have $815.9 billion of income from Schedule E, "Supplemental Income and Loss" (from rental real estate, royalties, partnerships, S corporations, estates, trusts, real estate mortgage investment conduits, etc.). *See* JCT, JCX-26-24, *supra* note 4, at 42, Table A-10.

[35] Testimony of then-IRS Commissioner Charles P. Rettig at a hearing before the Senate Finance Committee on the IRS's fiscal 2022 budget (June 8, 2021).

[36] Government Accountability Office, "Priority Open Recommendations: Internal Revenue Service" (June 25, 2024); John Guyton et al., "Tax Evasion at the Top of the Income Distribution: Theory and Evidence," National Bureau of Economic Research Working Paper 28542, at 21 (Mar. 2021) ("When individuals report partnership or S corporation income on their individual tax returns, auditors rarely examine the tax returns of the corresponding passthrough businesses."); Treasury, "The Case for a Robust Attack on the Tax Gap" (Sept. 7, 2021); Congressional Research Service, "Federal Tax Gap: Size, Contributing Factors, and the Debate over Reducing It" (Oct. 30, 2023); Tobias Burns, "IRS Gears Up to Go After 'Complex Partnerships' Despite Lack of Clear Definition," *The Hill*, July 31, 2023; Senate Finance Committee, "Wyden Statement on GAO Report on the Lack of Audits of Large Partnerships" (July 27, 2023). *See also* JCT, "Tax Gap: Overview of Federal Tax Provisions and Analysis of Selected Issues," JCX-30-21 (June 7, 2021).

[37] *See, e.g.*, IR-2024-130 (May 2, 2024); Rettig's Senate testimony, *supra* note 35.

[38] *See, e.g.*, Julie Zauzmer Weil, "Closing Asset Loophole Could Add Billions to Tax Collections, IRS Says," *The Washington Post*, June 17, 2023; Richard Rubin, "IRS Crackdown Takes New Aim at Partnerships' Maneuvers," *The Wall Street Journal*, June 17, 2024; Rafi Schwartz, "IRS Seeks to Close Loophole Used by Ultra-Wealthy," *The Week*, June 18, 2024; "The IRS Is Cracking Down on a Tax Loophole for the Rich. The Effort Could Raise $50 Billion," CBS News (June 17, 2024); Lee A. Sheppard, "Restraining Partnership Basis Shifts," *Tax Notes Federal*, July 1, 2024, p. 9 ("Yup, a new Treasury initiative that can be understood only by subchapter K specialists was pitched as tax fairness with a potential $50 billion revenue gain."); *id.* ("Next year, the 2017 tax cuts expire, and Congress will be busy trying to restore them. Some policymakers are looking for partnership tax law reform, with basis issues at the center. A credible authority challenge to any version of basis-shifting regulations could motivate Congress to act to fix the known problems.").

example, a proposal may be featured prominently in the 2025 tax debate but the authors believe, rightly or wrongly, that it faces much more significant political and/or technical hurdles. The inclusion of a proposal on the all-day menu or the late-night menu is not intended to convey the authors' endorsement of the proposal.

To make the evaluation of menu choices easier, this section begins with a chart providing the source of all-day proposals. Immediately following the chart, details and observations on the proposals on the all-day menu are provided. Next, this section contains a chart providing the source of the late-night proposals. Immediately following the second chart, details and observations on the proposals on the late-night menu are provided.

A. All-Day Menu of Subchapter K Revenue Raisers

1. Source(s) of the subchapter K revenue raisers on the all-day menu.

Table 1 provides the source(s) of the subchapter K revenue raisers included on the all-day menu.

Table 1. All-Day Menu Proposals

Proposals		Previously Proposed by:			
		Camp Discussion Draft	Wyden Discussion Draft	BBBA	Biden Green Book
Big Proposals					
Related-party changes	Changes to section 704(b) allocation rules for some related-party partnerships		♦		
	Changes to sections 732, 734, and 743 (basis adjustment rules) for related parties in partnerships				♦
	Enact special section 708 continuation rule for related parties		♦		
Changes to section 752 debt allocation rules (for example, generally allocating all partnership debt based on partner's share of partnership profits)			♦		
Net investment income tax expansion to business income of high-income taxpayers				♦	♦
Medium Proposals					
Mandatory use of remedials under section 704(c)'s rules regarding built-in gain property			♦		
Mandatory revaluations under section 704			♦		
Repeal the capital expenditure exception in section 707's disguised rules			♦		
Change section 708's continuation rule generally; possible conforming change to section 708 merger and division rules			♦		

Table 1. All-Day Menu Proposals *(Continued)*

Proposals	Previously Proposed by:			
	Camp Discussion Draft	Wyden Discussion Draft	BBBA	Biden Green Book
Address treatment and character of worthless partnership interests			♦	
Change publicly traded partnership rules (restrict, repeal, or expand)	♦	♦	♦	♦
Small Proposals				
Expand or make indefinite the section 704(c)(1)(B) and section 737 mixing bowl rule period	♦	♦		
Clarify treatment of section 707 disguised sales of partnership interests		♦		
Repeal section 736's special rule for retiring and withdrawing partners	♦	♦		
Extend or expand section 461(l)			♦	♦
Modify section 1202's exclusion regime	♦		♦	
Change section 751's hot asset rules	♦	♦		

2. More details on the subchapter K revenue raiser on the all-day menu.

The following provides details regarding the subchapter K revenue raisers included on the all-day menu — specifically, high-level descriptions of current law, a brief description of the proposals, and, in some instances, ways to modify the proposal. The expanded descriptions are merely meant to assist readers in understanding the changes that could occur as part of legislation addressing the impending tax cliff. As noted, the inclusion of a proposal on the all-day menu, alongside any commentary, is not meant to convey the authors' endorsement of the proposal.

a. Related-party changes.

Several proposals focus on partnerships with related partners or transactions involving persons related to a partner. Some related-party issues in the partnership space, notably related-party basis shifting, have been an area of focus to policymakers and have attracted significant press attention. Further, the history of subchapter K — as gleaned from the seminal 1954 American Law Institute report regarding partnership taxation rules (a document often consulted by tax staffers considering any changes to subchapter K) — provides a rationale for focusing on the related-party context, as that document suggests that the fisc did not have significant stakes regarding the contours of partnership tax, presumably because of the lack of related-party partnerships and tax-indifferent partners in the 1950s.[39] Thus, those changes are discussed first and grouped together.

i. Changes to section 704(b) allocation rules for some related-party partnerships.

Subchapter K allows for flexible income arrangements and contains various rules meant to align tax and economics. Section 704 contains such rules, specifically addressing the allocation of partnership items. Section 704(b) generally requires allocations of partnership items of income, gain, loss, deduction, or credit among the partners to have a substantial economic effect or be in accordance with the partners' interest in the partnership. The current rules allow for significant flexibility (for example, different allocations of individual items of income), including in the related-party context.

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[39] J. Paul Jackson et al., "A Proposed Revision of the Federal Income Tax Treatment of Partnerships and Partners — American Law Institute Draft," 9 *Tax L. Rev.* 109 (1954).

Under section 2 of the Wyden discussion draft, when some related parties — specifically, members of a controlled group (using the section 267(f) definition) — own more than 50 percent of a partnership (by capital or profits), partnership allocations would be made in proportion to net contributed capital. Said differently, pro rata allocations would be required in that context. To the extent that the actual economic allocations agreed to by the partners were not pro rata to net contributed capital, the proposal would create taxable transfers (akin to taxable capital shifts) between the partners to account for the disproportionate economics. This change to section 704(b) appears only in the Wyden discussion draft. However, the underlying issue (or perceived issue) has been previously identified in academic literature.[40]

Note that there appear to be several ways to contract or expand this proposal. For example, it could be modified to only require pro rata allocation as between the related partners (not all partners). It could also be modified to use a different (or alternative) relatedness threshold or standard. Also, policymakers may want to consider, and taxpayers may want to suggest, a transition rule to address existing arrangements.

ii. Changes to sections 732, 734, and 743 (basis adjustment rules) for related parties in partnerships.

Under subchapter K, the basis of partnership property (that is, asset basis) may be adjusted because of specific transactions (a distribution of partnership property or the sale of a partnership interest), and the rules adjusting asset basis generally preserve parity between the partner's basis in its partnership interest (that is, outside basis) and the partner's share of asset basis (that is, inside basis). While the rules apply on a mandatory basis in some circumstances, their application often requires a section 754 election, and thus their application is optional in several situations.

Rules (under sections 734(b) and 743(b)) determine the amount of the basis adjustment, and additional rules (in section 755) determine the allocation of the basis adjustment among the partnership's assets. The operation of the rules (and the resulting basis adjustments to partnership property) may increase or decrease cost recovery deductions, gain, or loss. There exist concerns that the rules allow basis shifting in the related-party context and that basis shifting in the related-party context is decreasing money in federal coffers by tens of billions of dollars.

In June, Treasury and the IRS announced forthcoming regulatory changes generally directed at basis shifting in the related-party context.[41] Specifically, the forthcoming proposed regulations are anticipated to include provisions restricting "inappropriate benefits" from basis adjustments under sections 732, 734(b), and 743(b) that result from some "covered" transactions (generally, but not exclusively, involving related-party partnerships or related parties). Reactions to the announcements may be viewed as encouraging congressional action in the related-party basis allocation space, as some have questioned Treasury's authority and suggested that legislative changes are more appropriate to address basis shifting. Further, Congress may be motivated by the revenue that could be raised from addressing basis shifting legislatively (as opposed to through executive agency action). Also, Biden's green books contain a proposal to address basis shifting in the related-party context, but that proposal appears only to address the basis allocation rules under section 734 (and not the basis allocation rules under section 732 or 743).

It is unknown if any legislative proposals copying the coming regulation, expanding Biden's green book proposal, or including a different related-party basis-shifting proposal have been drafted. Assuming legislative language is considered, there are many unknowns. For example, it is unclear what code provisions would be implicated. A possible legislative proposal that

[40] Gregg D. Polsky and Emily Cauble, "The Problem of Abusive Related-Partner Allocations," 16 *Fla. Tax. Rev.* 479 (2014) ("Because the section 704(b) regulations are premised on the assumption that partners deal with each other at arm's length, they are ill-suited to deal with related-partner allocations. As a result, these regulations can easily be abused by related partners.").

[41] Notice 2024-54, 2024-28 IRB 24. *See also*, *e.g.*, FS-2024-21 (June 17, 2024); Treasury, "U.S. Department of the Treasury, IRS Announce New Initiative to Close Loopholes, Ensure Wealthiest Taxpayers Pay What They Owe" (June 17, 2024); IR-2024-9 (Jan. 12, 2024).

aligns with the June guidance could take the form of changes to the basis allocation rules in sections 732, 734, 743, and 755.

It is also conceivable that a legislative proposal could take the form of a special related-party rule in subchapter K or involve a change to section 731 (for example, limiting tax-free treatment under section 731(a) when a non-pro-rata distribution is made to a partner that is related to another party). Policymakers may want to evaluate legislative options, and taxpayers would be wise to pay close attention to any congressional activity (for example, statements by members or the introduction of draft language) addressing basis shifting.

iii. Enact special section 708 continuation rule for related parties.

Section 708 provides rules for when a partnership continues to exist for tax purposes. Under the general rule, a partnership continues to exist until it is "terminated" according to the code. The general continuation rule states that "a partnership shall be considered as terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership." Before the enactment of the TCJA, section 708 contained a "technical termination" rule, and its repeal created confusion regarding the operation of the general continuation rule.[42] The confusion may be viewed to exist in the related-party context and more generally.

Section 10 of the Wyden discussion draft attempts to clarify section 708 by providing that the partnership continues if any person that was a partner in the partnership, and any person related to that person, continues to carry on any part of the partnership's business. The Wyden discussion draft references sections 707 and 267 for a relatedness standard.

There appear to be several ways to change this proposal. For example, a different relatedness standard could be used. Taxpayers also may want to request clarity on when relatedness is measured. Also note that there are possible changes that would explicitly address uncertainties in both the related-party context *and otherwise*, and those options are discussed below.

b. Changes to section 752 debt allocation rules.

Subchapter K, unlike subchapters S and C, allows partnership liabilities to increase the partners' bases in their partnership interests. Each partner's basis in its partnership interest is increased by the partner's share of partnership liabilities. Section 752 provides rules for determining a partner's share of partnership liabilities, and under current law, a partner's share of a partnership liability depends on whether the liability is recourse (within the meaning of section 752, which is an analysis based on a worst-case scenario fiction (under which, for example, all assets are deemed to be worthless)) or nonrecourse (also within the meaning of section 752). There are numerous regulatory rules regarding the allocation of recourse liabilities and a three-tier regulatory regime regarding the allocation of nonrecourse liabilities. Liabilities allocated under tier three of the nonrecourse liability regulations are generally allocated to each partner in accordance with that partner's share of partnership profits.

Section 12 of the Wyden discussion draft would allocate all partnership liabilities based on a partner's percentage of profits, except for bona fide debt advanced by partners or related persons. Under the Wyden discussion draft, guarantees and other credit support arrangements would be disregarded. The proposal would apply to liabilities that exist at the time of enactment. However, to the extent that a taxpayer would recognize gain based on the proposal's change to the partnership liability allocation rules, the taxpayer would be able to elect to pay the resulting tax liability in eight equal annual installment payments. This proposal appears only in the Wyden discussion draft. However, this idea has been previously advanced (for example, in articles).[43]

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[42] *See* Jennifer Ray and Dina Wiesen, "Partnership Continuations After the Tax Cuts and Jobs Act," *Tax Notes Federal*, Aug. 19, 2019, p. 1215; New York State Bar Association Tax Section, "Report on Partnership Terminations Following the Tax Cuts and Jobs Act," Report No. 1432 (Jan. 17, 2020).

[43] Eric B. Sloan and Jennifer H. Alexander, "Economic Risk of Loss: The Devil We Think We Know," 84 *Taxes* 217 (2006); Steven C. Todrys, "Recourse Debt Is Usually Nonrecourse: A Comment," 84 *Taxes* 251 (2006).

There are numerous ways the proposal in the Wyden discussion draft could be modified. A significantly reduced version of it would be to adopt it *only* for purposes of section 707's disguised sale rules.[44] Taxpayers may also want to suggest exceptions that policymakers may be sympathetic to. For example, a minor modification would be to retain the reg. section 1.752-3 rules, which would allow property with a nonrecourse liability exceeding the property's basis to be transferred to a partnership without triggering gain. Taxpayers may also want to offer comments on the effective date in the Wyden discussion draft and suggest a grandfathering rule (in addition to or instead of the installment payment mechanism in the draft).

c. Net investment income tax expansion to business income of high-income taxpayers.

Income above specific thresholds is generally subject to a combined 3.8 percent tax under the FICA tax or the Self-Employment Contributions Act (SECA) tax, and the net investment income tax. Some income earned by limited partners is not subject to FICA tax, SECA tax, or NII tax.

Under section 138201 of the BBBA, as passed by the House in November 2021, the NII tax would be expanded to apply to high-income individuals regardless of whether they materially participate in a trade or business generating income when that income is not otherwise subject to SECA or FICA tax. The high-income threshold would be $500,000 for married taxpayers filing jointly, $250,000 for married individuals filing separately, and $400,000 for other taxpayers. This (or a very similar) proposal appears in Biden's green books.[45]

d. Mandatory use of remedials under section 704(c)'s rules regarding built-in gain property.

Regulations under section 704(c) provide three allocation methods to take into account the difference between the fair market value and the adjusted basis of property at the time it is contributed — the traditional method, the traditional method with curative allocations, and the remedial method.[46] Section 704(c) generally works to prevent the shifting of built-in gain and built-in loss from a contributing partner to the noncontributing partners. However, if there is a so-called ceiling rule problem, built-in gains may be shifted unless the remedial method is used. The remedial method involves the creation of notional items and the inclusion of ordinary income by a partner that contributes built-in gain property in an amount equal to these notional items.

Section 3 of the Wyden discussion draft would make the remedial method the only permissible method for section 704(c) allocations. The traditional method and the curative method would be eliminated. It is arguably unclear whether the proposal covers only so-called forward section 704(c) layers (that result from the contribution of built-in gain property by a partner) or also covers so-called reverse section 704(c) layers (which, for example, could occur if A and B each contributed cash to a partnership, the partnership bought assets with the cash, and then C contributed cash to the partnership).

There are several possible modifications to this proposal. For example, the proposal could address whether it covers reverse section 704(c) layers. It could explicitly provide that a partner could choose sale treatment for contributed property (thereby generally avoiding the ordinary income inclusion that results from the remedial method's notional items).[47] The proposal could be modified to include rules about the character of the remedial income pickup (and direct Treasury to write rules about the character of the remedial income pickup). The proposal could be modified to require the use of the remedial method only in the case of a ceiling rule problem.

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[44] *See* reg. sections 1.707-5 and 1.752-3. Changes to section 752 debt allocation rules, if only regarding section 707's disguised sale rules, appear appropriate for the all-day menu. A broader change may be viewed as more appropriate for the late-night menu.

[45] It is worth noting that the NII tax was discussed in the recent Senate Finance Committee public hearing held on September 12 titled, "The 2025 Tax Policy Debate and Tax Avoidance Strategies." *See* JCT, JCX-47-24, *supra* note 34.

[46] Reg. section 1.704-3(b)-(d). Also, the regulations allow the use of other "reasonable" methods. Reg. section 1.704-3(a).

[47] Note that this treatment appears to be allowed under the current proposal if, in form, the partner makes an actual sale to the partnership. If such a rule was provided, policymakers might want to address the treatment of built-in loss assets.

e. Mandatory revaluations under section 704.

The current and proposed regulations under section 704(b) allow revaluation of partnership property upon the occurrence of specific events.[48] Upon a revaluation, the section 704(b) book value of property is "booked up" or "booked down" to its current FMV. The section 704(b) book value of property affects the manner in which partnership items are allocated, and because a revaluation is optional, the current rules have been criticized as allowing partnerships to shift gains and losses among partners when an enumerated event (for example, a change in a partner's interest in the partnership) occurs and the partnership chooses not to revalue the partnership property (for example, because of the administrative burden).

Under section 4 of the Wyden discussion draft, revaluation of partnership property would become mandatory upon the occurrence of any event described in current or proposed regulations or identified by the Treasury secretary. Revaluations at an upper-tier partnership would force a revaluation of assets in a lower-tier partnership if the upper-tier partnership owns more than 50 percent (by capital or profits) of the lower-tier partnership.

Given the potential administrative challenges, taxpayers may consider engaging on whether and how such administrative burdens could be addressed, especially in tiered settings.[49]

f. Repeal the capital expenditure exception in section 707's disguised rules.

Partners can generally contribute property to partnerships without any gain recognition under section 721. However, the code also contains several exceptions, including section 707's "disguised sale" rules. The disguised sale rules, at a high level, are designed to prevent the use of partnerships to exchange property for other property or cash without recognizing any gain. The regulations under section 707 provide exceptions to the disguised sale rules, including an exception allowing partnerships to reimburse partners for some "preformation capital expenditures" incurred during the two years preceding the transfer of property to the partnership.[50] There may be a limit on the amount of the reimbursement that qualifies for the exception.

Section 9 of the Wyden discussion draft would eliminate the regulatory exception for reimbursements of preformation capital expenditures. The payment of reimbursement proceeds would instead generally be treated as disguised sale proceeds.

There exist numerous ways in which this proposal could be modified if it moves forward. The exception for preformation capital expenditures could be narrowed to situations involving expenses made two years before the formation of a *new* partnership.[51] That is arguably in line with the original intent of the exception. The preamble to the proposed regulations states that the exception was intended to apply to transfers made to "reimburse partners for certain capital expenditures and costs incurred in *anticipation of the formation of a partnership*" (emphasis added).[52]

g. Change section 708's continuation rule generally; possible conforming change to section 708 merger and division rules.

As noted, section 708 provides rules governing the continuation or termination of a partnership, and, following the repeal of section 708's so-called technical termination rule as part of the TCJA, there exists uncertainty regarding the operation of section 708's general continuation rule. Both prior and current law provides special rules (to determine whether a partnership continues or terminates) that apply in the case of either (1) a merger or consolidation of two or more

[48] Reg. section 1.704-1(b)(2)(iv)(f). Proposed regulations would also allow revaluations when the partners change how they share any class of items. Reg. section 1.704-1(b)(2)(iv)(f).

[49] Taxpayers may want to offer comments on the administrative effect of many of the subchapter K revenue raisers and whether and how mitigation may be possible.

[50] *See* reg. section 1.707-4(d).

[51] John Rooney and Grace Henley, "Suggestions for Partnership Regulations," NYU Tax Law Center (Dec. 13, 2023).

[52] The preamble to the proposed regulations notes that the exception was intended to apply to transfers made to "reimburse partners for certain capital expenditures and costs incurred in *anticipation of the formation* of a partnership" (emphasis added). "Treatment of Transactions Between Partners and Partnerships," 56 F.R. 19055, 19058 (Apr. 25, 1991).

partnerships, or (2) a division of a partnership into two or more partnerships.[53] The merger and division rules, as well as the prior-law technical termination rule, use a 50 percent overlap standard.[54]

As noted, section 10 of the Wyden discussion draft attempts to clarify section 708 in the related-party context by providing that the partnership continues if any person that was a partner in the partnership, and any person related to that person, continues to carry on any part of the partnership's business. The Wyden discussion draft references sections 707 and 267 for a relatedness standard.

While section 10 of the Wyden discussion draft arguably addresses only the uncertainty noted in the related-party context, uncertainty exists in other contexts. There are several alternatives (as compared with section 10 of the Wyden discussion draft) that could clarify the operation of section 708's continuation rule after the repeal of section 708(b)(1)(B)'s technical termination rule generally. A change could be made to indicate that there is no partner overlap requirement (for example, by deleting the words "by any of its partners" from section 708(a)). Alternatively, a partner overlap requirement could be added (but it is arguably unclear what that overlap requirement should be).

Also, policymakers and taxpayers may want to evaluate section 708(b)(2)'s special rules for mergers and divisions in light of the TCJA's repeal of the technical termination rule and any proposal to clarify the operation of section 708(a)'s continuation rule. For example, if the general continuation rule was modified to make clear that there were no overlap requirements, each of section 708(b)(2)(A) and (B) could be amended by removing or modifying the 50 percent threshold (for example, replacing "of more than 50 percent in the capital and profits of" with "in" in the case of a no partner overlap rule). This would appear to provide Treasury with the authority to more closely align section 708(a)'s general rule and section 708(b)'s special rules for mergers and divisions by, for example, modifying the division rules such that there always existed at least one continuing partnership. Each of these alternatives (along with the proposal itself) would need to be carefully evaluated by policymakers and taxpayers.

h. Address treatment and character of worthless partnership interests.

The treatment of losses from a worthless or abandoned partnership interest is the subject of some consternation, particularly involving the character of the loss. IRS guidance provides that a loss incurred from a worthless partnership interest is an ordinary loss only if both of the following are true: (1) the transaction is not a sale or exchange, and (2) the partner has not received an actual or deemed distribution from the partnership.[55] However, case law exists to support an ordinary deduction for worthless partnerships, regardless of whether the partner has a share of liabilities under section 752.[56] In subregulatory guidance, the IRS concluded that the loss character for a worthless partnership interest depends on whether the partner has a share of liabilities — the loss is capital if the partner has a share of liabilities, and it is ordinary if the partner does not have a share of liabilities.[57] However, some have questioned whether that result is proper, and others have noted the confusion created by current law.

A BBBA provision provides that if any partnership interest becomes worthless during the tax year, the loss will be considered as a loss from the sale or exchange of a capital asset recognized at the time of the identifiable event establishing worthlessness, regardless of liabilities.[58] Thus, under the BBBA, the loss from a worthless partnership interest would be capital except to the extent that section 751 applies.

[53] IRC section 708(b)(2).

[54] Note, however, that merger and division rules (both now and before the TCJA) use a *more than* 50 percent standard while the prior-law technical termination rule used a 50 percent *or more* standard.

[55] IRS Publication 541, "Partnerships" (Mar. 2022).

[56] *Tejon Ranch Co. v. Commissioner*, T.C. Memo. 1985-207; *Zeeman v. United States*, 275 F. Supp. 235 (S.D.N.Y. 1967), *aff'd in part*, *rev'd in part*, 395 F.2d 861 (2d Cir. 1968); *In re Kreidle*, 146 B.R. 464 (Bankr. D. Col. 1991), *aff'd*, 143 B.R. 941 (D.C. Col. 1992).

[57] Rev. Rul. 93-80, 1993-2 C.B. 239.

[58] H.R. 5376, section 138142(a)(4), 117th Cong., 1st Sess., as passed by the House Nov. 19, 2021.

i. Change publicly traded partnership rules (restrict, repeal, or expand).

Section 7704 permits some publicly traded partnerships to avoid treatment as a C corporation by meeting specific qualifications — that is, 90 percent or more of the PTP's gross income must consist of qualifying income. Qualifying income generally includes income from the production of natural resources and passive-type income (for example, interest and dividends). PTPs do not pay corporate taxes despite being publicly traded since they are taxed as partnerships.

Various proposals have been put forth to restrict, repeal, or expand the PTP rules.[59] The Wyden discussion draft proposes a complete repeal of the exception for all PTPs. The Camp discussion draft proposes restricting the exception to partnerships 90 percent or more of whose income is from mining and natural resource activities. The BBBA includes a section expanding the PTP rules to include partnerships with income derived from green and renewable energy activities. Biden's green books propose repealing the exception for PTPs with qualifying income and gains from activities relating to fossil fuels.

Taxpayers that would be affected by a change to the PTP rules may want to model out how the different proposals would affect them. If a taxpayer would lose its PTP status under a proposal, they may want to consider the collateral consequences (for example, the effect of the corporate AMT).

j. Expand or make indefinite the section 704(c)(1)(B) and section 737 mixing bowl rule period.

Section 704(c)(1)(B) provides, in part, that a partner must recognize gain on contributed built-in gain property if the property is distributed to any partner within seven years. Section 737 provides that any property contributed by a partner and then distributed within seven years to another partner will result in gain to the original contributing partner. The rules act as backstops to the section 704(c) rules regarding built-in gain property and the section 707 disguised sale rules. As noted, the rules are limited to a seven-year window.

Under section 5 of the Wyden discussion draft and section 3617 of the Camp discussion draft, the seven-year period under section 704(c)(1)(B) and section 737's anti-mixing-bowl rules would be eliminated so that distributions at any time could trigger application of those rules.

There appear to be several potential variations of the proposal — including simply changing the seven-year period.

k. Clarify treatment of section 707 disguised sales of partnership interests.

Section 707(a)(2)(B) recharacterizes (as a disguised sale of partnership interests) some related contributions to and distributions from a partnership. The rule applies if (1) there is a transfer of money or property by the partner to the partnership, (2) there is a related transfer of money or other property by the partnership to that partner (or another partner), and (3) the transfers, when viewed together, are characterized as a sale or exchange of property. Further, the flush language of section 707(a)(2) refers to "under regulations prescribed by the Secretary." While the IRS "is clearly of the view that the provision is applicable even in the absence of final Regulations,"[60] and many partnership tax practitioners agree, some tax advisers and taxpayers may take the position that section 707(a)(2)(B)'s disguised sale of partnership interest rules do not apply because the Treasury secretary has not yet issued final regulations.[61]

Section 8 of the Wyden discussion draft would clarify that there can be disguised sales of partnership interests (and disguised payments for services) without implementing regulations. Said differently, the draft would make a change to the regulatory reference to make clear that regulations are not necessary to implement the rules relating to disguised sales of partnership interests (and disguised payments for services).

[59] Section 16 of the Wyden discussion draft; section 3620 of the Camp discussion draft; H.R. 5376, section 136107, 117th Cong., 1st Sess., as passed by the House Nov. 19, 2021.

[60] William S. McKee, William F. Nelson, and Robert L. Whitmire, *Federal Taxation of Partnerships and Partners*, at 14.02, n.166 (2021).

[61] Samuel Grilli, "Can the IRS Currently Contend That There Has Been a Disguised Sale of a Partnership Interest?" 123 *J. Tax'n* 289 (Dec. 2015).

Taxpayers that take (or plan to take) the position contrary to the IRS view should evaluate the effect of this proposal. Note, however, that taxpayers that take the position that aligns with the IRS view would appear to not be affected by this proposal.

l. Repeal section 736's special rule for retiring and withdrawing partners.

Section 736 classifies payments made to a retiring or withdrawing partner or a deceased partner's estate or successor in interest. To the extent that those payments are made in exchange for the partner's interest in partnership property, under section 736(b), the payments are treated as distributions subject to the general rules of sections 731, 732, and 751(b). All other payments are treated under section 736(a) either as part of the partner's distributive share of partnership income or as a section 707(c) guaranteed payment, depending on whether the payment is determined with or without regard to the partnership's income. The provision is a "traffic cop" provision (that is, it refers a taxpayer to the relevant operative rule based on whether the payment is demarcated as in exchange for the partner's interest in partnership property). Thus, it allows partnerships some degree of optionality regarding the tax treatment of some payments to retiring or withdrawing partners.

Section 7 of the Wyden discussion draft and section 3611(b) of the Camp discussion draft both would repeal section 736. Commentators have likewise long called for the repeal of section 736.[62]

Policymakers and taxpayers may want to query how payments to retiring and withdrawing partners, particularly general partners, would be treated if this proposal were enacted — specifically, if and when the distribution rules would apply.[63]

m. Extend or expand section 461(l).

Section 461(l), enacted as part of the TCJA, limits the ability of noncorporate taxpayers to deduct (in the year recognized) business losses exceeding a threshold amount (for example, $500,000 for married individuals filing jointly, adjusted for inflation ($610,000 for 2024)) against other income, like wages and investment income. Under current law, a disallowed loss in one year becomes a net operating loss under section 172 in the following year. The provision is set to sunset — the limitation does not apply to tax years beginning on or after January 1, 2029.

Under both section 138202 of the BBBA, as passed by the House in November 2021, and Biden's green books, the section 461(l) limitation would become permanent and in lieu of becoming an NOL carryforward, the excess loss would be taken into account as part of the aggregate deductions under section 461(l) for the next tax year (so that the carryover amount would be subject to the excess business loss limitation in that year). It is worth noting that California, whose tax law does not conform to section 461(l), previously enacted a provision under which carryover amounts are subject to the excess business loss limitation in subsequent years.

It is also worth noting that section 461(l) was enacted as part of reconciliation legislation in a Republican-controlled Congress and extended both on a bipartisan basis and as part of reconciliation legislation in a Democratic-controlled Congress. Taxpayers may want to model out the relative effects of the BBBA and Biden's green book proposals, as opposed to extending current-law section 461(l).

n. Modify section 1202's exclusion regime.

Section 1202 provides an exclusion regime that allows taxpayers to eliminate up to 100 percent of gain from the sale or exchange of qualified small business stock if specific requirements are met.

Under section 138149 of the BBBA, as passed by the House in November 2021, the section 1202 exclusion regime for small business stock would be made unavailable to some taxpayers. Specifically, the 100 percent and 75 percent exclusion regimes would not apply for (1) taxpayers with adjusted gross income of or

[62] *See, e.g.*, John A. Lynch Jr., "Taxation of the Disposition of Partnership Interests: Time to Repeal I.R.C. Section 736," 65 *Neb. L. Rev.* 450 (1986); Philip F. Postlewaite and Adam H. Rosenzweig, "Anachronisms in Subchapter K of the Internal Revenue Code: Is It Time to Part With Section 736?" 100 *N.W. U. L. Rev.* 379 (2006).

[63] Also, policymakers and taxpayers should be aware that, in the absence of section 736(b)(2), payments made to a retiring or withdrawing general partner of a service partnership could cause continuing partners to recognize a greater amount of ordinary income in the year of the payment(s), which generally would only be offset by the amortization of goodwill.

exceeding $400,000, and (2) taxpayers that are a trust or estate. The proposal contains a binding contract exception for sales and exchanges of stock before a specific date. Section 1045 of the Camp discussion draft would completely repeal the exclusion for gain on the sale of small business stock.

Taxpayers owning small business stock may want to model out the relative effect of the BBBA proposal, as opposed to the Camp discussion draft's proposal. Taxpayers may want to offer comments on the effective date or the binding contract exception and suggest a grandfathering rule (for example, for qualified small business stock acquired before a specific date).

o. Change section 751's hot asset rules.

Section 751 provides rules that may require a partner to recognize ordinary income on the sale of a partnership interest or upon some partnership distributions. These rules exist to preserve the partner's share of unrealized ordinary income and apply only if the partnership holds unrealized receivables or inventory items (that is, "hot assets"). Under current law, in the case of a partnership distribution, inventory must be substantially appreciated to be considered a hot asset.

The Wyden discussion draft would remove the requirement that inventory be substantially appreciated in the case of partnership distributions. Thus, the distribution of inventory that is not substantially appreciated would trigger the application of the hot asset rules.[64] Similarly, under the Camp discussion draft, the hot asset rules would be modified to remove the requirement that inventory be substantially appreciated in the case of partnership distributions. The Camp discussion draft would also provide that unrealized receivables include any property other than inventory, but only to the extent of the amount that would be treated as ordinary income if the property were sold for FMV.[65]

Policymakers and taxpayers may want to consider the administrative and other effects of these proposals (for example, whether the change would make the application of section 751(b) harder or easier).[66] Policymakers and taxpayers could also consider ways to make section 751, and specifically section 751(b), easier from a compliance and auditability standpoint more generally.

B. Late-Night Menu of Subchapter K Revenue Raisers

1. Source(s) of the subchapter K revenue raisers on the late-night menu.

Table 2 shows where draft legislative language for the subchapter K revenue raisers included on the late-night menu can be found.

2. More details on the subchapter K revenue raisers on the late-night menu.

The information below regarding the subchapter K revenue raisers included on the late-night menu includes high-level descriptions of current law, a brief description of the proposals, and, in some instances, reasons the proposal may face significant political and technical hurdles. The inclusion of a proposal on the late-night menu, alongside any commentary, is not meant to convey the authors' endorsement of the proposal and is merely meant to be informative.

a. Repeal subchapter K, create a single regime that encompasses subchapters K and S, or create a single regime that encompasses subchapters C, K, and S.

Politicians have long questioned the need for multiple passthrough systems (that is, the very existence of subchapter K) and have suggested a single regime for all passthrough entities. For example, Camp considered consolidating today's existing passthrough regimes.[67] Many academics have made the same rallying cry.[68] Further, the idea to treat a partnership like a corporation is an

[64] Wyden discussion draft, section 11.

[65] Camp discussion draft, section 3616(c).

[66] Subchapter K technicians may want to also consider how the removal of the substantially appreciated requirement would interplay with the current versus the proposed regulations under section 751(b).

[67] House Ways and Means Committee, "Discussion Draft on Tax Reform Act of 2013" (2013); House Ways and Means Committee, "Technical Explanation of the Ways and Means Committee Discussion Draft Provisions to Reform the Taxation of Small Businesses and Passthrough Entities" (2013); and John D. McKinnon, "Camp Steps Up Small-Business Tax Push," *The Wall Street Journal*, Mar. 12, 2013.

[68] *See, e.g.*, Lawrence Lokken, "Taxation of Private Business Firms: Imagining a Future Without Subchapter K," 4 *Fla. Tax Rev.* 249 (1999).

Table 2. Late-Night Menu Proposals

Proposals	Previously Proposed by:			
	Camp Discussion Draft	Wyden Discussion Draft	BBBA	Biden Green Book
Big Proposals				
Repeal subchapter K/create a single regime that encompasses subchapters K and S/create a single regime that encompasses subchapters C, K, and S	♦			
Different rules for "big" and "small" partnerships	Suggested but not drafted			
Carried interest change (one of many "flavors")	♦	♦	♦	♦
Change section 52's aggregation rules		♦	♦	
Eliminate section 704(b)'s substantial economic effect standard		♦		
Medium Proposals				
Changes to section 707(c) guaranteed payment rules	♦	♦		
Change section 734(b) and section 743(b) basis rules	♦	♦		Different section 734 change
Small Proposals				
Change section 701 to clarify that a partnership can pay tax		♦		
Change section 705 outside basis rules		♦		

outcome that the Supreme Court appears to allow in the recent case, *Moore*.[69]

History provides cautionary lessons: In the early 2000s the JCT considered a unified passthrough regime but rejected the option based on numerous significant policy issues.[70] During the process the JCT identified "administrative, revenue and equity concerns" and did not recommend such an approach, stating, "In light of the significant policy issues that could not be avoided in implementing a unified pass-through tax regime for domestic business entities, the Joint Committee staff is not offering a recommendation of this type."[71]

b. Different rules for 'big' and 'small' partnerships.

The idea of different rules for big versus small partnerships has been repeatedly proposed for decades and has been proposed as part of the 2025 tax debate by the American Enterprise Institute.[72] The AEI proposed (as part of its option 2) eliminating subchapter K except for businesses

[69] *Moore v. United States*, 144 S. Ct. 1680 (2024) ("When the Sixteenth Amendment was ratified, the courts, Congress, and state legislatures treated partnerships as separate entities in many contexts. . . . In short, the Moores are incorrect to claim that partnerships were not historically seen as separate taxable entities. . . . As with other business entities, Congress may choose whether to tax (i) the entity or (ii) its shareholders or partners on the entity's undistributed income.").

[70] JCT, "Volume II: Recommendations of the Staff of the Joint Committee on Taxation to Simplify the Federal Tax System," JCS-3-01, at 274 (Mar. 30, 2001).

[71] *Id.* at 273-274.

[72] Kyle Pomerleau and Donald Schneider, "Making the Tax Cuts and Jobs Act Permanent," American Enterprise Institute, at 17 (Mar. 2024).

with gross receipts under $25 million.[73] The AEI stated:

> Pass-through businesses would face two layers of tax on distributed profits, like C corporations, although at a lower statutory rate than under current law. These businesses would also benefit from the ability to retain earnings and avoid the second layer of tax until profits are ultimately distributed. Businesses with gross receipts under $25 million would be taxed as sole proprietors. These businesses would face current-law pass-through business treatment: Business cash flow would be immediately reported on the owner's tax returns and taxed as ordinary income.[74]

In 1999, before serving as the chief of staff for the JCT, George Yin suggested integrating the taxation of private business firms with different, elective rules for small entities, stating:

> Current law ought to be replaced by a system whereby all private business firms, no matter what their form of organization and organizational characteristics, are taxed as conduits for income tax purposes. Second, because conduit taxation is so complicated, the system should be implemented through a "two-track" approach in which a subset of private business firms would, at their election, be subject to a simplified set of tax rules. In general, the simplified version would be available to firms which have only individuals as owners.[75]

However, as noted, a few years after Yin's suggestion, the JCT pointed out the "significant policy issues" with that approach. Policymakers may be wise to draw lessons from this anecdote.

Further, any proposal involving a two-tiered system in which there is a simple system for small partnerships and a complicated system for big partnerships can be viewed as inherently problematic. First, there are definitional issues (for example, what is small beyond, perhaps, those eligible for subchapter S treatment?). Second, and more important, there are hard- or impossible-to-resolve issues involving situations in which a small partnership becomes a big partnership and vice versa.

c. Carried interest change (one of many flavors).

The proper taxation of carried interest has been discussed in tax policy for decades, and there are many legislative proposals, some newer and some of more historical vintage. Wyden has introduced the "Ending the Carried Interest Loophole Act," which creates a deemed loan concept to alter the treatment of carried interest (both timing of income recognition and the character of that income).[76] An early draft of the IRA and the Ways and Means markup version of the BBBA included a different carried interest proposal, which would have amended section 1061 by enacting much different holding period rules and making some other changes.[77] The Camp discussion draft included a third carried interest proposal. A fourth flavor of carried interest legislation, first introduced in 2007, would create a new section 710 and recharacterize some income from some carried interest as ordinary.[78] Variations of the section 710 carried interest proposal have been recently introduced.[79]

Policymakers and taxpayers should note that carried interest legislation has faced significant political hurdles. Policymakers and taxpayers should further note that the different proposals are significantly different in their operation and revenue scores. Taxpayers concerned with the possible inclusion of carried interest legislation

[73] *Id.* (Discussed options to extend the TCJA using "revenue-neutral, pro-growth options for tax reform." Option 2 was the only option considered by Pomerleau et al. that would extend all the expiring provisions in the TCJA.)

[74] *Id.*

[75] George K. Yin, "The Future Taxation of Private Business Firms," 4 *Fla. Tax Rev.* 141, 144 (1999).

[76] S. 3317, Ending the Carried Interest Loophole Act, 118th Cong., 1st Sess.; Senate Finance Committee, "Ending the Carried Interest Loophole Act One Pager" (last visited Aug. 23, 2024); Senate Finance Committee, "Ending the Carried Interest Loophole Act Summary" (last visited Aug. 23, 2024).

[77] Section 138149 of the BBBA, as reported in the House Ways and Means Committee on Sept. 27, 2021.

[78] *See* JCT, "Present Law and Analysis Relating to Tax Treatment of Partnership Carried Interests and Related Issues, Part I," JCX-62-07, at 47-50 (Sept. 4, 2007) ("Legislative Proposals in the 110th Congress").

[79] *See, e.g.*, S. 2617, Ending the Carried Interest Loophole Act, 117th Cong., 1st Sess.; S. 3317, 118th Cong., 1st Sess.

would be wise to model out the different effects of the various proposals.[80]

d. Change section 52's aggregation rules.

Section 52(b) aggregates "trades or businesses," including partnerships, and these rules, originally promulgated for purposes of the work opportunity tax credit, are now referenced in numerous provisions of the code.

Section 138151 of the BBBA, as passed by the House in November 2021, would modify the definition of trade or business for purposes of section 52(b) by reference to section 469(c)(5) and (6). Section 469(c)(6) includes as a trade or business any activity for which expenses are allowable as a deduction under section 212. That change was made only to the corporate AMT in a version of the IRA. However, an amendment made on the Senate floor removed the language addressing the application of section 52 to the corporate AMT.[81] The amendment's sponsor, Sen. John Thune, R-S.D., stated that the amendment was necessary to protect small- and medium-sized businesses.[82] Alternate views have been offered.[83]

e. Eliminate section 704(b)'s substantial economic effect standard.

Section 704(b), as noted, generally governs the allocation of partnership items among the partners. The regulations under section 704(b) are voluminous, and the primary rules elucidated in the regulations — the substantial economic effect (or SEE) safe harbor — is not the standard used most commonly by taxpayers. Instead, taxpayers tend to use "targeted" allocations, which generally yield the same or similar results. However, in many situations, almost all but those who practice extensively in the subchapter K space struggle to understand when and why their allocations are appropriate. Thus, many have voiced frustration with these regulations, and variations of the idea to eliminate section 704(b)'s SEE standard have existed for 30 years.[84] One critic has stated:

> It would be appropriate to replace the voluminous technical regulations under Sections 704 and 752 with regulations that simply require allocations to be made in accordance with the underlying economic realities of the partnership arrangement. While regulations containing general precepts usually provide less guidance in specific situations, we believe that both business people and IRS agents could more efficiently comprehend and apply general regulations requiring that allocations follow economic reality than the complicated partnership capital accounting rules presently contained in the regulations.[85]

However, the removal of the SEE standard would appear to require Treasury to undertake a large project to promulgate new section 704(b) regulations (for example, to draft targeted allocation regulations under the partner's interest in the partnership standard) — a herculean undertaking — and the new regulations may very well be neither easier to apply nor result in answers policymakers would prefer. Drafters of any such regulations would likely have to solve the exact same issues the drafters of the current section 704(b) encountered (for example, what value to presume for property without readily ascertainable values), and those problems have remained unsolved for years.[86] Further, the removal of the SEE standard may be viewed to

[80] It is worth noting that the taxation of carried interest was discussed in the recent Finance Committee public hearing held September 12, "The 2025 Tax Policy Debate and Tax Avoidance Strategies." *See* JCT, JCX-47-24, *supra* note 34.

[81] *See* IRA section 10101.

[82] *See* Thune release, "Senate Passes Thune Amendment to Protect Small- and Medium-Sized Businesses" (Aug. 7, 2022).

[83] *See, e.g.*, Jeff Stein, "With Sinema's Help, Private Equity Firms Win Relief From Proposed Tax Hikes," *The Washington Post*, Aug. 7, 2022.

[84] *See* public comments by then-American Bar Association Section of Taxation Chair Jere D. McGaffey on the rules governing the allocation of deductions attributable to partnership borrowings (1991). *See also* New York State Bar Association, "Report on Section 704(b)," Report No. 1502 (Oct. 10, 2024).

[85] McGaffey's public comments, *supra* note 84.

[86] Over 25 years ago, Treasury identified the value-equals-basis rule in the SEE regulations (reg. section 1.704-1(b)(2)(iii)(c)) as an example of a rule that produces tax results that do not properly reflect income. T.D. 8588, 60 F.R. 27 (Jan. 3, 1995). As background, the value-equals-basis rule effectively allows for transitory allocations where a partner is specially allocated depreciation regarding property whose economic value is unlikely to decline (*e.g.*, a building). *See* reg. section 1.704-1(b)(5), Example (1)(xi). *See also* McKee, Nelson, and Whitmire, *supra* note 60, at 11.02 (describing the "protection afforded by the value-equals-basis rule" and noting the "curious result" in reg. section 1.704-1(b)(5), Example (1)(xi)). However, it is entirely unclear (at least to the authors) what a better assumption would be.

adversely affect low-income housing tax credit partnerships and tax equity partnerships — where the favorable tax treatment attracts significant political support.

f. Changes to section 707(c) guaranteed payment rules.

Section 707 creates three categories of transactions between partners and partnerships, each subject to a different set of rules for determining tax consequences. At a high level, section 707(a) addresses payments in a no-partner capacity, section 707(b) addresses partner-capacity payments, and section 707(c) creates a hybrid category for so-called guaranteed payments. Specifically, section 707(c) provides that payments to a partner for services or the use of capital are treated as nonpartner payments for some provisions of the code — but only to the extent that those payments are determined without regard to the income of the partnership.

The inclusion of section 707(c) in the 1954 code was to address situations in which salary payments to partners (which were generally considered simply distributive shares of partnership income under prior law) exceeded total partnership income — because those situations resulted in "complexity (and sometimes confusion)."[87] However, the meaning and application of section 707(c) has been long criticized as unclear, and inconsistent court cases add to the confusion vis-à-vis present law.[88]

Section 7 of the Wyden discussion draft would repeal the rules relating to guaranteed payments for services or the use of capital under section 707(c) and would expand the scope of non-partner-capacity payments under section 707(a) to include those payments. Section 3611(a) of the Camp discussion draft would also repeal the section 707(c) rules relating to guaranteed payments. The American Bar Association previously recommended repealing section 707(c).[89]

However, repealing section 707(c) may present non-subchapter-K challenges, including challenges for qualified retirement rules (for example, section 401(c) and 401(k)). Under current law, service partners may contribute to 401(k) plans (or a partnership may make contributions on behalf of service partners), and both the partnership and partner get favorable treatment for treating the payment as a guaranteed payment (a current deduction for the partnership without current income for the partner). The repeal of section 707(c) would appear to require a new mechanism to result in such favorable tax treatment.

g. Change section 734(b) and section 743(b) basis rules.

As noted, under subchapter K, the basis of partnership property (that is, asset basis) may be adjusted because of some transactions (a distribution of partnership property or the sale of a partnership interest), and the rules adjusting asset basis generally preserve parity between the partner's basis in its partnership interest (that is, outside basis) and the partner's share of asset basis (that is, inside basis). While the rules apply on a mandatory basis in some circumstances, their application often requires a section 754 election. Thus their application is optional in several situations. Rules (under section 734(b) and section 743(b)) determine the amount of the basis adjustments, and additional rules (in section 755) determine the allocation of the basis adjustment to specific assets.

Sections 12 and 13 of the Wyden discussion draft and sections 3612 and 3613 of the Camp discussion draft, which are substantially similar, would (1) make basis adjustments arising from partnership distributions or transfers of partnership interests mandatory, and (2) change the calculation and allocation of section 734(b) basis adjustments in an attempt to make consistent each partner's pre-distribution and post-distribution share of gain or loss regarding partnership assets (including distributed assets). The second change appears to be derived from a series of academic articles.[90]

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[87] McKee, Nelson, and Whitmire, *supra* note 60, at para. 14.01.

[88] *See* ABA Section of Taxation, "Report to the ABA House of Delegates" (1999).

[89] *Id.*

[90] William D. Andrews, "Inside Basis Adjustments and Hot Asset Exchanges in Partnership Distributions," 47 *Tax Law Rev.* 1 (Fall 1991); Howard E. Abrams, "The Section 734(b) Basis Adjustment Needs Repair," 57 *Tax Law.* 343 (2004); Karen C. Burke, "Repairing Inside Basis Adjustments," 58 *Tax Law.* 639 (2007).

The second part of the proposal (regarding the calculation and allocation of section 734(b) basis adjustments) can be viewed as adding significant complexity because it could be viewed to require tracking partner-specific basis (or basis adjustments) in property. Further, the formula in the Camp discussion draft's proposal does not appear to account for the application of sections 704(c) and 752, creating possible distortions, and it remains unclear if the technical revisions in Wyden's proposal would address all "complicated" fact patterns (for example, the application of section 163(j)). Policymakers and taxpayers should study whether the draft language results in sensible answers in all instances (including by running examples) and consider the administrative burdens of the proposal.

h. Change section 701 to clarify that a partnership can pay tax.

Section 701 indicates that partnerships are passthrough entities by providing that a partnership is not subject to tax, a partnership's income is allocated to its partners, and the partners pay their taxes on that income.

Section 1 of the Wyden discussion draft inserts a "technical clarification" that partnerships can be subject to entity-level taxes. The Wyden discussion draft's section-by-section states: "The change would allow the IRS to enhance reporting requirements of partnership tax positions by aligning tax reporting with Financial Accounting Standards Board reporting, which may require the reporting of uncertain tax positions that could trigger an entity-level liability."

It is unclear if the change addresses a tax or financial accounting standard issue, and some could argue that FASB would be a more appropriate body to make the change. Taxpayers may be wise to study the financial accounting effect of such a change.

i. Change section 705 outside basis rules.

Section 705 provides rules to determine a partner's adjusted basis in a partnership interest (that is, outside basis). The general rule provides that the partner's initial basis is adjusted by the partner's share of (1) the partnership's taxable income, (2) the partnership's tax-exempt income, and (3) the excess depletion deductions over the basis of the depletion property. Section 705(b) provides an alternative rule for determining a partner's adjusted basis in the partnership. The alternative rule is used when a partner cannot practicably apply section 705's general rules and, based on the statutory language, can be used only upon the termination of the partnership. Under the alternative rule, outside basis is calculated based on the partner's share of the adjusted basis of partnership property (that is, inside basis).

Section 6 of the Wyden discussion draft would expand the availability of section 705's alternate rule by eliminating the reference to termination of the partnership.

Because the expansion of section 705's alternate rule would appear to merely provide additional flexibility to partnerships and partners, it is unclear whether the proposal is a revenue raiser. Thus, there may be limited interest in it.

IV. Conclusion

The outcome of the 2025 tax debate is unknown — and will not be known until legislation addressing the looming tax cliff occurs, or does not occur, in 2025 or 2026. However, the 2025 tax debate is one in which the taxation of partnerships and partners may be featured — and may be featured prominently. While this article is not prescriptive, it suggests the need for a healthy dose of study and debate. Partnerships, partners, and their tax advisers would be well served by examining what changes might be on the horizon for subchapter K — studying available draft legislative language and new draft legislation that will almost certainly enter the public sphere during the 2025 tax debate. Raising policy and technical concerns earlier in the debate, rather than later, will likely result in a more palatable menu for partnerships and partners. The oft-quoted adage, "if you're not at the table, you're on the menu," is apropos. ■