TAX STRATEGIES IN THE SALE OF A BUSINESS – WHAT THE NEW TAX LAW CAN DO FOR YOU

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TAX STRATEGIES IN THE SALE OF A BUSINESS – WHAT THE NEW TAX LAW CAN DO FOR YOU[1]

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Part One
Preliminary Analysis

For the seller, the initial tax planning for the sale of a business involves determining the amount of gain that would be recognized in a fully taxable transactions and then exploring alternatives to minimize the resulting tax.

1. Evaluating the Seller's Potential Gain

What is the corporation's tax basis in its assets (the "**inside basis**") and each shareholder's basis in his stock (the "**outside basis**")? In most cases the outside basis of *each* S corporation shareholder must be analyzed separately. The California and federal bases often will differ, especially if the corporation has property, plant or payroll outside California or if the federal S election was effective before 1987.

How much gain will the **corporation** realize if it sells assets? What will be the **tax** on this gain if it is recognized?

How much gain will the **shareholders** realize if they sell stock? How much gain will the shareholders realize if the corporation sells assets, pays tax and then distributes the balance of the sales proceeds to them as a liquidating distribution?[2]

Use this as a benchmark for your tax planning.

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[1] The material in this outline is current as of August 8, 2003, and does not reflect developments after that date.

[2] See "Avoiding the Double Tax in an Asset Sale" below.

The seller often must **groom the business** for sale. Here is an overall strategy for **disposing of unwanted assets** of a C corporation (or an S corporation subject to the built-in gains tax). The seller should list the corporation's assets and then **rank** them by the appreciation in each asset. The ultimate goal is to leave the highly appreciated assets in the corporation and to **sell the stock** of the corporation with those assets in it. To the extent that the low-gain assets would reduce the marketability of the substantially appreciated assets, have the corporation **sell the low-gain assets** at a low tax cost. The seller should also consider combining with another business to **achieve critical mass** and higher multiples or to make the business more attractive to a financial buyer.

2. Planning for the Seller's Gain Recognition

Should one or more of the shareholders **hold the shares until death** so that their heirs can receive the step-up in basis to the fair market value at that time? If so, the sale should be deferred or a nonrecognition structure should be considered.

A sale to the next generation is one of several methods of **freezing the value** of the business in the seller's estate. The future appreciation in value would be taxed at estate tax rates of 49% (the 2003 maximum rate). The anticipated present value of that tax must be balanced against the tax on currently recognized gain at a combined federal and California maximum effective rates of approximately 40% for C corporations, 46% for individual's ordinary income, 24% for individual's long-term capital gain (assuming the federal AMT applies and knocks out the federal deduction for California tax), and 47% and 24% for ordinary income or long-term capital gain flowing through and S corporation (in each case, assuming that a double income tax and substantial sales tax can be avoided).

If the value of an asset held by an individual is less than his basis in the asset, the individual can benefit by **recognizing the loss** during his lifetime. If the asset is held until death, the basis will **step down** to the fair market value at that time, with no income tax benefit from the adjustment.

If the seller will realize gain on the sale, does he have **capital losses from other sources** to offset the gain? If the seller will realize a loss on the sale, does he have gain from other sources which he can recognize and absorb the capital loss from the sale?

If the seller does not plan to hold out for the basis step-up at death and the sale will generate ordinary income (as a result of depreciation recapture or the tax benefit rule, for example), it might make sense to use a **taxable structure** if the seller believes that **tax rates** on ordinary income will increase.

3. The Seller's Charitable Contribution of Sale Proceeds

If the seller plans to donate some of the sale proceeds to charities, he should consider **donating some of the stock** to the charity and letting the charity sell it. If the step transaction problem can be avoided, the donor will receive an income tax deduction for the donation and the charity will escape tax on the sale.[3]

Another alternative is to establish a **private foundation**, contribute the target stock to the foundation, and let the foundation sell the stock. The foundation can hold the sale proceeds as an endowment, distributing only the income to other charities. (The donors may also wish to use the foundation in their estate plan.) Generally, the foundation can hold the stock for five years without incurring penalty taxes. The deduction limitations that apply to contributions to private foundations are more onerous than those for contributions to public charities and private operating foundations.[4] Consequently, the seller should explore establishing a **fund** with a **community foundation** to achieve better tax results with flexibility very close to a private foundation -- but a lot less hassle.

The seller should consider using a **charitable remainder trust** ("CRT")

- The income tax deduction in the year of the initial donation can **shelter gain** from the sale.

- The stream of **lifetime payments** from the CRT can put the seller in close to the same after-tax position as if he sold the stock and took back a promissory note with level payments. If the seller and the

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[3] Making assumptions and running the numbers is the only way to determine if the pre-sale contribution of stock will result in tax savings. The **contribution deduction limitations** should be reviewed to determine (1) whether the amount of the contribution will be measured by the value of the stock or the donor's basis in it, and (2) the applicable percentage limitation (50%, 30% or 20% of AGI, disregarding NOL carryforwards).

[4] The amount of the deduction for a contribution of stock of a closely-held business to a private foundation is limited to the donor's **basis** in the shares.

seller's spouse outlive their actuarial life expectancies, they can actually do better with the CRT. By investing some of their up-front tax savings in life insurance held in a "**wealth replacement trust**," they can hedge the risk that they will not outlive their actuarial life expectancies.

- o The payments from the CRT can continue for the lives of the seller and his spouse, as compared with the shorter term of a promissory note.

- o The undistributed assets in the CRT **grow tax-free**, like a qualified retirement plan or an IRA.

- o The annual valuation of the CRT assets provides **protection from inflation** that is not available with a promissory note.

Note: Transfers of shares to these entities cannot be undone. *If the deal does not close, the seller cannot get the shares back.*

4. When to Use a Tax-Free Structure

From the seller's perspective, a tax-free reorganization or contribution to capital of a corporation (in either case with a basis carryover) will be attractive if:

- o The seller wants to hold out for the **basis step-up at death** or wants to avoid tax in the current year, and

- o The seller will be **satisfied with an equity interest** in the buyer or the buyer's parent.

However, after the reorganization, the seller's assets **remain at risk** in the target business, which will then be operated by the buyer.

In certain tax-free transactions the seller can receive some cash in the form of taxable "**boot**." The seller can also receive funds pursuant to employment, consulting or deferred compensation arrangements or covenants not to compete.[5]

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[5] See "Techniques to Minimize the Seller's Double Tax" below.

Sellers should always use a **triangular merger** instead of a "B" reorganization (stock "solely for stock"); because *any* boot in a "B" will cause the exchange to be taxable. Big buyers like triangular mergers because they often can avoid the expense and delay of soliciting **shareholder approval** for the transaction.

A tax-free transaction is attractive for the buyer because it allows the buyer to acquire the target business with a **minimum cash cost**. However, the seller stays in the picture, sharing in the upside and having a say in how the business is run.

The **like-kind exchange** rules which permit tax-free swaps of investment property *do not* apply to exchanges of stock, securities, notes or partnership interests. However, carryover basis treatment is available for rollovers of publicly traded securities into Small Business Investment Companies (**SBICs**) under Section 1044 and for rollovers of **qualified small business stock** into other qualified small business stock under Section 1045.

5. When to Use an ESOP

The seller should consider an ESOP as a way to cash out of a C corporation *without recognizing any gain* by selling the business to the employees, to achieve a tax-free cash-out of minority shareholders as a prelude to the sale of the business, and/or to help to bond the employees to the company.

The buyer should consider an ESOP to make the principal payments on the acquisition debt (or on post-acquisition borrowings to capitalize the business) effectively *deductible* for federal and California income tax purposes.[6]

6. The Buyer's Pre-Acquisition Planning for Unitary Tax Issues

When acquiring a business which could be unitary with other businesses of the buyer, substantial tax savings can be realized in many cases by structuring the transaction with the unitary rules in mind.

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6 Although S corporations are now allowed to have ESOPs (for federal -- but not for California – tax purposes), the best features of ESOPs are not available to S corporation ESOPs

The Unitary Method. When a taxpayer derived income from sources both within and without California, it is required to measure its California franchise tax liability by its net income derived from or attributable to sources within this state. If the taxpayer is engaged in a unitary business with one or more affiliated corporations, the amount of business **income attributable to California sources** must be determined by applying an apportionment formula to the total income derived from the combined unitary operations of the affiliated companies.

If the California business generates a **loss**, but the worldwide unitary business is profitable, California franchise tax will be due under the unitary method. Many find this unfair.

There are two alternative tests to determine whether a affiliated entities are part of a unitary business:

- A unitary business is conclusively established by the existence of: (1) unity of ownership; (2) unity of operation as evidenced by central purchasing, advertising, accounting, and management divisions; and (3) unity of use in a centralized executive force and general system of operation (the "three unities" test).

- A business is also unitary when the operation of the business within California contributes to, or is dependent upon, the operation of a commonly-owned business outside the state (the "dependency" test).

The existence of a unitary business may be established if either the three unities or the dependency test is satisfied.

Structuring Concerns. Projections should be made for each business which the buyer group will own after the acquisition. Then determine which businesses should be unitary, which should not be unitary and in which years. For example, it may be helpful to arrange for the **separation** of certain businesses from the unitary group at a future time. To keep a business outside of the unitary group, it should be segregated in a separate entity. The easiest unitary factor to manipulate is **the ownership factor**, but the other factors can also be used.

The Water's Edge Election. For a buyer group which will be eligible for the water's edge election as a result of the acquisition, the election should be carefully considered before the closing. If the election is made, most **foreign corpo-**

rations are excluded from the unitary group and the California corporation is required to pay a deductible annual fee based on its California property and payroll.

Part Two
Asset Sales

Selling the business assets (including goodwill) -- as opposed to the stock or partnership interests -- raises special tax concerns for the seller. This is often the best structure for the buyer.

7. Avoiding the Double Tax in an Asset Sale

To the extent reasonably possible, in an asset sale the seller should **allocate** the purchase price **away** from assets held by a profitable C corporation (or an S corporation which is subject to the built-in gains tax). Instead, allocate the purchase price to payments directly to the individual sellers, such as personal goodwill, salary, rent and payments for consulting and, if necessary, covenants not to compete.

The seller's goal is to achieve a single level of tax, which would be the result if an individual sold a sole proprietorship.[7]

The Double Tax Problem

The sale of a business (or other appreciated asset) by a C corporation and the distribution of the sale proceeds to its shareholders -- whether in liquidation or otherwise -- will almost always result in *two levels of tax*: one at the corporate level resulting from the sale, and a second tax at the shareholder level when the balance of the proceeds are distributed.

The extent of the double tax depends on the selling corporation's basis in its assets (the "**inside basis**") and its shareholders' basis in their stock (the "**outside basis**").

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[7] If the business owner or spouse of the business owner recently died, the goal changes to avoiding gain entirely by using the basis step-up.

Example 1: Using Inside and Outside Basis. In 2003, X Corp, a C corporation, sells its business for $1,000,000, recognizing gain of $800,000 and liquidates. Dave and Ed, the shareholders, have an aggregate basis of $10,000 in their X Corp stock. At an effective combined federal and California tax rate of 40%, X Corp will incur a tax of $320,000 ($800,000 x 40%) on the sale, leaving $680,000 ($1,000,000 - $320,000) for distribution to Dave and Ed. Since the liquidating distribution will be treated as a sale of their stock, Dave and Ed will recognize gain of $670,000 ($680,000 - $10,000) on the distribution. At an effective federal and California tax rate of 24% for long-term capital gain, they will pay tax of $161,000 ($480,000 x 24%). The tax on the sale and distribution will total $481,000 ($320,000 + $161,000) -- over 48% of the sale price.

If the selling corporation has a tax loss from operations in the year of the sale or a net operating loss (an "**NOL**") carryforward to that year, the corporate-level tax may be reduced or eliminated.[8]

Example 2: Worst Case. If X Corp had a zero basis in the assets which it sold and the distribution was a taxable non-liquidating distribution, then X Corp's gain would be $1,000,000, subject to a tax of $400,000; the amount of the distribution would be $600,000; if the shareholders had a zero tax basis in their shares, then the tax would be $144,000; the total tax would be $544,000, or 54% of the sale price -- the current maximum "**double tax**" rate on dividend distributions of C corporation earnings and profits.

8. Sell Stock/Buy Assets

If the buyer is considering the purchase of a business currently conducted by a corporation, it ordinarily will be in the *buyer*'s interest to **buy the business assets, not the stock**, of the corporation, even if the buyer plans to incorporate the business. (The buyer can organize a new corporation, which would buy the assets from the selling corporation.) By purchasing assets:

- It is easier to minimize the buyer's potential **liability** for claims against the business which arise before the acquisition date;[9]

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8 See "Using Net Operating Losses" below.

- The buyer gets an aggregate **tax basis** for the assets equal to his purchase price, which is generally greater than the existing aggregate tax basis of the assets;

- The buyer can tailor a new corporation's **capital structure** and **tax elections** (including the S corporation election) to his own needs; and

- The buyer's new corporation will not be burdened with the seller's undistributed C corporation **earnings and profits** or negative S corporation accumulated adjustments account.

The buyer **amortizes** over 15 years the portion of the purchase price in an asset deal that is properly allocated to **goodwill**, but cannot deduct or amortize any of the purchase price for stock (until the stock is sold or becomes worthless).

The buyer can arrange to use the seller's trade **name** and corporate name even in an asset deal.

In contrast, the *seller* wants to **sell stock**, achieving a single level of tax at favorable long-term capital gain rates (a 24% combined rate vs. the 54% worst-case combined rate noted above for an asset sale), and disposing of the corporate shell along with the business assets.

Before deciding to proceed with an asset sale, the seller should determine whether **sales tax** will apply. If the seller agrees to an asset sale to accommodate the buyer, the seller should insist that the buyer bear the resulting sales tax, if any.[10]

Purchasing assets requires a review of all leases and other **contracts**, and transferring certain assets or large quantities of assets may present problems.

Sometimes other considerations force the buyer to acquire stock of the corporation conducting the target business. The corporation may have favorable

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[9] An asset deal is one of several ways to minimize the buyer's risk. The parties should agree on **risk allocation principles** *before* the agreements are drafted.

[10] See "Sales and Use Tax" below.

contracts which cannot be easily assigned; the type or quantity of assets involved may make transfers impractical; or the seller's tax situation or bargaining power may preclude an asset sale.

If the buyer acquires stock of a corporation with undistributed earning and profits, the purchase price should reflect the eventual **tax cost** which the buyer will pay to distribute those earnings.[11]

9. Techniques to Minimize the Seller's Double Tax and to Accelerate the Buyer's Deduction

Person Goodwill. Some of the goodwill of the business is attributable to its name, location, trademarks, phone number and domain names. However, some of the goodwill of the business may be personal goodwill of the business owners who are active in the business. If the customers will follow the owner to whatever business home he may find, the goodwill is personal and the owner individually may be able to sell it, avoiding a double tax. This is often the case in service businesses.

Employment and Consulting Agreements and Covenants Not to Compete. Employment and consulting agreements and covenants not to compete can allocate the purchase price to the shareholders -- where it is taxed once, and away from the corporation -- where it subject to a second level of tax.

Now that the maximum effective tax rates on long-term capital gain and ordinary income are 24% and 46%, respectively, the seller will prefer long-term capital gain to ordinary income -- unless the buyer reduces the purchase price.

The buyer can **deduct** currently the payments under the employment or consulting agreement (subject to "leveling" rules in some cases if the payments are unequal over time), can deduct over 15 years the portions of the purchase price allocated to the covenant and goodwill, and can deduct the amount paid for depreciable or amortizable assets would be deducted over the life of the asset. However, the entire amount paid for stock must be **capitalized**. *The buyer will almost always prefer to allocate to amortizable or depreciable assets, rather than to stock.*

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11 See "Avoiding the Double Tax in an Asset Sale" above.

The Service can require either party to show that rendering the consulting services was a reasonable possibility at the time that an "availability" agreement was made and/or, if the agreement requires actual services, that they were performed. For payments under a covenant, the Service can require a showing that competition was a real threat. Accordingly, these techniques should be used only for shareholders who are **active in the business** prior to the sale. Also, the seller should allocate between the covenant and the sale of personal goodwill, since the former will be taxed at ordinary income rates and the latter has a shot at being taxed at capital gains rates.

An **employee's duty of loyalty** during employment prohibits the employee from competing with the employer, unless the employment agreement expressly provides otherwise. In contrast, a consultant has **no duty to refrain from competing** with a client, unless the duty is imposed by law (as it is for attorneys) or by contract. If a consulting agreement includes a covenant not to compete, the Service might require an **allocation** of the payments between the consulting services and the covenant, with the latter deductible over 15 years. If the goal is to prevent competition, an **employment** arrangement is better than consulting; if employment is not feasible, the prohibitions should be stated in terms of protecting the target company's **trade secrets** rather than prohibiting competition.

The parties must also be prepared to show that no more than a **reasonable amount** was paid for the seller's services or his promise not to compete. An appraisal or the opinion of an investment banker can be helpful.

Allocate to Assets Held Outside the Corporation. If some of the assets being sold are held **outside the corporation** (for example, real estate, equipment, designs, patents or the stock of brother-sister corporations), the seller should allocate the highest reasonable amount to those "outside" assets that generate **long-term capital gain**, reducing the portion of the purchase price allocated to "inside" assets (that is, those held by the corporation) and to outside assets that will generate ordinary income (for example, from depreciation recapture). The gain on the outside assets is **taxed once**, but the gain on assets held inside the corporation might be taxed at both the corporate and the shareholder level.

Reminder: Appreciating assets should *never* be held by a corporation (whether an S corporation or a C corporation), absent a compelling reason to do so.

Management Contracts. To avoid the second level of tax in an asset sale by a C corporation (or an S corporation subject to the built-in gains tax), the "seller" should consider arranging a management agreement with the "buyer," pursuant to which the "buyer" will operate the business and receive most of the profits.[12] Among several drawbacks to this arrangement is the **ordinary income** character of the amounts received by the "seller."

S Corporation Election. The preliminary review discussed in "Evaluating the Seller's Potential Gain" above is critical **when the seller is an S corporation.** The seller of a business conducted by an S corporation often can accommodate the buyer's request for an asset sale -- without incurring a second level of tax on the seller. If there is no built-in gain problem, they should be willing to sell assets, the **buyer gets a basis step-up** and the **seller has one level of tax** in *either* a stock deal or an asset deal. If the seller incurs more tax by selling assets and liquidating, the buyer might prefer to increase the purchase price rather than do a stock deal and keep the low inside basis.[13]

A primary reason to make or retain the S election is to avoid a double tax in an asset sale and to minimize the gain in a stock sale. *The S election is still one of the best tax planning techniques for a business that is held by a C corporation, if the business is increasing in value and is being held for a possible sale.*[14]

If the target qualifies for the S corporation election, **consider making the S election** in connection with a plan to minimize the built-in gain tax and to avoid the excess passive receipts tax, especially where the target corporation has NOL carryforwards generated in C corporation years or will incur losses or "zero out"

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[12] Note that this will not generate "passive receipts" (which would subject an S corporation with C corporation earnings and profits to the excess passive receipts tax). In contrast, other techniques such as leasing, licensing or franchising to the "buyer" would probably generate passive receipts. *Note*: For a well-advised S corporation with some cash, the excess passive receipts problem is often manageable.

[13] See "When the Buyer or the Target is an S Corporation" below.

[14] For business that is not in a corporation, a limited liability company is often a better alternative than either a C corporation or an S corporation. See page 31 for the outline *Structuring Businesses for the 21st Century*.

in the 10 tax years following the election. The C corporation NOLs may be carried forward to reduce the built-in gain, which is recognized only to the extent that the corporation has taxable income. The unrecognized portion of the built-in gain is carried forward, but not after the tenth S corporation year.

Note that the S corporation election for a profitable business will increase the basis in shares by the amount of the undistributed S corporation income. Consequently, the S corporation election benefits the sellers *whether they sell stock or the corporation sells assets*.

10. **Structuring With the Asset Allocation Rules in Mind**

The buyer and the seller should allocate the purchase price among several categories which may be applicable. A particular allocation which has favorable tax consequences for the buyer usually -- but not always -- has unfavorable tax consequences for the seller, and vice versa. Summarized below are the federal income tax consequences to the buyer of allocating the purchase price to each of several common categories:

> **Accounts receivable**: costs capitalized and the buyer has gain or loss if the amount collected varies from the amount capitalized.
>
> **Inventory**: costs capitalized and deducted against sales as cost of goods sold.
>
> **Equipment**: costs capitalized and depreciated. *Sales tax* may apply to the amount allocated to the equipment.[15]
>
> **Franchises** and the right to use **trade names** and **trademarks**: generally, payments are currently deductible if the amount of the payments is contingent on the use, productivity or disposition of the franchise, trademark or trade name. If the amount of the payments is not contingent, the deductions are spread over 15 years. If the buyer acquires all of the seller's significant rights in the franchise, trademark or trade name, the buyer cannot deduct the amount paid for these items *unless* the buyer can show that they have a limited useful life.

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[15] See "Sales and Use Tax" below.

Land: costs capitalized and *not* deducted or depreciated.

Real estate improvements: costs capitalized and depreciated.

Favorable lease: costs allocated to the lease are amortized over the remaining lease term. (Not subject to the 15-year amortization rule for other intangibles.)

Consulting agreements, employment agreements: payments generally deductible over the term of the agreement.

Covenants not to compete: capitalize and deduct over 15 years (capitalize each payment and amortize it over the balance of the 15-year period, as opposed to taking 1/15th of the aggregate covenant payments in the first year).

Customer lists, **patents** and **secret formulas**: amortize over 15 years.

Goodwill (*i.e.*, the excess of the total purchase over the amount allocated to assets): amortize over 15 years.

Payments made by the buyer will also have significant tax consequences:

Interest payments in an asset deal: When the buyer is a C corporation, the interest payments are deductible. (If the indebtedness is attributable to a passive activity, note that the passive activity rules will prevent a closely-held C corporation from using passive losses to offset portfolio income.)

When the buyer is an individual, the interest payments are generally deductible, subject to the passive activity, at risk and investment interest limitations.

When the buyer is a partnership or an S corporation, the interest expense is currently deductible by the partners or shareholders who materially participate in the business, but only (a) to the extent that the interest is not allocable to property held for investment or passive activities of the buyer, or (b) if so allocable, to the extent deductible under the investment interest and passive activity limitations. If the buyer is a partnership or S corporation, the at risk rules and basis limitations on losses must also be considered.

Lease payments: generally currently deductible.

Licenses to use patented inventions: payments deductible over the term of the license.

Investigation and due diligence: deductible immediately if the buyer is in the target's business already; deductible over 60 months as start-up expenditures if the buyer is not in the target business.

Acquisition Costs (legal, accounting, investment banking, finder's fees, escrow costs, etc.): added to the basis and allocated among the assets purchased. Deductible to the extent the asset's basis is subject to depreciation or amortization deductions.

Allocation Method. The **"residual" method** is the only way to determine the amount allocated to goodwill in an asset sale.

Reporting Requirement. Form 8594, Asset Acquisition Statement, must be filed in any "transfer of assets which constitutes a trade or business." This provides a substantial incentive for the buyer and seller to agree on the allocations.[16] The parties must disclose whether they have agreed on the allocations and whether they have entered into an employment agreement or a covenant not to compete. If the buyer and seller agree on the allocations, *they* are bound by them -- but the Service is *not* bound!

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[16] The 1990 Tax Act extended the reporting requirement to **stock sales** if a 10% shareholder or a related person enters into any agreement with the buyer "in connection with the transaction," including the following:

- an employment agreement
- a covenant not to compete
- a royalty agreement or
- a lease agreement.

Form 8594 has not been revised to reflect this 1990 statute.

Penalties apply for failure to file this information return.[17]

11. **Installment Sales**

Installment sales can be used to push the recognition of gain -- and the obligation to pay tax on that gain -- into a future year. Using the installment method is no longer as straightforward as it was once was, and alternatives should be considered in some cases.

The installment method is **not available to accrual method taxpayers** with gross receipts over $1 million.

Hazards of Using the Installment Method. Using the installment method might defer the gain into a year in which the federal or state **tax rate** on that gain exceeds the current rates. **Depreciation recapture** cannot be deferred under the installment method. Gain from the **sale of a partnership interest** cannot be deferred under the installment method to the extent that it is attributable to the partnership's substantially appreciated inventory which would not be subject to the installment method if sold directly. To the extent that the face amount of the liabilities arising in a single year exceeds $5 million at year-end, **interest** must be paid **on the deferred tax**. The time value of the deferral must be weighed against this tax in each case in which it applies. **Pledging** installment obligations accelerates the gain. An installment obligation cannot be **secured** by cash or cash equivalents (C.D.s, T-bills). Installment sales are subject to the **imputed interest** and original issue discount rules. The passive activity and investment interest limitations may apply to the buyer's interest expense deduction.[18] If a C corporation has deferred gain from an installment sale that is not subject to the interest charge, the deferral is an AMT **ACE adjustment**. If the seller is a "foreign person," the buyer must **withhold** tax on the interest payments.

Installment obligations held by a decedent do not enjoy a step-up in basis at death.

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[17] I.R.C. § 6721.

[18] See "Structuring With the Asset Allocation Rules in Mind" above and "The Buyer's Interest Deduction in a Stock Deal" below.

Structuring Hold-Backs. Buyers are often concerned about adverse events (such as a decline in sales or a big products liability lawsuit) which may occur after the closing. If neither party will entirely accept the risk, there are two choices:

- Pay the purchase price at the closing and require the seller to give part of it back if adverse events occur; or

- Use installment payments which are subject to a right of offset.

If the purchase price is paid and then part of it is **given back**, the seller will pay tax on the sale and **capital loss** on the give-back, which may not be immediately useful.

The second alternative limits the amount of gain recognized initially and has **no negative tax consequences** for the seller when the adverse event occurs. Accordingly, the seller should use the installment sale/offset alternative where he does not need the cash immediately.

Example 1. Seller sells his business in 2000 and promises to indemnify Buyer for any products liability claims arising before 2004. The entire purchase price is paid in 2000. Seller's gain on the sale is capital gain. A products liability claim arises in 2003 and Seller indemnifies Buyer in 2004. The amount paid by Seller in 2004 is a capital loss. Unless Seller has substantial capital gain in 2004, Seller's ability to use the capital loss to offset other income will be limited; the unused capital loss will be carried forward and, if Seller is a corporation, will be lost if not used in five years.

Example 2. Same as Example 1, but a portion of the purchase price is paid by a five-year balloon note and the Buyer is entitled to offset claims for indemnity against the amounts due under the note. The note bears interest payable annually at a market rate. Using the installment method, Seller defers recognition of a portion of the gain until the principal portion of the note is paid. When Buyer satisfies the claim, Buyer reduces the amount due under the note. There is *no tax consequence to Seller* at that time. When Seller receives payment of the reduced amount under the note, Seller is taxed on the deferred gain -- but the amount of gain recognized is reduced in proportion to the principal reduction on the note. If the products liability claim exceeded the principal due under the note, Seller's deferred gain would be eliminated and, to the extent that Seller was required to make an indemnification payment to Buyer in 2004, Seller would incur a capital loss -- with the possibly adverse tax consequences described above.

Earn-outs (used when the purchase price will increase if specified targets are reached) raise similar issues.

12. **Sales and Use Tax**

Unless the business being sold is a service business, California sales tax probably will apply to amounts allocated to equipment and certain other tangible personal property in an asset sale.

Sales tax does not apply to "**occasional sales**." To qualify for this exemption, the seller must not be required to hold a **resale permit** (that is, the seller must not regularly engage in sales of tangible personal property); and the seller must not engage in more than **two** other sales in any 12-month period which includes the closing. The **third sale** will cause all sales within the 12-month period to be taxable.[19]

No sales tax applies to **sales of stock**, which is not "tangible" personal property. (This is another reason why sellers prefer stock sales to asset deals.)

Note: When grooming the business for sale, and before signing a letter of intent, the seller should consider dropping the equipment into a single-member LLC so that the buyer can buy an LLC interest (probably not subject to sales tax), rather than the taxable equipment. The buyer, as the new owner of the single0member LLC, should be treated for tax purposes as the owner of the equipment and the LLC should be disregarded, putting the buyer in the just as favorable an income tax position as if the buyer had bought the equipment and not the LLC interest.

Sales tax does not apply to **mergers**. This rule provides planning opportunities for minimizing sales tax in asset deals.

Inventory held for resale will be exempt from sales tax *if* the seller obtains a completed and executed resale certificate from the buyer.

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[19] A special rule applies when a single entity conducts **both** a **service** business **and** a **sales** business.

There are several **other exemptions** to the sales tax. Until an applicable exemption is identified, assume that each item of tangible personal property in an asset sale will be subject to the sales tax.

Either party can bear the sales tax or they can split it. The purchase agreement should specify **who is responsible**. The seller will be required to file the sales tax return and to make payment to the State Board of Equalization.

The buyer should withhold a portion of the purchase price until the buyer obtains a **certificate of release** from the State Board of Equalization stating that no sales or use tax (whether incurred as a result of the sale of the business or otherwise), interest, or penalties remain unpaid. The buyer should file with the local office of the State Board of Equalization a written request for a certificate of release as soon as possible -- recognizing that doing so will probably trigger a sales tax audit of the target business. If the buyer does not do so, the State Board of Equalization can **collect** the tax, plus any other taxes owed by the seller, from *either* the seller or the buyer. Filing the request starts a three-year statute of limitations; the SBE cannot assess the seller's sales tax liability against the buyer or the buyer's successor-in-interest after the three-year period expires.

13. The Buyer's Liability for the Seller's Other Taxes

Income and Franchise Taxes. Generally, the buyer of substantially all of the assets of a business for value is not liable for the seller's federal income and California income and franchise taxes. However, the buyer may be secondarily liable if the buyer does not pay full value or assumes *all* of the seller's liabilities.

In addition, in a "**bulk transfer**" of assets, tax authorities have the same rights as the seller's other creditors under the Uniform Commercial Code -- Bulk Transfers. *If no bulk sale notice is published, the buyer may be liable for the seller's taxes (even if the buyer paid full value for the assets).* The buyer's potential liability extends to the seller's income and franchise taxes incurred during the year in which the sale occurs -- even though the seller is not required to file a tax return for that year until after the closing. The buyer can be liable for *federal employment taxes* as well as income tax.

California Employment Taxes. In contrast, generally the **buyer is liable** for the seller's California unemployment insurance contributions. The buyer's liability for the seller's California unemployment insurance contributions can be eliminated if the seller obtains a **certificate of release** from the local office of the California Employment Development Department. A request for a certificate probably will trigger an audit of the seller's California employment tax returns.

Part Three
Stock Sales

In a stock sale, the entity remains intact, with the business "inside" it. This is often the best structure for the seller. It raises planning issues for the buyer.

14. **Combining Stock Sales and Redemptions**

When the goal is to transfer all of Shareholder A's shares to Shareholder B, but B does not have sufficient cash to buy them, it may be possible to have the target corporation buy some of A's shares, reducing the purchase price to be paid by B for A's remaining shares.

Problem: Don and Ed each owns 200 shares of X Corp, a C corporation. There are no other shareholders and Don and Ed are not related. Don wants to buy Ed out, but Ed wants $2 million in cash for his shares. Don can raise $500,000. X Corp has $1.5 million in available cash, but Ed and Don are both at the maximum reasonable compensation and neither wants to risk a possible taxable constructive dividend by bonusing out a substantial sum.

Solution: X Corp redeems 150 of Ed's shares for $1.5 million. Immediately after the redemption, Don buys Ed's remaining 50 shares for $500,000. Although the redemption, standing by itself, would not qualify for sale treatment, when the redemption by X Corp and the sale to Don are considered together, Ed is deemed to have completely terminated his interest in X Corp and sale treatment applies. This structure is known as a *Zenz* transaction after the case of *Zenz v. Quinlavin* in which the court held that sale treatment applied. The Service has accepted this decision.

Ed now owns all of the outstanding shares and has a basis of $500,000 in them (assuming that Ed had a zero basis before the stock purchase). In contrast, if Ed had bought all of Don's shares, Ed would have a basis of $2 million in the shares. The bottom line: Doing a *Zenz* **wastes basis**. *All stock redemptions waste basis*. A shareholder-to-shareholder sale (or "cross purchase") will benefit the remaining shareholder when he later sells stock or liquidates the corporation and can use his increased basis to reduce gain at that time.

15. **Using a Cash Merger to Acquire Minority Shares**

If the majority shareholders want to buy the shares of the minority shareholders, but it is not feasible to negotiate a separate transaction with each minority shareholder, the following "cash merger" should be considered:

- The majority shareholder(s) of Target form a new corporation "Newco" to which they contribute their Target shares.

- The majority shareholders arrange for the merger of Target into Newco. In the merger, Newco's name is changed to Target's name and each share of Target is converted into a fraction of a share of Newco, but only whole shares of Newco are issued. The minority shareholders who would receive fractional shares receive cash instead. The conversion ratio is designed to cash out all of the minority shareholders.

Example: Big owns 50 shares of Target. No minority shareholder owns more than 4 shares. Big contributes all 50 Target shares to Newco. Target merges into Newco with a 5-to-1 conversion ratio, so that Big's 50 Target shares convert into 10 Newco shares and each other Target shareholder receives cash in lieu of fractional shares.

The minority shareholders have a right to vote on the merger if they hold more than 10% of Target's stock. The minority shareholders have a right to challenge the **value** assigned to their Target stock, but they do not have a right to challenge the **terms** of the merger, including the conversion ratio. It will usually be advisable to **apply for a permit** from the California Commissioner of Corporations.

For *federal* income tax purposes, the transaction is treated as a distribution which might be treated as a sale. The creation of Newco and the merger of Target into Newco are disregarded and Newco uses Target's federal employer identification number, tax year and other tax attributes.

For California tax purposes, Newco cannot be ignored, so the transaction is treated as (a) an "F" reorganization (a mere change in form) and (b) a distribution that is tested under the California sale treatment test.

The same result can be achieved by organizing Newco as a subsidiary of Target and merging Target into Newco. If Target holds **real property** in California, this structure minimizes the risk of a technical change in ownership for property tax purposes.[20]

The tax basis of the remaining shareholders in their shares does not increase as a result. Like a redemption, a cash merger **wastes basis**. A cross purchase is better for the buyer.

Using a Cash Merger to Effect a Management Buy-Out. Sometimes the minority shareholders will not commit to allowing a proposed management buy-out. For management buy-outs with **outside funding**, consider the following structure to enable management to avoid tax on the exchange of their shares: Management and the money parties form Newco, the money parties contributing cash and Management contributing their Target stock. Newco then buys Target shares from some of the non-Management holders, increasing Newco's ownership of Target to over 50%. Target then merges into Newco, with the remaining minority shareholders of Target receiving cash.

17. **The Buyer's Interest Deduction in a Stock Deal**

If the buyer is an individual, a partnership or an S corporation and the target is a C corporation, the investment interest generally will be deductible, but the limitations might defer or block the deduction.

If the buyer is a C corporation, the interest generally will be deductible. For a corporate buyer which will have interest expense of more than $5 million in any year resulting from acquisitions, a deduction disallowance rule might apply. C corporations which issue low interest notes with yields to maturity of five points or more over the applicable federal rate must consider the rules for "applicable high yield discount obligations."

If the target is an S corporation that will continue its S status, the buyer's interest deduction depends on whether the buyer materially participates in the business, the extent to which the target's assets are used in operations, and whether the shareholder has sufficient basis and amounts at risk.

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20 See "Property Tax Reassessments" below.

If the target is a C corporation which will elect S corporation status effective after the closing, the investment interest limitations should cease to apply and the pass-through rules should apply. However, the guidance provided by the Service to date does not address this issue.

SUMMARY		
Buyer	**Target**	**Effect**
Individual, partnership or S corp	C corp	Deductible, subject to limitations
C corp		Deductible up to $5M/yr
	S corp	Deductible if buyer is active in business
	C corp that elects S corp after closing	Should be deductible as for S corps

The indebtedness might also be subject to recharacterization as equity for tax purposes, eliminating deduction for the interest payment (which would then be treated as a dividend).

Buyers who rely on the dividends-received deduction to fund a corporate buyer's debt service should be sure the **California dividends-received deduction** will apply.

18. **The Section 338 Election: Opportunities and Risks**

The Section 338 Election. Under Section 338(a) a corporate buyer of 80% or more of a target corporation's stock can elect to **step up the basis in the target's assets** by having the target taxed as if it had sold all of its assets on the date of the stock sale. Generally, the **target** corporation **or the buyer**'s affiliated group pays the **tax on target's gain** recognized on the deemed sale.

The immediate tax cost of recognizing the gain in the target's assets often outweighs the benefits of the basis step-up (benefits that are realized only over the applicable depreciation or amortization periods or when the assets are sold). However, if the target or the buyer group incurs substantial **losses** after the acquisition, the losses may absorb the gain on the deemed sale. The various loss and credit limitations should be considered in planning to use losses incurred before the acquisition date to absorb the gain on the deemed sale.

The Section 338(h)(10) Election. If the target is a member of an affiliated group before the sale and the buyer makes a Section 338 election, an election is available under which the **target is treated as a member of the selling group** for purposes of the deemed asset sale, so the selling group absorbs the gain on the deemed liquidation of the target. If this Section 338(h)(10) election is made, the selling group does not recognize gain on the sale or exchange of the target stock. This election should be considered when the target corporation has a low basis in its assets relative to their value and one of three other conditions apply:

- The **selling group has losses** which can absorb the gain realized on the deemed sale of the target's assets;

- The corporate seller's **outside basis** in the target stock is **approximately equal to** the target's **inside basis** in its assets (in this case, the seller's gain is the same with or without the (h)(10) election); or

- The corporate **seller** defers the (h)(10) gain with the installment method and **expects** to have **losses** to shelter the gain recognized in future years.

Shareholders of **S corporation targets** can make the (h)(10) election to absorb the gain when the corporation is sold, giving the buyer a corporation with a stepped-up basis in its inside assets.

California franchise taxes are an important issue when considering the (h)(10) election. California does not recognize consolidated returns and has less favorable NOL carryforward rules (even when they are not suspended).[21]

S Corporation Buyers. If the buyer is an S corporation but the seller insists on a stock deal, consider doing a stock deal and then make a Section 338 or 338(h)(10) election and either a **Q-Sub election** or merge or dissolve the target corporation into the buyer. The result: the buyer gets a basis equal to the purchase price and can retain its S status.

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21 See "Using Net Operating Losses" below.

19. **Avoiding FIRPTA Traps**

If the buyer is required to withhold a portion of the purchase price of real property under the FIRPTA rules, but does not do so, the **buyer will be liable for the tax** which should have been withheld.

The buyer is also required to withhold from the purchase price of the stock of a "U.S. real property holding corporation." Once a corporation becomes a "U.S. real property holding corporation," it retains that taint for five years unless it recognizes the gain on its U.S. real property interests. Accordingly, **a corporation that holds no real property at the time of the stock sale could be a U.S. real property holding corporation** and the buyer would be required to withhold a portion of the purchase price.

California has a separate set of withholding rules.

20. **Property Tax Reassessments**

If California real property is being acquired, it generally will be assessed at its current value for California property tax purposes.

Similarly, if a corporation owns California real property, a **sale of all of its stock** will **trigger a reassessment** of its real property.

And if a subsidiary owns California real property and all of **the parent's stock is sold**, there will be a reassessment of the subsidiary's real property. If a reassessment of the property is anticipated, the buyer's **cash flow projections** should take this into account.

The buyer should consider **leasing** the property from the seller for a term of less than 35 years. The seller/lessor will expect the rental rate to reflect a portion of the buyer/lessee's property tax savings resulting from the low assessed value.

It is particularly important to work with the appraiser if an appraisal is being obtained for any purpose, including at the lender's request or to support the tax allocation between land and buildings. The property tax assessor's office may ask if there has been an **appraisal** and, if there has, will pick the valuation method in the appraisal which allocates the highest amount to the real property.

The IRS or the Franchise Tax Board may also have access to the appraisal and may also use a high allocation to the land and a **low allocation to the building**, reducing the amount of depreciable assets for the buyer.

21. Acquisition Costs in a Stock Sale

The buyer's costs of acquiring stock are added to the basis of the stock and are *not* depreciated or amortized.

Part Four
When the Buyer or the Target is an S Corporation

Buying and selling businesses conducted by S corporations involves several unique considerations. A few examples are listed below.

22. If the Buyer *Will* Continue the S Corporation Election:

The buyer will need representations, tax returns and other documentation concerning the date of the S election, the **value of built-in gain and loss assets** on that date, and indemnification if the information provided is inaccurate.

The sellers should represent that they have not taken any action which will result in a termination of the S election and that representation should be effective when the agreement is signed and at the closing.

If the seller terminates the S election by action that is not effective until after the closing, or if any of the seller's tax representations are inaccurate, the seller should be responsible for the resulting corporate tax.

If in a **tax-free transaction** the S corporation **acquires** appreciated assets from a C corporation (or acquires from an S corporation assets with a built-in gain taint), the assets will be subject to the onerous built-in gains rules and a new 10-year "recognition period" will begin for those assets. The net built-in gains on these assets cannot be reduced by built-in losses recognized on the disposition of assets acquired at other times.

The election to **close the books** should be considered.[22]

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[22] See "Using the Interim Closing of the Books Election to Eliminate Taxable Income" below.

Any remaining shareholders who will not control the board of directors may want a guarantee that the corporation will make **distributions** in amounts sufficient to enable them to pay their taxes on their shares of the corporation's income. The income, gain, loss or credit of an S corporation flows through to its shareholders in proportion to their share ownership. Because the corporation's taxable income flows through to the shareholders, they must pay tax on it. But neither tax nor corporate law requires the corporation to distribute cash to the shareholders to pay tax on their share of the S corporation's taxable income. However, that requirement may be imposed by an agreement among the shareholders and the corporation. The agreement could require cash distributions from the corporation in an amount equal to at least one third of the corporation's taxable income. The distributions could be made quarterly to permit the shareholders to make estimated tax payments. In the absence of a separate shareholders agreement, the buy-sell agreement could cover this point.

Minority shareholders of an S corporation may be squeezed out if they do not have sufficient income from other sources to pay the tax on their share of the corporation's taxable income.

23. **If the Buyer Will *Not* Continue the S Corporation Election**:

The buyer may qualify for a tax-free distribution from the accumulated adjustments account, even if the buyer does not qualify as the shareholder of an S corporation.

If less than 50% of the stock is acquired, there will be a pro rata daily allocation between the buyer and seller. The buyer may prefer to close the year and to adjust the purchase price, if necessary, since post-sale expenses which are not deductible by an S corporation (such as certain fringe benefits) and post-sale exclusions not available to an S corporation (such as the exclusion for dividends received) will be shared with the selling shareholder.

The buyer should consider the timing effects if the target corporation becomes a member of an affiliated group and automatically changes its tax year.

If the stock sale occurs within the first two months and 15 days of the target's tax year, the buyer can retroactively revoke the S election as of the first of the year.

24. **Using the Interim Closing of the Books Elections to Eliminate Taxable Income**

Making the election to close the books when a shareholder terminates or substantially reduces his interest in an S corporation can **eliminate taxable income**. Neither sellers nor buyers can afford to ignore this election.

Part Five
Other Issues

Net operating losses of sellers and buyers are important in both asset and stock deals.

A final issue for the seller is whether and when to dissolve the corporation after it has sold its business.

25. **Using Net Operating Losses**

The Bottom Line: By using net operating losses to absorb the gain on an asset sale (for the seller) or on the disposition of unwanted assets after the sale (for the buyer), the overall tax on the transaction may be minimized. If the limitations apply, be sure to analyze the "**built-in gain and loss**" rules, which might provide surprising benefits.

Carryforwards. Generally, if a taxpayer's aggregate business deductions exceed its gross income in a taxable year, the excess may be carried back and forward as an NOL deduction. Carrybacks are limited after the NOL corporation acquires the stock of another corporation or makes an extraordinary distribution ("corporate equity-reducing transactions" or "CERTs"). Somewhat similar rules permit unused net capital losses and certain unused credits to be carried forward.

NOL Limitations. The federal income tax benefits of NOL carryforwards are limited (or, in one situation discussed below, eliminated) if there is a substantial change in the controlling interest in the loss corporation. The limitation applies only after an "ownership change" with respect to the loss corporation. Generally, if in any three-year period more than 50% of the stock changes hands, an ownership change occurs. For purposes of this test, decreases in percentage interests are disregarded. But the regulations indicate that a redemption can result in an "owner shift involving a 5% shareholder."

The Limitation. If an ownership change occurs, the maximum NOL that can be applied to reduce the loss corporation's taxable income for any subsequent carryover period is the limitation amount. This amount equals the product of the value of the loss corporation on the date of the ownership change multiplied by a statutory rate of return (the "long-term tax-exempt rate"), published monthly, which is based on recent Treasury bill yields.

If in any year the loss corporation does not use its entire limitation for that year, the unused portion may be carried forward. However, the maximum 20-year carryforward period is not extended.

Built-In Gains and Losses. If the aggregate fair market value of the loss corporation's assets either exceeds or is less than its aggregate tax basis in those assets by an amount which is more than the lesser of 10% of the aggregate value of the assets on that date or $10 million, then special rules apply. If in the year of the transaction or a later year the corporation recognized gain on property which it owned on the transaction date, *the annual limitation would be increased* for that year by the amount necessary to shelter the portion of its "net unrealized built-in gain" attributable to such property. The "net unrealized built-in gain" is the excess of the aggregate value of all of the corporation's property on the transaction date over its aggregate tax basis in all of its property at that time.

Conversely, if the corporation had "built-in" loss, the loss would be limited the same way that the NOL would be limited.

Disallowance of the Entire Carryforward. If the loss corporation does not continue its historic business during the two-year period following the ownership change, the entire carryforward is disallowed. Even after the carryforward is disallowed, the **built-in gain** can be offset by the built-in losses.

Purpose Test. The Service can disallow a deduction or credit if (a) control of a business is acquired and (b) **the principal purpose** of the acquisition is to secure the deduction or credit.

Limitation on Other Carryforwards. A collateral effect of an "ownership change" is a similar limitation on unused business credits and research credits, excess foreign tax credits, and net capital loss.

These limitations do not appear to affect **suspended passive activity losses**.

The ability to use the losses of one corporation to offset the built-in gain of an unrelated acquired corporation after the acquisition date is limited.

S Corporation Elections. This limitation remains effective after the S election for purposes of applying the deduction or credit against the built-in gains tax.

California NOL Limitations. For net operating losses attributable to taxable years that began after 1992, California law generally permits a specified percentage of the loss to be carried forward for up to ten years. The specified percentage is 60% for losses incurred in taxable years beginning after 2001 and before 2004. NOL carrybacks are not permitted. Several special rules apply.

26. Acquisition Costs for Sellers and for Deals that don't Close

The target corporation's costs incurred to sell its **assets** reduce the purchase price and so provide an immediate tax benefit.

The U.S. Supreme Court has held that a target corporation's costs incurred in connection with a **friendly stock purchase** were nondeductible capital expenditures. But if a Section 338 election or 338(h)(10) election (discussed above) is made, the target's costs probably reduce the amount realized on the deemed sale of the target assets, and thus provide an immediate tax benefit.

The buyer's costs incurred in a transaction that **does not close** are probably capitalized and then deducted as an abandoned asset when the deal falls through. However, where several **alternative deals** are explored but only one closes, the costs of all of the deals probably should be *capitalized* and added to the basis of the stock or assets of the target in the deal that closes.

27. Should the Seller Liquidate After the Sale?

Before deciding whether to liquidate a corporation following the sale of its assets, several concerns must be balanced. One is the desire to get the corporation out of the picture when its principal purpose (**protecting the shareholders from liabilities** incurred in operating the business) no longer exists. Another is the **tax costs** which may be incurred on the liquidating distribution, against which is balanced the possibility of holding the stock until death and using the **basis step-up** to escape the shareholder-level tax.

C Corporations. The corporation may become subject to the **accumulated earnings** or **personal holding company** penalty taxes. To the extent that these taxes are avoided by investing in **tax-exempt instruments**, consider whether the exempt income will be included in alternative minimum taxable income. Distribution of **installment obligations** will accelerate gain recognition at the corporate level.

S Corporations. An **S election** will cause *all* of the C corporation's deferred gain on an installment obligations to be recognized *in the first S year*. If an **S corporation sells** assets and **then distributes** the installment obligation to its shareholders, corporate-level gain remains deferred (except for corporate-level taxes, such as built-in gains tax) and shareholder-level tax is also deferred under the installment method.

The corporation may become subject to the tax on **excess passive receipts** if it has C corporation earnings and profits. If this tax is incurred for three consecutive years, the S corporation election is terminated.

Leftover Assets. What should be done with real estate that remains in the corporation after the sale? Consider making an S corporation election, planning to avoid the excess passive receipts tax, and then holding the asset until the later of the end of the ten-year built-in gains period or the death of the shareholders. At that time the asset can be sold and the liquidating distribution -- *if made in the same year as the sale* -- will eliminate the gain from the sale. Do not make lifetime gifts of the stock, because the basis step-up is a critical part of this plan. The corporation can do an like-kind swap of the property.

Consider electing S corporation status and having the corporation contribute the **real property** to a charitable remainder trust for a term of years (maybe 20 years). The shareholders achieve liquidity and might avoid both a corporate-level tax *and* the excess passive receipts tax.

Also consider contributing the **stock** to a charitable remainder trust.

[End of text.]

ADDITIONAL INFORMATION

If you would like more information, please check the appropriate box or boxes below, provide your address (or business card) and return this sheet to Bill Staley -- or FAX it to Susan Rognlie at (818) 936-2990.

1. ☐ **"Buy-Sell Agreement Checklist**."* For those considering adopting or revising a buy-sell agreement.

2. ☐ "**Disregarded Entities: Working with Single-Member Limited Liability Companies and Qualified Subchapter S Subsidiaries**"*

3. ☐ "**Hot Tax Planning Tips and Strategies**"* A presentation in November 2002 for the the CPE Education Foundation of the California Society of CPAs

4. ☐ "**Limited Liability Companies – An Introduction**"* – A bulleting with the basic info about this new entity

5. ☐ "**Liquidating California Corporations and Partnerships**"

6. ☐ "**S Corporation Update: Qualified Subchapter S Subsidiaries, Curing Invalid S Elections and Basis and Distribution Rules**"

7. ☐ "**Structuring Businesses for the 21st Century**"* A practical approach to choosing the best business entity.

8. ☐ "**Tax Planning for Large Charitable Contributions: Private Foundations, Common Funds and Community Foundations**."

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* Available on www.staleylaw.com.