

2 Whether there will be any tax consequences to A as a result of its proposed redemption of its stock from shareholders, other than B.

CONCLUSION:

1 There will be no tax consequences to A as a result of its proposed sale of the stock to B.

2 There will be no tax consequences to A as a result of its proposed redemption of its stock from shareholders other than B.

FACTS:

A as debtor and B have submitted a plan of reorganization pursuant to Chapter 11 of Title 11 of the United States Code.

Under the plan of reorganization of A as submitted to the Bankruptcy Court, the following events will occur: B will acquire #b shares of A stock in exchange for cash of approximately \$a. Under the plan of reorganization, A will transfer such purchase price to a trust which will first pay creditors, as determined by the Bankruptcy Court proceedings, and then use the balance of the purchase price to fund the redemption of the remaining A stock.

Since A will redeem all of the stock held by its present shareholders, at the conclusion of the transaction, B will own all of the stock of A, and all of the other A stock will have been redeemed.

LAW AND ANALYSIS

LAW

I.R.C. § 1032(a) provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

I.R.C. § 311(a) provides, except as provided in subsection (b), no gain or loss shall be recognized to a corporation on the distribution of property (not in complete liquidation) with respect to its stock.

I.R.C. § 311(b) provides, if a corporation distributes property (other than obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and the fair market value of such property exceeds its adjusted basis (in the hands

of the distributing corporation), then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

I.R.C. § 317 provides that the term “property” means money, securities, and any other property.

ANALYSIS

Stock Sale Issue 1

The issue is here whether there will be any tax consequences to A as a result of the proposed stock sale to B.

I.R.C. § 1032(a) provides that no gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation.

In the instant case, A exchanged its own stock for \$a in cash. Therefore, under I.R.C. § 1032(a) A should recognize no gain or loss on the sale or exchange of its stock for cash.

Stock Redemption Issue 2

The issue here is whether there will be any tax consequences to A as a result of the proposed redemption of its stock from shareholders other than B.

In general, no gain or loss shall be recognized to a corporation on the distribution of property with respect to its stock. I.R.C. § 311(a). However, I.R.C. § 311(b) provides, if a corporation distributes property (other than obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation), then gain shall be recognized to the distributing corporation as if such property were sold to the distributee at its fair market value.

In the instant case, no gain or loss shall be recognized to A, on the distribution of cash to its shareholders with respect to its stock.

In the instant case, A redeemed its stock from its shareholders (excluding B). As a result of this redemption, A shareholders received cash in exchange for their A stock. Cash always has a basis equal to its fair market value, therefore it can never be appreciated property under I.R.C. § 311(b). Therefore, because the fair market value of the cash property distributed by A does not exceed its basis, no gain or loss will be recognized by A on the distribution of property with respect to its stock.

There are no tax consequences to A as a result of the proposed sale of its stock to B, and there are no tax consequences to A as a result of the proposed redemption of its stock from shareholders other than B.

CASE DEVELOPMENT HAZARDS AND OTHER CONSIDERATIONS



If you have any further questions, please call 622-7930.

Deborah Butler
Assistant Chief Counsel
(Field Service)

By: _____
STEVEN HANKIN
Special Counsel
Field Service Corporate