DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR: John S. Repsis, Associate Area Counsel
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FROM: Associate Chief Counsel (Income Tax & Accounting) CC:ITA

SUBJECT: Exchange of Property Held for Productive Use or for Investment

This Chief Counsel Advice responds to your memorandum dated March 20, 2002. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

LEGEND

Taxpayer =
Parent =
Sub 1 =
Sub 2 =
TrustCo =
Fcorp =

FcorpFinance =

LeaseCorp =
New Plane(s) =
X-Firm =
Year 6 =
Year 11 =
Year 14 =
Year 15 =
Year 16 =

Date 1 =
Date 2 =
Date 3 =

Date 4	=		Date 12	=	
Date 11	=				

ISSUES

You requested we consider the following issues concerning the validity of an exchange of aircraft by Taxpayer in a transaction intended to qualify for tax deferral under § 1031 of the Internal Revenue Code:

1. Was Taxpayer's exchange of aircraft under §1031 of the Code a valid business transaction? If not, should the aircraft exchange be disallowed and the depreciation attributable to the exchange aircraft be adjusted, along with alternative minimum tax (AMT) and adjusted current earnings (ACE)?

2. If the primary position is not sustained (i.e., if we determine that the exchange had a valid business purpose), then should the step transaction doctrine be applied to Taxpayer's exchange of aircraft under § 1031? If the step transaction doctrine applies, should the aircraft exchange be disallowed and the depreciation attributable to the exchanged aircraft be adjusted, along with alternative minimum tax (AMT) and adjusted current earnings (ACE)?

CONCLUSIONS

There is no direct or indirect authority precluding the Service's use of the business purpose, step transaction or substance over form doctrines to disallow a transaction designed to avoid longer depreciation as provided under section 168. The Service may reasonably argue any or all of these doctrines to show that Taxpayer is not entitled to have its transaction respected as a like-kind exchange, and thereby transfer the basis of New Plane to the eight old aircraft. The application of these doctrines to the transaction at issue would support your adjusting the depreciation attributable to the aircraft involved, along with prior calculations of Taxpayer's alternative minimum tax (AMT) and adjusted current earnings (ACE) for the applicable taxable year(s), consistent with your conclusions.

FACTS

As one of its businesses, Taxpayer leases aircraft. From Year 6 to Year 11, Taxpayer acquired and then leased aircraft to its lessees.

Fcorp is a nondomestic (foreign) air carrier. In year 14, Fcorp took delivery of five New Planes and had closed sale / leaseback / exchange transactions on four of them. LeaseCorp, an unrelated company and investor in the fourth New Plane, advised Taxpayer concerning the possibility of "investing" in and acquiring the fifth New Plane to implement the tax planning strategy afforded by engaging in a leaseback and exchange transaction. These transactions were presented to Taxpayer's finance committee. As part of the presentation Taxpayer's personnel prepared an "Appropriation Request." The Appropriation Request stated:

> [Taxpayer] has ... aircraft that have expended a large portion of their tax benefits [depreciation]. The leasing market has developed a structure that takes advantage of the 'like-kind exchange' provisions of the Internal Revenue Code ...
>
> [Taxpayer's Sub 1] purchases from and leases back to [Fcorp] [New Plane] for $. [Taxpayer] 'exchanges' eight aircraft on lease to US lessees valued in total at $ (that are substantially depreciated for US tax purposes). As a result of this exchange, [Taxpayer] is able to obtain more accelerated tax depreciation of the cost of the [New Plane]. [Taxpayer] leases back the [New Plane] to [Fcorp] for a term of years. At [the conclusion of the original year lease term], [Fcorp] can buy the aircraft for a fixed price (% [of the original purchase price]) or find a "replacement" lessee for an additional -year term or return the aircraft to [Taxpayer] plus pay % of the original cost. Payback period is months.

On Date 1, the Finance Committee of the Board of Directors of Taxpayer approved the transaction. To set-up the transaction, Sub 1 organized a domestic trust (Trust 1). Trust 1 was designed to qualify as a grantor trust under §§ 671-677 of the Code. Sub 1 became the grantor of Trust 1. To fund the purchase, Sub 1 contributed $ to Trust 1. In addition, Trust 1 assumed $ in nonrecourse debt (recourse only to the aircraft) provided by an unrelated foreign bank. Taxpayer also organized a second domestic trust (Trust 2) designed to qualify as a grantor trust under §§ 671-677, with Taxpayer as the grantor. TrustCo became the trustee of both Trust 1 and Trust 2.

On Date 2, the various parties entered into numerous agreements (Participation Agreement, Purchase Agreement, Lease Agreement, Loan Agreement, Trust Agreement, etc.) to effect the sale, leaseback and like-kind exchange (LKE) transaction. On Date 3, Trust 1 purchased New Plane for $ from FcorpFinance. Immediately after the acquisition and pursuant to the Lease Agreement, Trust 1 leased the aircraft to Fcorp for a period of years. After the end of the initial lease period (Date 11) Fcorp will have three options:

1. Purchase the aircraft for $;
2. Find a replacement lessee for an additional years (until Date 12); or
3. Return the aircraft to Taxpayer and pay Taxpayer $.

Immediately after leasing back New Plane, Trust 1 transferred New Plane to Trust 2. In return, Taxpayer transferred to Sub 1 the eight older aircraft it owned and leased.

While the closing documents indicated that the eight aircraft were transferred from Taxpayer to Sub 1, Sub 2 (another subsidiary of Taxpayer) continued depreciating the aircraft for federal income tax purposes after the like-kind exchange for the Year 15 and Year 16 tax years.

Taxpayers are required to notify the Service of LKE's by filing Form 8824 in the year of the exchange. During the audit for the Year 15 tax year, Taxpayer indicated that none of the Forms 8824 filed with the Year 15 income tax returns were attributable to the Fcorp exchange. Taxpayer failed to duly disclose the exchange at issue.

LeaseCorp prepared a document discussing the details of the transaction between Taxpayer and Fcorp, which includes the following additional explanation of Taxpayer's strategy:

> In leasing an aircraft to [Fcorp], or any other tax-exempt entity, [Taxpayer] cannot use the accelerated 7 year MACRS depreciation. The Pickle Dole regulations decree that any time a company leases equipment to a tax-exempt entity it has to use straight-line depreciation. The term over which the property would be straight-line depreciated is the greater of the class life or 125% of the lease term of the class life. The class life of aircraft is 12 years and the lease term of this transaction is . The depreciation in this case is straight-line over . [Taxpayer] has also used a LKE in this transaction to enhance its economics and offer a more attractive present value benefit to [Fcorp].

By exchanging New Plane for eight substantially older aircraft, Taxpayer and Sub 1 were attempting to shift the tax basis of the assets exchanged. Under this plan, depreciation is based on the "use" of the property. In this case Taxpayer and Sub 1 traded the eight aircraft already in their portfolio for Fcorp's New Plane. Accordingly, Sub 1 used 7-year MACRS in depreciating substantially all of the $ paid for New Plane since the bulk of the basis attached to the eight "old" aircraft and the depreciation was based on the domestic usage of the "old" aircraft.

In its Summary Document, LeaseCorp also discussed the importance of the values of the aircraft exchange being equal or near in value, stating:

> To get the most efficient economic benefit from the LKE, the current fair market value of the assets to be exchanged should be equal. If the values are not equal then the tax consequences of the disparity decreases the benefit of doing the LKE.

In the same Summary Document, LeaseCorp identified the fair market value of the eight "old" aircraft as about $, a little more than the value as that of New

Plane. LeaseCorp also discusses the “Remaining tax basis in the ‘old’ assets.” LeaseCorp stated:

> Since the tax basis in these assets gets exchanged, any tax basis in the “old” assets gets “attached” to the [Fcorp] aircraft and has to be depreciated using the straight-line method outlined above. The lower the tax basis in the “old” assets the greater the benefits of doing LKE. The remaining tax basis for the “old” assets was $ as of the exchange date....

Since the LKE was taking place within the same consolidated group (Taxpayer and its subsidiaries) for both tax and accounting purposes, and the changes in depreciation are solely due to the Fcorp transaction, the entire net effect of the new lease and LKE have been included the Fcorp lease. This approach was used by LeaseCorp’s parent after consultation and approval by X-Firm, its accountants, in its December, Year 14 Fcorp LKE lease. LeaseCorp also indicated that other lessors with their accountants are applying the same methodology.

As to how tax depreciation should be reported after the LKE, LeaseCorp indicates that the remaining depreciation available with respect to the old assets was $. The $ new asset basis must be reduced by the remaining basis of the old assets for a net basis of $. As a result of the exchange, the net basis of $ is now attributable to the old assets and thus would be depreciated using a 7 year MACRS with a half year convention. The basis of $ in the new asset would be depreciated over years using the straight-line method.[1]

LAW AND ANALYSIS

Section 167(a) provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business of the taxpayer, or of property held for the production of income.

The depreciation deduction provided by § 167(a) for tangible property placed in service after 1986 generally is determined under § 168. This section prescribes two methods

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[1] The difference between the fair market value of New Plane ($) and the 8 “Old” aircraft ($) is $. This difference constitutes an exchange group deficiency for which Taxpayer should have recognized gain in its Year 15 taxable year if this transaction was valid. See § 1.1031(j)-1(b)(iv) and *Example 1*, para. (iii)(A) of §1.1031(j)-1(d) of the regulations.

of accounting for determining depreciation allowances. One method is the general depreciation system in § 168(a) and the other method is the alternative depreciation system in § 168(g). Under either depreciation system, the depreciation deduction is computed by using a prescribed depreciation method, recovery period, and convention.

The alternative depreciation system in § 168(g) must be used for the properties described in § 168(g)(1). Under § 168(g)(1)(B), any tax-exempt use property is subject to the alternative depreciation system. Section 168(h)(1)(A) defines "tax-exempt use property", in general, as that portion of any tangible property (other than nonresidential real property) leased to a tax-exempt entity. Under § 168(h)(2)(A), a tax-exempt entity includes any foreign person or entity. Under § 168(h)(2)(C), a foreign person or entity includes any person who is not a United States person.

Section 168(g)(2) provides that depreciation allowances under the alternative depreciation system are determined by using the straight-line method of depreciation without regard to salvage value, the applicable convention under § 168(d), and a recovery period determined under the table in § 168(g)(2)(C). Section 168(g)(3)(A) provides that in the case of any tax-exempt use property subject to a lease, the recovery period used for purposes of § 168(g)(2) cannot be less than 125 percent of the lease term.

Section 168(i)(7)(B)(ii) provides that in the case of any property transferred in any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by the group, the transferee will be treated as the transferor for purposes of computing the depreciation deduction determined under § 168 with respect to so much of the basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

Section 1.168(h)-1(a) provides that property (tainted property) transferred directly or indirectly to a taxpayer by a related person (related party) as part of, or in connection with, a transaction in which the related party receives tax-exempt use property (related tax-exempt use property) will, if the tainted property is subject to an allowance for depreciation, be treated in the same manner as the related tax-exempt use property for purposes of determining the allowable depreciation deduction under § 167(a). The tainted property is depreciated by the taxpayer over the remaining recovery period of, and using the same depreciation method and convention as that of, the related tax-exempt use property. Section 1.168(h)-1(b)(2)(ii) provides that § 1.168(h)-1 does not apply to so much of the taxpayer's basis in the tainted property as is subject to § 168(i)(7). Section 1.168(h)-1 applies to transfers on or after April 20, 1995 and prevents basis freshening using LKE.

Section 1.168(h)-1(d) provides, in part, that common law doctrines or other authorities may apply to recharacterize or alter the effects of the transactions described in the regulation. Further, the preamble to the final regulations provides that no inference is intended by the effective dates in the regulations as to the treatment of any transaction under prior law. Also, the preamble states that the regulations do not preclude the application of common law doctrines (such as the substance over form or step transaction doctrines) and other authorities to transactions described in the regulations (e.g., as to whether a particular transaction should be characterized as a lease or a conditional sale for federal income tax purposes). T.D. 8667, 1996-1 C.B. 22, 23.

In the instant case, § 168(i)(7)(B)(ii) applies because Taxpayer and Sub 1 are members of an affiliated group included in the Parent's consolidated tax returns through the Date 4. Consequently, of Sub 1's approximate $ basis in New Plane, approximately $ is subject to § 168(i)(7), and therefore, depreciated using the same recovery period and depreciation method (general depreciation system) as Taxpayer. Sub 1's remaining basis (approximately $) is at issue.

As to Sub 1's remaining basis in New Plane, we recognize that § 1.168(h)-1 does not apply because Taxpayer and Sub 1 traded the properties on Date 3, prior to April 20, 1995. However, the preamble and § 1.168(h)-1(d) suggest that regardless of whether § 1.168(h)-1 applies, the Service may apply common law doctrines (including the substance over form or step transaction doctrines) or other authorities to achieve the same result as provided under § 1.168(h)-1, namely, to prevent taxpayers from avoiding the application of the alternative depreciation system through the use of a like-kind exchange under § 1031.[2]

We do not know of any authority precluding the Service's use of the business purpose, step transaction or substance over form doctrines to disallow a transaction designed to avoid the requirement of a longer depreciation period as provided under § 168. Therefore, we believe the Service may apply any and all of these doctrines if facts and circumstances warrant their application.

The business purpose and step transaction doctrines used together constitute a stronger argument for recharacterizing the transaction in the present case.

First articulated in Gregory v. Helvering, 293 U.S. 465, 469 (1935), the business purpose doctrine generally holds that a transaction that is not entered into for a business purpose cannot come within the provisions of the tax law intended to apply to business transactions. This doctrine has been expanded, since the Gregory decision,

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[2] At this juncture, we note a fair degree of consistency in the Service's actions designed to prevent taxpayers from circumventing the intent of Congress in these transactions. For example, the Service has also promulgated § 1.1502-80(f), providing that § 1031 does not apply to intercompany transactions occurring in consolidated return years beginning on or after July 12, 1995, a date which is also subsequent to Date 3.

to apply sham transactions set up in the business context and is used by the courts to deny intended tax benefits of transactions that have no business purpose other than the creation of tax benefits. Knetsch v. United States, 364 U.S. 361 (1960) (which denied deductions for interest incurred in a sham transaction set up for tax avoidance purposes).

The step transaction doctrine requires that the tax consequences of interrelated steps in an integrated transaction be determined by viewing the transaction as a whole, rather than by viewing each step separately. The step transaction doctrine requires the linking together of "all interdependent steps with legal or business significance, rather than [taking] them in isolation" so that "federal tax liability may be based on a realistic view of the entire transaction. Commissioner v. Clark, 489 U.S. 726, 738 (1989). "Like the business purpose doctrine, it began as an interpretation of a detailed statutory provision but has been a successful cultural imperialist, on which the sun never sets." 1 BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES AND GIFTS ¶ 4.3.5 (3d ed., 1997). Thus, the step transaction doctrine is generally applicable to any integrated transaction accomplished in a series of steps that serve no purpose other than to position the taxpayer to achieve a tax advantage. In applying the step transaction doctrine, the Supreme Court has stated that "a given result at the end of a straight path is not made a different result because reached by following a devious path." Minnesota Tea Co. v. Helvering, 302 U.S. 609, 613 (1938).

In the present case, the overall affect of Taxpayer's series of transactions is to achieve a result that is inconsistent with Congressional intent to assign a slower recovery period for tax-exempt use property. The exchange was evidently motivated in order to achieve a high basis for the eight older aircraft that would be eligible for depreciation under the MACRS system. On appropriate facts, transactions and steps to transactions may be ignored under the business purpose and step transaction doctrines when necessary to prevent Taxpayer from achieving tax avoidance in contravention to legislative policy.

Whether a transaction should be respected and given effect for tax purposes in the manner asserted by Taxpayer depends on the facts and circumstances at issue. In this case, the fact that Taxpayer declined to explain the business purpose for engaging in the sale-leaseback-exchange transaction with Fcorp and Sub1 is relevant in determining whether there were credible non-tax reasons for engaging in the transaction. Furthermore, a determination to not respect the transaction as a like-kind exchange may be supported, in part, by:

(1) Taxpayer's failure to report the transaction as required on Form 8824 for the years at issue, and

(2) Sub 2's continued practice of depreciating the eight old aircraft for the two taxable years immediately after they were allegedly transferred in the exchange.

In other words, a taxpayer's failure to treat its transaction in a manner consistent with its own characterization may further justify the Service in recasting the transaction in a manner consistent with law and practice.

Even in the realm of like-kind exchanges under § 1031, for which form of the transaction is so important to assure its validity, the step transaction doctrine is applied where necessary to prevent abuse and give effect to legislative policy. This application was tested in True v. United States, 190 F.3d 1165, 1179 n. 14 (10th Cir. 1999). In that case, the taxpayers, through related entities, acquired and then exchanged five new ranch properties (which were both nondepreciable and nondepletable) for depletable oil and gas leases in the following steps: First, instead of True Ranches (a partnership entity owned by members of the True family) directly acquiring the new ranchlands, the taxpayers arranged for Smokey Oil Company (a related, taxpayer-controlled corporation) to purchase the parcels of real property while the True Ranches acquired the operating assets of each ranch. Next, Smokey Oil Company transferred the ranchlands to the True Oil Company (a related, taxpayer-controlled general partnership) in exchange for selected productive oil and gas leases. Next, True Oil Company distributed the newly acquired ranches to the individual family member partners of True Oil Company as tenants in common. Lastly, the partners then contributed their undivided interests in the ranches to True Ranches by general warranty deed. The taxpayers treated the exchange of the ranch lands for the mineral properties as a like-kind exchange for which gain realized is deferred under § 1031. The distributions from and the contributions to the partnerships involved were also nontaxable events under §§ 731 and 721.

The True family believed that a taxpayer-favorable benefit had been achieved through this series of transactions. As provided under § 1031(d), the property received in the exchange gets the same basis of the property transferred. Under this basis switching regime, Smokey Oil Company received depletable oil and gas leases with the same basis it had in the nondepreciable ranchland it transferred in the exchange with True Oil Company, thus permitting it to claim cost depletion deductions on its 1989 and 1990 income tax returns under § 612. This constituted a substantial tax benefit for the taxpayers. On the other hand, True Oil Company received the non-depreciable ranchland with the same zero basis that its exchanged oil and gas leases once had. The taxpayers' position with respect to these transactions was that they were entitled to reap the tax benefits of turning non-depreciable, high basis ranchlands into cost depletable oil and gas assets, while True Ranches was left with the nondepreciable ranchlands which now had a low ($0) basis.

In looking at this series of transactions, the 10th Circuit discerned no economic or business purpose for engaging in them other than the tax advantages derived. The original acquisition of the ranchlands by the Smokey Oil Company was suspect because it was not in the ranching business. Moreover, Smokey Oil Company did not even take or exploit the mineral interest in the traded ranch properties. Similarly suspect was the exchange of the ranchlands for oil and gas leases with another oil company (True Oil Company), which also was in the oil business, not the ranching business. Also, there was no apparent business reason for separating the operating assets from the ranchlands themselves when the property was first acquired by the True family companies. The operating assets and the ranchlands did not remain under separate ownership. The only apparent reason for separating the operating assets of the ranches from the real estate was to make it possible to exchange real property under § 1031 without recognizing gain from boot. The only evident reason for entering in the exchange of ranchlands for mineral properties was to switch the basis between the ranches and the oil properties and to thus regain the tax advantage of depletable basis § 612 of the Code.

The court in True observed that the step transaction doctrine, like the sham transaction doctrine, was a corollary of the substance over form principle. While the sham transaction doctrine looks to business purpose and economic effects other than tax benefits, the step transaction doctrine is tailored to examine transactions involving a series of interrelated steps for which the taxpayer is seeking independent tax treatment for each step. See 190 F.3d at 1176-7, n. 11.

The court in True concluded that the step transaction doctrine was the appropriate way to analyze the transaction. The court noted that the taxpayers avoided what would have been a natural result of a direct purchase of ranchland by engaging in a series of steps designed from the outset to circumvent the tax code by effectively depleting the cost basis of non-depletable ranchlands. 190 F.3d at 1179. The court, therefore, concluded that the indirect route used by the taxpayer to get the ranchlands into True Ranches' possession should be ignored. The True Ranches partnership was treated as if it had purchased the five ranches directly, in first instance, along with the operating assets. [3]

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[3] Redwing Carriers, Inc. v. Tomlinson, 399 F.2d 652 (5th Cir. 1968) is yet another case in which the court applied the step transaction doctrine, this time to treat a transaction as an exchange under § 1031. The taxpayer in that case wanted a higher basis for replacement property to inflate depreciation deductions. Therefore it reported the transaction as a series of sales which were followed by purchases. The court, however, found that the transactions constituted exchanges based on the fact that the old relinquished property was traded for new replacement property through a common dealer notwithstanding the documentation of the transactions as sales/purchases. The court concluded with the following explanation of its decision:

> Taxation is transactional and not cuneiform. Our tax laws are not so supple that scraps of paper, regardless of their calligraphy, can transmute trade-ins into sales. Although Redwing's transfers may have been paper

Therefore, it is reasonable and consistent for the Service to superimpose this same analysis and conclusion on the present case. You may choose to treat Taxpayer as if it had acquired New Plane directly, by purchase. Thus New Plane in Taxpayer's hands would retain the same high cost basis. The eight older aircraft, leased to domestic carriers, retain a low basis because § 1031(d) would be inapplicable.

The substance over form doctrine, which provides that the substance of the transaction, rather than its form, should determine its tax consequences, offers an alternative argument. In Frank Lyon Co. v. United States, 435 U.S. 561, 572-3 (1978), the Supreme Court provided its analysis of how and when this doctrine should apply:

> In a number of cases, the Court has refused to permit the transfer of formal legal title to shift the incidence of taxation attributable to ownership of property where the transferor continues to retain significant control over the property transferred. E. g., Commissioner v. Sunnen, 333 U.S. 591 (1948); Helvering v. Clifford, 309 U.S. 331 (1940). In applying this doctrine of substance over form, the Court has looked to the objective economic realities of a transaction rather than to the particular form the parties employed. The Court has never regarded "the simple expedient of drawing up papers," Commissioner v. Tower, 327 U.S. 280, 291 (1946), as controlling for tax purposes when the objective economic realities are to the contrary. "In the field of taxation, administrators of the laws, and the courts, are concerned with substance and realities, and formal written documents are not rigidly binding." Helvering v. Lazarus & Co., 308 U.S., at 255. See also Commissioner v. P. G. Lake, Inc., 356 U.S. 260, 266-267 (1958); Commissioner v. Court Holding Co., 324 U.S. 331, 334 (1945). Nor is the parties' desire to achieve a particular tax result necessarily relevant. Commissioner v. Duberstein, 363 U.S. 278, 286 (1960).

Although the taxpayer in the above case (Frank Lyon Co.) prevailed, the analysis provided by the Court has a certain degree of relevance to the present case. It is worthy of note for example that ownership of all exchange property is retained within the same control group of Taxpayer. Thus, it is arguable that under the Sunnen and Clifford rationale, the transfer of legal title by means of the exchange "should not shift

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> sales, they were actual exchanges. A taxpayer may engineer his transactions to minimize taxes, but he cannot make a transaction appear to be what it is not. Documents record transactions, but they do not always become the sole criteria for transactional analysis.

399 F.2d at 659.

the incidence of taxation attributable to ownership" of New Plane or the eight older aircraft.

It is well established that in determining the incidents of taxation, the Service should look through form and search out the substance of a transaction. Georgia-Pacific Corporation v. United States, 264 F.2d 161 (5th Cir. 1959); Commissioner v. Court Holding Co. v. Commissioner, 324 U.S. 331, 333 (1945); and Gregory v. Helvering, 293 U.S. 465 (1935). The Fifth Circuit has also characterized this principle as "a basic concept of tax law particularly pertinent to cases involving a series of transactions designed and executed as parts of a unitary plan to achieve an intended result." It further stated that "such plans will be viewed as a whole regardless of whether the effect of doing so is imposition of or relief from taxation" and that "the series of closely related steps in such a plan are merely the means by which to carry out the plan and will not be separated." Kanawha Gas & Utilities Co. v. Commissioner, 214 F.2d 685, 691 (5th Cir. 1954). It is also proper to apply the substance over form principle to "promote the effective administration of the tax policies of Congress" when 'the true nature of the transaction [is otherwise] disguised by mere formalisms which exist solely to alter tax liabilities." Kornfeld v. Commissioner, 137 F.3d 1231, 1234 (10th Cir. 1998).

DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

[redacted]

[redacted]

[redacted][4]

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[4] [redacted]

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