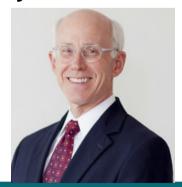
## Welcome!

## **Taxing LLC Options**

(It's Complicated)

Presented by Walter R. Rogers, Jr.







- The largest business and litigation law firm headquartered in the Research Triangle area and one of the largest in North Carolina
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#### Reminder...

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### Stock Options ≠ LLC Options



Noncompensatory options are <u>not</u> options issued in connection with the performance of services.

NCOs include call options, warrants, conversion feature of convertible debt and conversion feature of convertible equity.



Describing the NCO

Partnership Agreement or LLC

**Operating Agreement** 

**Underlying Partnership Interest** 

**Regulatory Provisions** 

**Grant Document** 

**Underlying Partnership Interest** 

**Option Price** 

**Exercise Price** 



Tax Consequences of **Issuance** of NCO

Partnership or LLC

Option Holder



Tax Consequences of Exercise of NCO
Partnership or LLC – Not Taxable
Option Holder
Generally Not Taxable
Exceptions



Tax Consequences of **Lapse** of NCO

Partnership or LLC – Income

Option Holder - Loss



When is an option holder treated as a partner?

- 1. Rights that are substantially similar to the rights afforded a partner <u>and</u>
- 2. Strong likelihood that failure to treat option holder as a partner would result in a substantial reduction in the present value of partners' and option holder's aggregate Federal tax liabilities



Rights Substantially Similar to Partner Rights if either

- 1. Option reasonably certain to be exercised, <u>or</u>
- 2. Option holder has partner attributes



Option Reasonably Certain to Be Exercised

Facts and circumstances test Safe harbor



#### Partner Attributes

Facts and circumstances test

"Conclusively" present when

1. Option holder has rights to share in distributions, <u>or</u>

2. Option holder agrees to bear losses



# Strong Likelihood of Substantial Reduction in Tax – A Facts and Circumstances Test



#### Accounting for NCOs

**Exercises** 

Revaluations while NCOs are outstanding

Allocations while NCOs are outstanding



#### Accounting for Exercises

Credits to capital account of option holder (exercising partner)

Revaluations upon exercise

Share of partnership capital of acquired partnership interest

Corrective allocations



Revaluations While NCOs Outstanding
Options in the money
Options not in the money



Allocations While NCOs Outstanding – Requirements to Be Deemed in Accordance with Partners' Interests in the Partnership

- 1. Holder of NCO not a partner
- 2. Mandatory provisions for partnership agreement
- 3. Allocations and capital account adjustments would be respected if no NCOs were outstanding



What to Remember about Taxing NCOs

Partnership or LLC NCOs are taxed differently than stock options.

Holder of NCO may be treated as a partner for tax purposes.

Terms of the NCO and the underlying partnership or LLC interest must be clear from the partnership or LLC documents, and all documents concerning the NCOs must be coordinated.

Tax regulations mandate certain provisions for NCOs in partnership or LLC agreement.

Once NCOs are issued the partnership or LLC will have substantially more accounting work.



# Thank you!

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