**8774. Are there any safe harbor provisions that allow a partnership to avoid taxation as a publicly traded partnership based on a finding that its shares are traded on a secondary market (or the equivalent thereof)?**

Several safe harbors exist that allow a partnership to avoid taxation as a publicly traded partnership. Under the “*Private Transfers Safe Harbor,” c*ertain transfers not involving trading (private transfers) are disregarded in determining whether interests in a partnership are readily tradable on a secondary market or the substantial equivalent thereof.[[1]](#footnote-1) These transfers include:

(1) transfers in which the basis of the partnership interest in the hands of the transferee is determined by reference to the transferor’s basis or is determined under IRC Section 732;

(2) transfers at death, including transfers from an estate or testamentary trust;

(3) transfers between family members, as defined in IRC Section 267(c)(4);

(4) the issuance of partnership interests for cash, property, or services;

(5) distributions from a qualified retirement plan or individual retirement account;

(6) a partner’s transfer of interests exceeding 2 percent of total interests in partnership capital and profit during a 30 day period (“block transfers”);

(7) transfers under redemption or repurchase agreements that can only be exercised upon:

(a) death, disability, or mental incompetence of the partner, or

(b) the retirement or termination of service of a person actively involved in managing the partnership or in providing full time services to the partnership;

(8) transfers of an interest in a closed end partnership pursuant to a redemption agreement if the partnership does not issue any interest after the initial offering (and substantially identical investments are not available through the general partner or certain related parties under IRC Section 267(b) and IRC Section 707(b)(1));

(9) transfers of at least 50 percent of the total interests in partnership capital and profits in one transaction or a series of related transactions; and

(10) transfers not recognized by the partnership.

The “*Redemption and Repurchase Agreements Safe Harbor”* allows transfers involving redemption and repurchase agreements (other than those described in (7) and (8) of “Private Transfers Safe Harbor,” above) to be disregarded in determining whether interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof if the following requirements are met:

(1) the agreement provides that the partner must give written notice to the partnership at least 60 days prior to the redemption or repurchase date;

(2) either (a) the agreement provides that the redemption or repurchase price cannot be established until at least 60 days after such notification, or (b) the redemption or repurchase price is not established more than four times during the partnership’s taxable year; and

(3) no more than 10 percent of partnership interests are traded during a taxable year (disregarding only private transfers, see above).[[2]](#footnote-2)

The “*Private Placement Safe Harbor”* provides that interests in a partnership will not be treated as publicly traded if: (1) all interests in such partnership were issued in transactions that were not required to be registered under the Securities Act of 1933, and (2) the partnership has 100 partners or fewer at all times during the taxable year. Each person indirectly owning an interest in the partnership through a partnership, S corporation, or grantor trust is treated as a partner if (1) substantially all of the value of the owner’s interest in the entity is attributable to its interest in the partnership, and (2) a principal purpose of the tiered arrangement is to satisfy the 100 partner limitation.[[3]](#footnote-3)

A “*Two Percent Safe Harbor”* provides that interests are not tradable on a secondary market or the substantial equivalent thereof if less than 2 percent of the percentage interests in partnership capital or profits are transferred during the taxable year (disregarding certain transfers involving private transfers, those involving qualified matching services, and certain redemption and repurchase agreements).[[4]](#footnote-4)

1. . Treas. Reg. §1.7704-1(e). [↑](#footnote-ref-1)
2. . Treas. Reg. §1.7704-1(f). [↑](#footnote-ref-2)
3. . Treas. Reg. §1.7704-1(h). [↑](#footnote-ref-3)
4. . Treas. Reg. §1.7704-1(j). [↑](#footnote-ref-4)