



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR ROD OAKES,

FROM: Associate Chief Counsel (Passthroughs & Special Industries)

SUBJECT:

This Chief Counsel Advice responds to your facsimile dated March 22, 2001. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

DISCLOSURE STATEMENT

Chief Counsel Advice and is open to public inspection pursuant to the provisions of section 6110(i). The provisions of section 6110 require the Service to remove taxpayer identifying information and provide the taxpayer with notice of intention to disclose before it is made available for public inspection. Sec. 6110(c) and (i). Section 6110(i)(3)(B) also authorizes the Service to delete information from Chief Counsel Advice that is protected from disclosure under 5 U.S.C. § 552 (b) and (c) before the document is provided to the taxpayer with notice of intention to disclose. Only the National Office function issuing the Chief Counsel Advice is authorized to make such deletions and to make the redacted document available for public inspection.

Accordingly, the Examination, Appeals, or Counsel recipient of this document may not provide a copy of this unredacted document to the taxpayer or their representative. The recipient of this document may share this unredacted document only with those persons whose official tax administration duties with respect to the case and the issues discussed in the document require inspection or disclosure of the Chief Counsel Advice.

LEGEND

A =

B =

C =

D =

State =

Date 1 =

Date 2 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

j =

k =

l =

ISSUE:

Under the facts presented below, should the Service invoke the Treas. Reg. § 1.701-2 anti-abuse rule to recast the transaction and subsequent basis allocation.

CONCLUSION:

Yes, where a transaction is set up solely to take advantage of the basis rules under § 732 in an inappropriate manner, the transaction will be recast.

FACTS:

On Date 1, A (Wholly owned by B) transferred all of its assets to C in exchange for the stock in C. The assets transferred to C consisted of inventory (AB= \$a), prepaid expenses (AB= \$b), security deposits (AB= \$c), trademarks (AB=\$d), fixed assets (AB=\$e), customer lists (AB=\$f), and goodwill (AB=\$g).

On Date 2, just 10 days after Date 1, A sold its h% interest in C to D, a newly formed State corporation, for approximately \$i, including \$j and the assumption of liabilities. Pursuant to section 732 (b) and (c) D allocated basis equal to C's basis to the inventory, prepaid expenses, and security deposits and allocated the balance to other assets in proportion to C's basis in those assets. As a result, the basis in the trademarks was increased to \$k and the basis in fixed assets (depreciable over 5-7 years) was increased to \$l.

LAW AND ANALYSIS:

Treas. Reg. § 1.701-2(b) provides that where a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners' aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K, the Commissioner can recast the transaction for federal tax purposes. Here the partnership was formed and terminated for no other purpose than to take advantage of the rules under § 732 so the application of the § 1.701-2 anti-abuse rule is appropriate in this case. Section 732 was enacted for taxpayer convenience for the distribution from a partnership with an operating history. It is clear that under these facts, the creation and termination of the partnership, in ten days, was a deliberate plan to use § 732 for an inappropriate tax accounting. Therefore, the Service will recast this transaction as a sale of h% of A's assets to D and the subsequent creation of the partnership, C.

Please call if you have any further questions.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

DAVID R. HAGLUND
Senior Technician Reviewer