



# Do We Have a Partnership?

*Digital Asset Activities, Staking, and Entity Classification in Practice*

SJSU Blockchain Tax Conference

January 30, 2026

Baker Tilly Advisory Group, LP and Baker Tilly US, LLP, trading as Baker Tilly, are members of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. Baker Tilly US, LLP is a licensed CPA firm that provides assurance services to its clients. Baker Tilly Advisory Group, LP and its subsidiary entities provide tax and consulting services to their clients and are not licensed CPA firms.



DO WE HAVE PARTNERSHIPS?

# Speakers

**Chris Land**

STAFF DIRECTOR OF SENATE  
BANKING COMMITTEE'S  
SUBCOMMITTEE ON DIGITAL ASSETS;  
GENERAL COUNSEL FOR SENATOR  
LUMMIS, U.S. SENATE

E: [chris\\_land@lummis.senate.gov](mailto:chris_land@lummis.senate.gov)

**Erik Weinapple**

PRINCIPAL, BAKER TILLY

E: [erik.weinapple@bakertilly.com](mailto:erik.weinapple@bakertilly.com)

**Matthew Dimon**

ASSOCIATE, FENWICK

E: [MDimon@fenwick.com](mailto:MDimon@fenwick.com)

**Jamison Sites**

PRINCIPAL, KPMG

E: [jamisonsites@kpmg.com](mailto:jamisonsites@kpmg.com)



# Let's define partnership

## Key points

- Under the Code, the term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate.
- Caselaw tests on whether a tax partnership exists look to the intent of the partners to jointly operate a business and split the profits, as well as other indicia of partner-like behavior.
- See *Culbertson v. Comm’r*, 337 U.S. 733 (1949); *Comm’r v. Tower*, 327 U.S. 280 (1946); *Luna v. Comm’r*, 42 T.C. 1067 (1964).

## Discussion

- Common issues on set-up
- Why documentation matters



VERY BRIEF, VERY PRACTICAL

# Partnership Basics

## What actually creates a partnership

- Two or more persons
- Carrying on a trade or business
- With intent to share profits (explicit or implied)

## Key takeaway

- You do not need a formal agreement—or intent—to create a partnership



# “We Didn’t Think We Had a Partnership...”

## Let’s discuss the following fact patterns

- Founders pooling tokens to bootstrap a protocol
- Validators coordinating rewards and slashing risk
- Advisors receiving token-based upside tied to performance
- Revenue splits vs profit & loss splits
- DAO-style governance without legal wrappers, particularly if tokenholders share economics

## Issue spotting

- Is there **joint control**?
- Is there **shared upside and downside**?
- Are activities **ongoing** vs isolated transactions?



# Once You *Do* Have a Partnership: Tax Consequences

## Immediate implications

- Entity classification and filing obligations
- Allocation of income, loss, and credits
- Withholding exposure (domestic + foreign)
- State filing footprint expands instantly

## Common issues

- In-Kind contributions / distributions
  - Investment Partnership classifications; BIG issues
- Capital account maintenance when assets are digital



# Staking Income: Partnership Issues

## Threshold questions

- Is staking income:
  - Active or passive?

## Why this matters

- Self-employment tax
- Passive activity limitations
- Foreign partner consequences
- UBTI exposure for exempt partners

## Liquid Staking / Do we have a partnership? (Jamison/Matthew)

- Validators, Delegating, partnership construct
- Examples: ETH + Compute power

## PANEL QUESTION:



Staking remains one of the most unsettled areas tax-wise. Is Congress aligned on whether staking rewards are income upon receipt, upon sale, or something else entirely?

# Withholding & Cross-Border Implications

## Key classifications to analyze

- ECI vs FDAP
- Validator vs. delegator
- U.S. partnership with foreign partners
- U.S. sourcing / 892 (Jamison) testing
- UBTI Determination

## Risk areas

- Failure to withhold on effectively connected staking income
- Mischaracterization leading to Forms 8804/8805 issues
- State sourcing of validator activity

## Planning Ideas / How to mitigate:

- Offshore Feeder structures
- Blockers

## Audit trend

- Examiners focusing on *function*, not labels



# Contributing Tokens to a Partnership

## Common scenario

- Low-basis tokens contributed to:
  - Investment partnerships
  - Operating entities
  - DAO-adjacent structures

## Key risks

- Disguised sale exposure
- Built-in gain shifting
- Immediate gain recognition in unexpected cases

## Practice note

- “Non-taxable contribution” assumptions are often wrong with digital assets

# SAFE / SAFT Structures: Partnership Adjacent?

## Why this comes up

- Token pre-launch fundraising
- Hybrid debt / equity economics
- Rights that look like profit participation

## Questions to flag

- Is there implicit co-venture economics?
- Are holders exposed to operational upside?
- Does this cross into partnership territory?

(Flagged as “fact-dependent—watch closely” rather than definitive.)



# DAOs, Re-Structuring, and Retroactive Problems

## Key issues

- Was it ever a partnership before incorporation?
- Retroactive filings and exposure
- Entity migration  $\neq$  risk elimination

## Common misconception

“We incorporated, so the risk went away.”



# Partnership Audits

## BBA Audit Regime

- Economic reality over legal form
- Inconsistent reporting across partners – balance sheet discrepancies
- Missing withholding and information returns

## Advice to practitioners

- Document intent early
- Align operating reality with tax positions
- Do not wait for scale to fix structure



# Practical Takeaways

## For practitioners

- Partnership analysis should happen **before** income recognition
- Facts matter – no two crypto assets are exactly the same, and have to be analyzed on their own merits
- Withholding is the fastest way exposure shows up

## For founders

- Informal arrangements create formal tax consequences
- Fixing it later is almost always more expensive



# Possible Legislation

- How will current administration bring more digital asset activity back to the U.S.?
- Any insights / proposed initiatives?
- From your vantage point advising senator Lummis – what problem is Congress aiming to solve with digital-asset legislation?
- Over the next 12-24 mo's – what should we be paying the closest attention to?

# Questions?

Baker Tilly Advisory Group, LP and Baker Tilly US, LLP, trading as Baker Tilly, operate under an alternative practice structure and are members of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. Baker Tilly US, LLP is a licensed CPA firm that provides assurance services to its clients. Baker Tilly Advisory Group, LP and its subsidiary entities provide tax and consulting services to their clients and are not licensed CPA firms. The name Baker Tilly and its associated logo is used under license from Baker Tilly International limited. The information provided here is of a general nature and is not intended to address the specific circumstances of any individual or entity. In specific circumstances, the services of a professional should be sought. © 2025 Baker Tilly Advisory Group, LP