

State and Local Tax Implications Of Reorganizing Business Enterprises

by Craig B. Fields and Philip M. Tatarowicz



Craig B. Fields

Philip M. Tatarowicz

'Tax-Free' (IRC section 351) Contributions to a Corporation

This article is the third in a series dedicated to examining state and local tax (SALT) questions implicated by the purchase, sale, and reorganizing of business enterprises — hereafter referred to as restructurings or mergers and acquisitions. The last installment provided an overview of major considerations implicated by restructurings, which included jurisdiction to tax; ensuring timely compliance with filing obligations; and the need to consider, among other things, optional and mandatory accounting methods, periods and income calculations.¹ Also, it provided a high-level overview of income-based taxes, sales and use taxes (SUTs), property taxes, unemployment taxes, transfer taxes, and other taxes and considerations. The goal of that over-

¹See Craig B. Fields and Philip M. Tatarowicz, "State and Local Tax Implications of Reorganizing Business Enterprises," *State Tax Notes*, Nov. 5, 2012, p. 427. Also see the first installment of this series, Fields and Tatarowicz, "State and Local Tax Implications of Reorganizing Business Enterprises: The Marketplace and Its Challenges," *State Tax Notes*, July 30, 2012, p. 329. It examined the SALT mergers and acquisitions marketplace and the challenges it presents to SALT specialists and those who employ them.

view was to provide the reader with insight into the different focal points of these levies and how they inform tax administrators in their compliance examinations.

This third installment will examine how the states vary in their tax treatment of corporate organizations under IRC section 351.² Presented in a comparative law format, this review will contrast select state levies against the federal statutory, judicial, and administrative rules that govern IRC section 351. Accordingly, we first present an overview of the federal income tax rules describing and limiting IRC section 351, followed by a discussion and analysis of select taxes imposed by subnational governments on these types of transactions.

The law in this area is so voluminous that the authors must continually be on guard to strike a reasonable balance between informing versus not overwhelming the reader. Moreover, limitations inherent in any series of articles focused on a topic of this nature require the authors to pick and choose which subnational taxes to detail in any given installment, leaving others for more cursory observations and later detailing.

For this installment, more detail is devoted to subnational income and SUT issues. In future installments, other levies will be highlighted. It is our belief that the person committed to reading this column will become more fully informed and appreciative of the challenges and opportunities that this dynamic and exciting practice of law affords.

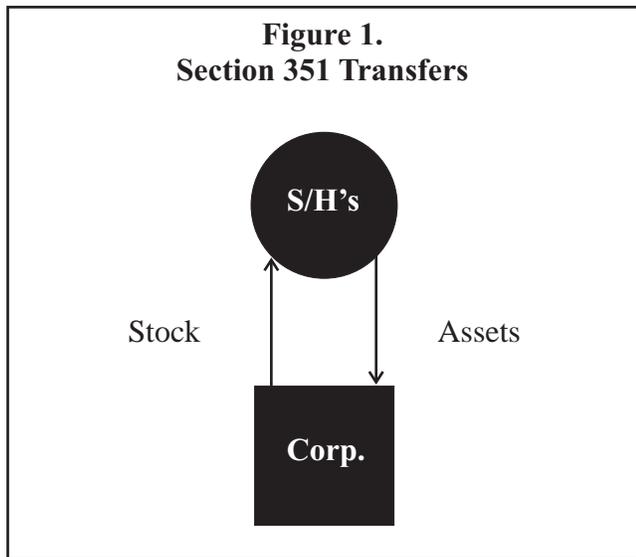
Federal Discussion and Analysis

IRC Section 351

IRC section 351 addresses corporate organizations and provides for the nonrecognition of gain or loss on one or more persons' transfer of property to another in exchange for stock. IRC section 351(a) provides:

²Unless otherwise stated, all references to the "code" and to "IRC" are to the Internal Revenue Code of 1986, as amended, and all references to the "regulations" or to "Treas. Reg." are to Treasury's regulations promulgated thereunder.

No gain or loss shall be recognized if *property* is *transferred* to a corporation by one or more persons *solely in exchange for stock* in such corporation and immediately after the exchange such person or persons are in *control* (as defined in section 368(c)) of the corporation. [Emphasis added.]



In addition to the statutory requirements of (i) property, (ii) transfer, (iii) solely for stock, and (iv) control noted above, other administrative and judicial limitations may apply. For instance, although IRC section 351 does not expressly require a business purpose, the IRS has taken the position that before it will issue a favorable private letter ruling, a business purpose must exist and be identified.³ Courts generally have supported the IRS's position.⁴ Similarly, uncertainty exists if a valid IRC section 351 transaction may occur when the transferee is insolvent or when liabilities assumed by the transferee exceed the fair market value of the transferred prop-

³See section 4.06 of Rev. Proc. 83-59; 1983-2 C.B. 575. See also IRC section 7701(o) addressing the economic substance doctrine, its relation to business purpose, and saving state and local taxes.

⁴See, e.g., *Caruth v. U.S.*, 688 F. Supp. 1129 (N.D. Tex. 1987), *aff'd*, 865 F.2d 644 (5th Cir. 1989). But see *W&K Holding Corp. v. Comm'r*, 38 B.T.A. 830 (1938). (Securities with a built-in loss were transferred by taxpayers to a corporation in exchange for preferred stock. Soon thereafter, the transferee corporation sold the securities in order to offset a gain it recognized from the sale of real estate. Later the corporation then redeemed the preferred stock it had issued to the individual taxpayers. The court upheld the corporation's claimed loss and the individuals' claimed loss from the redemption of the preferred stock, despite the absence of a nontax business purpose for engaging in the series of transactions.)

erty. Hence, the solvency (net value) of the transferee, and the amount of transferor liabilities assumed by the transferee, must be considered. Further, the transaction must not be precluded by the exceptions contained in IRC sections 351(e)⁵ and 269.⁶ Although an exhaustive discussion of the federal requirements is beyond the scope of this article, following is a brief discussion of those select statutory, administrative, and judicial requirements, which will be important to keep in mind when we turn to the SALT implications of IRC section 351 transactions.

The Property Requirement

Although neither the IRC nor the regulations define property for purposes of IRC section 351, the term has been broadly defined by the IRS and courts. For instance, for purposes of IRC section 351, money, stock, and partnership interests constitute property,⁷ as do accounts receivable⁸ and other intangibles that are not "valueless."⁹ However, under IRC section 351(d), stock issued for services,¹⁰ indebtedness of the transferee corporation that is not evidenced by a security, or an interest on indebtedness of the transferee corporation that accrued on or after the beginning of the transferor's holding period for the debt are not considered property.

The Transfer Requirement

IRC section 351 requires that property be transferred to a corporation for nonrecognition treatment to apply. Hence, if the transferor merely transfers use of the property, while retaining ownership, the receipt of stock by the transferor could be treated as a royalty and taxed as ordinary income, rather than qualifying for tax-free treatment under IRC section 351.¹¹

⁵Excludes from application of IRC section 351(a) the transfer of property to an investment company, and title 11 or similar cases.

⁶Acquisitions made to evade or avoid income tax.

⁷See, e.g., *Halliburton v. Commissioner*, 78 F.2d 265, 269 (9th Cir. 1935) (cash); Rev. Rul. 74-502, 1974-2 C.B. 116 (stock of another corporation); Rev. Rul. 74-503, 1974-2 C.B. 117, *rev'd on other grounds* in Rev. Rul. 2006-2, 2006-1 C.B. 261 (stock of transferor corporation); Rev. Rul. 75-143, 1975-1 C.B. 275 (stock of a section 957 controlled foreign corporation); IRS LTR 81-34-092 (May 28, 1981) (stock of another corporation); Rev. Rul. 84-111, 1984-2 C.B. 88 (partnership interests).

⁸Rev. Rul. 80-198, 1980-2 C.B. 113.

⁹See *U.S. v. Stafford*, 727 F.2d 1043, 1052 (11th Cir. 1984).

¹⁰Treas. reg. section 1.351-1(a)(1)(i) (as amended by T.D. 8663, 61 FR 19544, 19545, May 2, 1996, as corrected at 61 FR 39072, July 26, 1996) provides, in part, that stock issued for services rendered, or to be rendered, to or for the benefit of the issuing corporation is not treated as having been issued in return for property.

¹¹For instance, see Rev. Rul. 69-156, 1969-1 C.B. 101; Rev. Rul. 64-56, 1964-1 C.B. 133, *amplified by* Rev. Rul. 71-564, 1971-2 C.B. 179; Rev. Rul. 79-288, 1979-2 C.B. 139.

The Solely for Stock Requirement

In order to qualify for nonrecognition treatment under IRC section 351(a), the transfer of property must be solely in exchange for stock of the transferee corporation. However, under IRC section 351(b), receipt of non-stock consideration by the transferor will not adversely affect whether a transaction constitutes an exchange under IRC section 351 as long as some stock is deemed¹² or actually issued by the transferee corporation as part of the exchange. IRC section 351(b) provides that if IRC section 351(a) otherwise would have applied, but for the fact that there is received, in addition to stock, other property or money, then (1) gain (if any) to the transferor shall be recognized, but only to the extent of the amount of money received, plus the fair market value of such other property received; and (2) no loss to the transferor shall be recognized. IRC section 357(a) provides that generally a corporation's assumption of a shareholder's liability in an IRC section 351 exchange will not be treated as money or other property received by the shareholder.

The Control Immediately After Requirement

In order to qualify for nonrecognition under IRC section 351(a), the transferors must be in control of the transferee corporation immediately after the exchange. For purposes of IRC section 351, the term "control" is defined by section 368(c) as "the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation." In Rev. Rul. 59-259, 1959-2 C.B. 115, the IRS ruled that "80 percent of the total number of shares of all other classes of stock," means 80 percent of the total number of shares of each class of stock.

The Business Purpose Requirement

As described above, the IRS is of the view that a business purpose is required for a transaction to qualify as an IRC section 351 exchange.¹³ A discussion of business purpose and its close cousin, nontax economic substance, is beyond the scope of this article. Given the growing reliance on that judicial doctrine, which has been codified under federal

law¹⁴ and in select states,¹⁵ the authors plan to dedicate a future installment in this series to this important doctrine.

Solvency and Assumed Liabilities

The IRS issued proposed net value regulations in 2005 providing guidance regarding the eligibility for nonrecognition treatment in specific transactions. Prop. Treas. reg. section 1.351-1(a)(1)(iii) (Mar. 10, 2005) provides that "stock will not be treated as issued for property if either: (A) the fair market value of the transferred property does not exceed the sum of the amount of liabilities of the transferor that are assumed by the transferee in connection with the transfer and the amount of any money and the fair market value of any other property . . . received by the transferor in connection with the transfer; . . . or (B) the fair market value of the assets of the transferee does not exceed the amount of its liabilities immediately after the transfer."¹⁶

Among the proposed regulations is Prop. Treas. reg. section 1.351-1(a)(1)(ii) (Mar. 10, 2005), which provides that exchanges under IRC section 351 must involve an exchange of net value. Although this regulation has yet to be finalized, its provisions may be indicative of the current IRS position. Accordingly, prudence would strongly caution anyone faced with facts other than a positive net value, particularly when the transferor and/or transferee are operating in separate return jurisdictions where the availability of tax attributes of related entities that might militate against adverse tax consequences are not available.

Section 351(e) Limitation — Transfers to Investment Companies

IRC section 351 does not apply to transfers of property to an investment company, or to some transfers by transferors who are debtors in a bankruptcy.¹⁷ An investment company includes any entity if more than 80 percent of its assets, by value, consist of¹⁸ money; stocks and other corporate equity interests; evidence of indebtedness, options, forward or futures contracts, notional principal contracts, or derivatives; foreign currency; select interests in precious metals; interests in regulated investment companies, real estate investment trusts, common trust

¹²Despite the express statutory requirement for receipt of stock, both the IRS and courts have permitted IRC section 351 transactions in which no shares of stock are issued, because the issuance would be a meaningless gesture because the transferor already owned 100 percent of the outstanding transferee stock. See, e.g., Rev. Rul. 64-155, 1964-1 C.B. 138; *Abegg v. Comm'r*, 50 T.C. 145 (1968), *aff'd*, 429 F.2d 1209 (2d Cir. 1970); *Lessinger v. Comm'r*, 85 T.C. 824 (1985), *rev'd on another issue*, 872 F.2d 519 (2d Cir. 1989).

¹³See *supra* note 3.

¹⁴See IRC section 7701(o).

¹⁵See 2003 Mass. S. 1949 ch. 4. Gov. Mitt Romney, on March 5, 2003, approved in part a supplementary budget bill for fiscal 2003. (L. 2003, S1949 (c. 4), *eff.* as stated.)

¹⁶This proposed regulation applies to transfers occurring after the date the proposed regulations are published as final regulations in the *Federal Register*. To date, a portion of the proposed regulation was finalized by T.D. 9434, filed December 11, 2008. Prop. Treas. reg. section 1.351-1, among others, remain proposed.

¹⁷See IRC section 351(e).

¹⁸See Treas. reg. section 1.351-1(c)(1).

funds, and publicly traded partnerships; other interests in noncorporate entities that are convertible into, or exchangeable for, any of the above assets; or some other noncorporate interests.¹⁹

Stocks and securities are deemed held for investment unless (i) held primarily for sale to customers in the ordinary course of business, or (ii) used in the trade or business of banking, insurance, brokerage, or a similar trade or business.²⁰ As for the 80 percent test, stock and securities in subsidiary corporations are disregarded and the parent corporation is deemed to own its ratable share of its subsidiaries' assets.²¹ A corporation is considered a subsidiary for these purposes if the parent owns 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote, or (ii) the total value of shares of all classes of stock outstanding.²²

The purpose of the investment company exception is to stop the use of a tax-free organization to achieve diversification of a person's investment portfolio without gain recognition. Without knowledge of that rule, a business can incur costly SALT over-sights.

Section 269: Acquisition Made to Evade or Avoid Tax

Creation of a new corporation may constitute an acquisition within the meaning of IRC section 269(a)(1).²³ Generally, IRC section 269 authorizes the secretary to disallow²⁴ tax benefits (deductions, credits, or other allowances that the person would otherwise benefit from) when tax avoidance is the principal purpose behind the person²⁵ acquiring

control,²⁶ directly or indirectly, of a corporation or property in some transfers of property between corporations.²⁷

Receipt of Property in Addition to Stock; Controlled Corporation's Assumption of Liabilities

IRC section 351(b) provides, in part, that if IRC section 351(a) would apply to an exchange but for the fact that there is received, in addition to the stock permitted to be received, other property or money, gain (if any) to that recipient is recognized, but in an amount not in excess of the sum of that money and the fair market value of such other property. No loss shall be recognized.²⁸

IRC section 357(a) provides that generally, a corporation's assumption of a shareholder's liability in an IRC section 351 exchange will not be treated as money or other property received by the shareholder. However, outside the context of a U.S. consolidated group, IRC section 357(c) provides that if the sum of the amount of the liabilities assumed exceeds the total adjusted basis of the property transferred under that exchange, the excess is considered a gain from the sale or exchange of property.²⁹ Also, if the principal purpose of the taxpayer regarding the assumption of liabilities was to avoid U.S. federal income tax on the exchange or there was not a bona fide business purpose, the total amount of liabilities assumed by a transferee corporation is to be treated by the transferor as the receipt of money in the exchange.³⁰

As will be discussed more fully under the section on state income taxes below, significant questions can arise when disparity exists between the taxpayer's basis for federal and state purposes. With proper planning, the taxpayer can identify and discuss those issues. If left untended, however, they can become deal killers. In one transaction, the adverse

¹⁹See IRC section 351(e)(1).

²⁰See Treas. reg. section 1.351-1(c)(3).

²¹See Treas. reg. section 1.351-1(c)(4).

²²*Id.*

²³See Treas. reg. section 1.269-1(c) (as amended by T.D. 8388, 57 FR 345, Jan. 6, 1992) and Treas. reg. section 1.269-3(b) (as amended by T.D. 8388, 57 FR 345, Jan. 6, 1992). See also *James Realty Co. v. U.S.*, 280 F.2d 394, 399 (8th Cir. 1960) and *Borge v. Comm'r*, 405 F.2d 673, 677-678 (2d Cir. 1968).

²⁴See IRC section 269(c). See also Treas. reg. section 1.269-4 (1962) (providing that (i) the district director is authorized to allow a part of the amount disallowed by IRC section 269(a), but he may allow that part only to the extent that he determines that the amount allowed will not result in the evasion or avoidance of U.S. federal income tax for which the acquisition was made; and that (ii) the district director is also authorized to use other methods to give effect to part of the amount disallowed under IRC section 269(a), but only to the extent that he determines will not result in the evasion or avoidance of U.S. federal income tax for which the acquisition was made).

²⁵Under Treas. reg. section 1.269-1(d) (as amended by T.D. 8388, 57 FR 345, Jan. 6, 1992), a person includes an individual, a trust, an estate, a partnership, an association, a company, or a corporation. See Treas. reg. section 1.269-1(d).

²⁶Under IRC section 269(a), control means the ownership of stock that possesses at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

²⁷IRC section 269(a)(2) states that the powers conferred under IRC section 269 applies if a "corporation acquires . . . directly or indirectly, property of another corporation, not controlled, directly or indirectly, immediately before such acquisition, by such acquiring corporation or its stockholders, the basis of which property, in the hands of the acquiring corporation, is determined by reference to the basis in the hands of the transferor corporation."

²⁸However, see IRC section 351(b)(2), which provides that no loss is recognized by the transferor on the exchange.

²⁹See Treas. reg. section 1.1502-80(d) (as corrected at T.D. 9424, 73 FR 53934, 53984, Sept. 17, 2008). (IRC section 357(c) does not apply to transfers between members of a U.S. consolidated group.)

³⁰See IRC section 357(b).

state tax effect attributable to a basis disparity was in excess of \$30 million — a deal and job killer by most anyone's definition.

State and Local Tax and Analysis

From an income tax perspective, IRC section 351 transfers are one of the most straightforward and simplest transactions to follow. Frequently, that simplicity can lure a non-SALT professional into assuming that the “tax-free” federal treatment will similarly be tax free at the SALT level. Unfortunately, those fallacious assumptions can lead to costly errors and missed opportunities at the subnational level.

While an all-inclusive analysis of SALT disconnects from federal consequences is beyond the scope of this series, following is a brief discussion of select instances in which the subnational tax and administrative costs can result in substantial charges to the proposed transaction. Bottom line: The tax-free transaction at the federal level may simply not exist at the SALT level, particularly without careful planning, and even with careful planning may result in significantly greater administrative burdens than encountered at the federal level.

With IRC section 351 transfers, the tax-free transaction at the federal level may simply not exist at the SALT level, particularly without careful planning.

Using income, sales and use, property, unemployment, transfer, and other taxes and considerations as our pallet, following are illustrative instances in which the SALT consequences surrounding an IRC section 351 transaction can differ from the tax-free treatment obtained at the federal level.

Income-Based Taxes

Most states start their corporate income tax computation with federal taxable income either before or after the net operating loss deduction and special deductions for dividends.³¹ Accordingly, absent a state not recognizing IRC section 351, or not agreeing with the characterization of a transaction as such for state income tax (SIT) purposes, the tax consequences should be the same at both the federal and state levels.

Historically, states have not audited federal income tax (FIT) requirements, leaving adjustments of so-called above-the-line items to the IRS. On balance, the states felt relatively protected with that

approach, particularly given that taxpayers must report IRS adjustments to the states, paying identified underpayments of taxes and interest as appropriate. More recently, however, states have been increasing their audits of select above-the-line matters and giving public notice of their right to not honor the FIT treatment of select IRC section 351 transactions.

For instance, the California Franchise Tax Board recently issued a notice making clear its right to ignore the tax-free nature of an IRC section 351 transfer to combat a listed transaction. FTB Notice 2011-04 involves a parent corporation (P) that attempts to increase the tax basis of its stock in subsidiary (S) before P's selling the stock of S to an unrelated party. Herein, the taxpayer attempted to achieve FIT/SIT basis parity, without the outlay of cash or property.³²

The hoped-for result that P is seeking in the transaction is to increase the tax basis of (that is, reduce the taxable gain from) the stock of S held by P via the following steps: (1) P contributes a promissory note or other instrument to S under IRC section 351³³; (2) S takes steps to generate earnings and profits by selling or transferring intangible property to a related entity that avoids the state's intercompany transaction rules³⁴; (3) P pays off the note or other instrument issued to S; and (4) S distributes in whole or part the cash received or another substantially equivalent amount of property back to P. Based on those facts, it was the position of P that the payment received from S is a deductible or excludable dividend, because it was

³²See, California FTB Notice 2011-04 (Aug. 4, 2011), superseding FTB Notice 2011-03. If one is not familiar with the differences between FIT and SIT regimes, many SIT traps for the unwary exist. For instance, for various reasons, a state may not conform to the federal consolidated tax return regulations, which can result in a different tax basis in the stock of subsidiaries for federal and state income tax purposes. The investment adjustment rules are used to track an owning member's stock basis in subsidiary members. See Treas. reg. section 1.1502-32. Generally, the rules increase or decrease subsidiary stock basis for items including the subsidiary's income or losses; tax-exempt income; noncapital, nondeductible expenses; and distributions by the subsidiary of its stock. *Id.*, at section 1.1502-32(b)(2) and (3). When basis disparities remain until the time a decision is made to sell the stock of a subsidiary, problems can arise. See, e.g., *In the Matter of the Appeal of Novartis Vaccines and Diagnostics Inc.*, No. 397618 (Board of Equalization July 21, 2009) (non-precedential) (The BOE denied appellant's refund for approximately \$1.9 million attributable to the FTB's denial of a \$490 million increase in the stock basis of its subsidiary because the transactions violated the antiabuse statute and should be ignored as violating the step transaction, economic substance, and substance-over-form judicial doctrines).

³³Applicable to California per Calif. Revenue and Taxation Code section 24451.

³⁴Cal. Code regs., tit. 18, section 25106.5-1.

³¹See line 28 or 30 of Form 1120, “U.S. Corporate Income Tax Return.”

paid from the E&P of S; and, as such, P does not have to reduce its basis in S.³⁵ As a result, P claims it is entitled to an increase in the basis of S stock for its contribution of the promissory note or other instrument that never remained with S. In other words, P seeks to increase its basis in the stock of S without any cost to it.

As part of its analysis, the FTB holds that the contribution of the promissory note or other instrument from P to S is temporary and transitory in nature, because it is intended to remain with S only for a short period of time. Moreover, the steps taken in this transaction were taken to exploit the state's nonconformity to the E&P and stock basis portions of the federal consolidated return regulations found in reg. sections 1.1502-32 and -33.³⁶

As such, the FTB states, in part, that the "contribution to capital did not meet the requirements under [Calif. Revenue and Taxation Code] section 24451, which conforms to IRC section 351, because it was illusory and remained in Subsidiary for a temporary period of time."³⁷

In addition to the above, the need to track and report other matters attributable to an IRC section 351 transaction may exist. For instance, taxpayers participating in transactions "substantially similar" (whatever that means) to the transaction outlined in FTB Notice 2011-04 (Aug. 4, 2011) above are subject to the reporting requirements under Calif. Revenue and Taxation Code section 18407. Persons failing to comply may be subject to accuracy-related penalties, non-economic-substance transaction penalties, and 100 percent interest-based penalties under Calif. Revenue and Taxation Code section 19164, Calif. Revenue and Taxation Code section 19774, and Calif. Revenue and Taxation Code section 19777, respectively. Also, in some circumstances, fraud penalties may apply according to Calif. Revenue and Taxation Code section 19164(c).

Further, depending on the enactment date of a state's income tax, pre-enactment values may have to be noted and carried over so as to avoid tax burdens imposed on those values should the assets

³⁵Calif. Revenue and Taxation Code section 24451, which conforms to IRC section 301(c)(2).

³⁶See, e.g., *Appeal of Young's Market Company*, 86-SBE-199 (Cal. BOE, Nov. 19, 1986) (California E&P is computed on a separate entity basis and does not reflect the E&P of lower-tier subsidiaries); and *Appeal of Rapid American Corp.*, No. 94A-0284 (Cal. BOE, May 8, 2007) (cost basis of unitary subsidiary stock not adjusted for subsidiaries' E&P).

³⁷Other potential challenges the FTB sets forth, depending on the facts and circumstances before it, include substance over form, sham transaction, step transaction, lack of economic substance and/or a nontax business purpose, and, subject to the authority found in Rev. Rul. 78-397, 1978-2 C.B. 150, and *Andantech LLC v. Commissioner* (T.C. Memo. 2002-97), that circular cash flows be disregarded for tax purposes.

be sold at a later time.³⁸ Moreover, select credits and other types of incentives carrying over with a transfer may have to be reported to perfect their assignment to a new entity.³⁹ Finally, the continuing application of tax attributes and filing elections will have to be evaluated.

Sales and Use Taxes

A common trap for the uninitiated in SUTs occurs when one approaches SUT exemptions in the area of restructurings as being driven by the form of IRC provisions, rather than thinking about how the form of IRC provisions overlays the policy objectives (or lack thereof) of sale and use taxes. An additional trap is when one approaches research in that area in search of a singular exemption. Frequently there are a number of potential exemptions that may cover aspects of a transfer, but not others — leaving portions of the transaction exempt and others taxable.

SUT exemptions that may apply to IRC section 351 transfers can differ remarkably among the states.

SUT exemptions that may apply to IRC section 351 transfers can differ remarkably among the states. More times than not that is attributable to the fact that SUT exemptions are driven by policy considerations whose principal objective is to tax consumption at the retail level, not to address particular forms of IRC transactions. Accordingly, SUT exemptions potentially applicable to transactions to organize new corporations, and to merge, consolidate, or restructure existing operations frequently appear as an afterthought, given lack of guidance and/or as internal consistency between economically equivalent transactions.

When viewed from a multistate perspective, SUT exemptions that apply to IRC section 351 transfers can differ because of any number of elements that may make up a legislative exemption and/or its administrative and judicial interpretations. It is common for the facts and circumstances underlying a proposed IRC section 351 transfer to fail the contours of a specific exemption, only to be "saved" by another exemption found within the same body of laws. Without overstating the obvious, it is important for the taxpayer to be informed of all available

³⁸For instance, Illinois adopted its income tax effective August 1, 1969. Accordingly, gain realized from an asset held before the effective date is excludable from the gain taxable for value realized after the date of enactment.

³⁹See, e.g., Rhode Island Reg. HTC 08-01(VII) (requiring notification of assignment of credit to commissioner).

exemptions so it can consummate the restructuring in a way that accomplishes its business objectives in the most tax-efficient manner possible. Frequently, tweaks to a proposed transaction can be accomplished to achieve tax-free treatment without economically altering the needs of the taxpayer.

If one approaches the SUT area with knowledge only of the requirements that make up a tax-free IRC section 351 transaction, it is more likely that mistakes may occur because of differing federal and state laws requirements. That is one of the primary reasons why it is so important for restructuring teams to have federal, state, and international tax specialists assigned to work together on a project. Frequently the areas of law are so broad that no one person can develop a reasonable command of all the areas potentially implicated, let alone massage the interconnected parts to arrive at the least costly options the taxpayer should consider. Interdisciplinary consultation among the team members is critical to avoid costly mistakes and needless compliance burdens.

Before turning to an illustrative list of FIT-SUT disconnects implicated by IRC section 351 transfers, several additional points must be made. First, because of space limitations, this installment of our series focuses on general SUT exemptions and their limitations that may apply to IRC section 351 transfers, rather than individual types of property that may be excepted from the general rule. That is important to note upfront, because many states exclude select types of property from their broader-based exemptions. Perhaps the broadest category of those carve-outs relates to instrumentalities of commerce (for example airplanes, boats, trucks, and automobiles).⁴⁰ Also, there may be notification requirements imposed under the tax laws (for example, transferee liability provisions and sales exemption certificates) that are outside the scope of this article.⁴¹ Further, once a liability is established,

⁴⁰See, e.g., Ark. Code Ann. section 26-52-510(a)(3)(B). (Exemption in section 26-52-401(17) for isolated sales does not apply to the sale of a motor vehicle, trailer, or semitrailer.)

⁴¹See, e.g., Idaho Admin. Code r. 35.01.02.128.05.i (Rule 128). (“Sales Tax Exemption Certificate — Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business’ assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners’ equity.”)

the tax burden may raise subsidiary questions, for example, withholding tax obligations that may need to be considered.⁴²

The following is a list — admittedly arbitrary and not intended to be exhaustive — of select elements that may limit application of a SUT exemption otherwise applicable to IRC section 351 transfers. The exemption limitations discussed below concern (1) point-in-time transfer requirements, (2) proportionality of ownership interests requirements, (3) property use requirements, (4) taxability of boot questions, and (5) other types of exemption limitations.

Point-in-time exemption limitations requiring transfers of property within a specific time frame of incorporating the transferee: Some states limit their SUT exemption to a specific time frame or event between the date of the property transfer and the incorporation of the transferee. Illustrative of a narrow time frame is California. Under regulations, transfers of tangible personal property to a commencing corporation solely in exchange for first issue stock of the commencing corporation “is not regarded as having measurable value at the time of the transfer.”⁴³ With this type of exemption, transfers regarding the first contribution are exempt, but later transfers (despite the existence of continuing control under IRC section 351) are taxable.

At the other extreme are states like Illinois that have no point-in-time exemption limitation and thereby exempt qualifying transferors⁴⁴ making

⁴²See, e.g., Miss. Code Ann. section 27-65-55(1). (“The purchaser or transferee in business shall be required to withhold sufficient of the purchase money to cover the amount of any taxes, damages and interest due until such time as the former owner shall produce a receipt from the commissioner showing that such liability has been paid, or a certificate that no taxes are due.”)

⁴³See Cal. Code Regs., tit. 18, section 1595(b)(4). Cf. Maryland, which provides a quantitative standard defining the exempt period. Md. Code Ann. Tax-Gen. section 11-209(c)(1)(ii) provides that the “sales and use tax does not apply to a transfer of tangible personal property, on *organization of a corporation* or joint-stock company, to the corporation or company principally in consideration for the issuance of its stock” (emphasis added). Furthermore, Md. Reg. Code section 03.06.01.13.C.(1) states: “The transfer will not be considered to be upon the organization of a corporation unless the Articles of Incorporation were filed for record with the appropriate State authority not more than 6 months before the transfer, and the corporation has not been actively engaged in business for more than 30 days before the transfer.”

⁴⁴I.e., persons “not engaged in the business of selling tangible personal property.”

multiple transfers “in order to dispose of such tangible personal property, because such sales are isolated or occasional and do not constitute a business of selling tangible personal property at retail.”⁴⁵ Although that exemption is contained in rules applying to occasional sales of a business, it applies with equal force to transfers of assets under IRC section 351.⁴⁶

In the middle of the above two extremes are states employing other point-in-time exemption limitations. For instance, New Jersey and New York exclude from retail sales “the transfer of property to a corporation upon its organization in consideration for the issuance of its stock.”⁴⁷ Unfortunately, the phrase “on its organization” can create traps for the unwary, because it can be interpreted in different ways, for example, the date of incorporation of an entity, or the date a new business is transferred into the entity.⁴⁸ Those varying interpretations can be at tension with conflicting nontax legal needs.

For instance, corporations “liquidated” for tax purposes under IRC section 332 need not be dissolved for corporate law purposes. Accordingly, it is not uncommon for legal departments to maintain dormant corporations for a number of reasons — for example, to safeguard a corporate name.

If one is not focused on the SUT ambiguity surrounding the phrase “upon its organization,” it is easy to imagine how a non-informed individual might overlook distinguishing between a newly formed entity and a dormant entity. In fact, for the fiscally responsible legal department looking to avoid needless costs of incorporating a new entity, choosing a dormant company over setting up a new entity may be admirable if no other considerations applied. That is not always the situation.

For example, in New York, electing to use a dormant entity over a newly formed entity can result in triggering otherwise avoidable SUT costs, because “transfers made to a dormant corporation, which is being activated, are not eligible for the exclusion.”⁴⁹ Fortunately, in most instances, a readily available cure exists: incurring the nominal costs of incorporation and setting up a new entity. If use of

a preexisting, dormant entity is necessary for business reasons, other options may exist to avoid triggering a SUT, as well as satisfying management’s goals.

Exemption limitations requiring that stock received be in proportion to transferor’s interest before the transfer: Exemptions found in a number of states require proportionality of the transferor’s contributed property interest to the stock interest received from the transferee. Oklahoma, for instance, exempts the transfer of tangible personal property if the value of the stock or securities received by each shareholder is “substantially *in proportion* to the value of such person’s interest in the property transferred by all the former owners.”⁵⁰ Similarly, Georgia does not impose a SUT if: “Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the . . . stockholders of the business being reorganized maintain the same proportionate interest or share in the newly-formed business reorganization.”⁵¹

Although SUT exemptions requiring proportionality generally are unwelcome to taxpayers, those exemptions might be found to save the day in cases in which other potential exemptions do not apply. For example, depending on the facts and circumstances of the IRC section 351 transfer, a taxpayer may fail California’s “first issue of stock” limitation applicable to the commencement of a new corporation, yet meet the state’s so-called 80-80 transaction exemption. In California the transfer of 80 percent or more of tangible personal property held or employed by a business in operations necessitating a seller’s permit will be considered an occasional sale if after the transfer the ownership of the property is 80 percent or more of the ownership that existed before the transfer.⁵²

In the context of organizing a corporation, proportionality requirements of the above types functionally limit the exemption to corporations with a single shareholder. Hence, given that IRC section 351 does not require direct proportionality, many IRC section 351 transactions encountered in practice may not meet those limitations. Exemption limitations would exclude start-up entities in which two or more persons decided to combine assets, as well as internal restructurings in which related entities might jointly contribute assets to a newly formed corporation for business reasons having nothing to do with taxation.

When the above exemption limitations might prohibit a taxpayer from achieving a SUT-free transfer,

⁴⁵See Ill. Admin. Code tit. 86, section 130.110(a) and (b).

⁴⁶See Illinois Dept. of Rev. General Information Letter No. ST 97-0513-GIL, Nov. 6, 1997.

⁴⁷See N.J. Rev. Stat. 54:32B-2(e)(4)(E) and N.Y. Tax Law section 1101(b)(4)(iv)(A)(IV), respectively. Note: A sale of assets to a subsidiary can trigger sales tax, even if a transfer would qualify as exempt under N.Y. Tax Law section 1101. See *Prospect Dairy Inc. v. Tully*, 53 A.D.2d 755 (1976), citing N.Y. Tax Law section 1101.

⁴⁸See, e.g., *Matter of Noar Trucking Company Inc.*, 527 N.Y.S.2d 597 (N.Y. App. Div. 1988) (transfer of trucks in the year following incorporation held to be too late to qualify for SUT exemption).

⁴⁹See 20 NYCRR section 526.6(d)(5)(iii).

⁵⁰See Okla. Stat. tit. 68, section 1360(1)(c). (Emphasis added.)

⁵¹See Ga. Code Ann. section 48-8-3(21).

⁵²See Cal. Code Regs. tit. 18, section 1595(b)(2).

alternate organizational structures should be considered. For example, SUT-free treatment might be achieved without adverse economics via the use of a partnership or limited liability company.

Exemptions limited to select types of property use: Some exemption limitations address how a transferred property must have been or will be used. For instance, the Texas occasional sales exemption is qualified by a requirement that holds that the property transferred must be “all or substantially all the property used by a person in the course of an activity.”⁵³ The term “activity” is not defined, but suggests property associated with a business operation. Similarly, although Georgia law provides an exemption that may prove helpful with an IRC section 351 transfer, the exemption is limited to, among other things, transfers made as a result of a business reorganization. These types of nebulous exemption limitations provide the fodder for future litigation on a number of levels.

Exemptions limited by the type of ‘consideration’ received for transferred property: It is rare in a complex restructuring for business operations to be transferred “naked” from their related operational liabilities. For various reasons it is common to see transferees assume the liabilities associated with transferred property. Also common is to see transferees distributing some cash, securities or other properties (boot) in addition to their stock. For the federal tax practitioner not familiar with SUT law, extra care must be taken not to overlook potential positive or negative SUT consequences of an IRC section 351 transfer when consideration other than stock is received in exchange for the transferred property.

We have illustrated instances when a transfer that is tax-free for FIT purposes and involves only transferee stock can result in negative SUT consequences, that is, a tax cost, because of unfavorable exemption limitations found among the laws of the states. Inversely, there can be instances when a partially taxable transfer from an FIT perspective — for example, the transferor receives stock and cash from the transferee — can result in positive SUT consequences, that is, no tax cost, because of favorable exemptions found among the laws of the states that do not tax boot.

Consistent with one of the hallmarks of multi-jurisdictional taxation, SUT laws concerning the taxation of boot are nonuniform when viewed from a nationwide perspective. Pegging the two extremes of that range are laws that do not tax boot (for ex-

ample, Arkansas,⁵⁴ Kansas,⁵⁵ and Virginia⁵⁶), to those that do tax boot (for example, California,⁵⁷ Vermont,⁵⁸ and Wyoming⁵⁹), which may or may not be defined consistently with federal law.⁶⁰ In the middle of the range are states like New York that may or may not tax boot depending on the facts and circumstances of the transfer,⁶¹ or may not tax a contribution to capital, but only if the taxpayer astutely avoids what is at best a trap for the unwary.⁶²

⁵⁴See Ark. Code Ann. section 26-52-401(17) and (18) (gross receipts or gross proceeds from isolated sales are exempt).

⁵⁵Kan. Stat. Ann. section 79-3606(1) (exempts “all isolated or occasional sales of tangible personal property, services, substances or things, except isolated or occasional sale of motor vehicles specifically taxed under the provisions of subsection (o) of K.S.A. 79-3603”).

⁵⁶Va. Code Ann. section 58.1-609.10(2) (occasional sales are exempt from the sales tax).

⁵⁷Cal. Code Regs. tit. 18, section 1595(b)(4) (in exchange solely for first issue stock).

⁵⁸Vt. Stat. Ann. section 9742(5) (“The transfer of property to a corporation upon its organization in consideration for issuance of its stock” is exempt from SUT).

⁵⁹Wyo. Stat. section 39-15-101(a)(vii)(E) (“The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80 percent) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation.”)

⁶⁰Before October 2, 1989, securities were not considered boot for purposes of IRC section 351. Under P.L. 101-239, section 7203(a), IRC section 351(a) was amended by striking “or securities” after “for stock,” effective generally for transfer after October 2, 1989. If select states had crafted their exemption-limitations to parallel prior law, several have not updated their references and continue to define boot more narrowly than federal law. This positive SUT difference can reduce what otherwise might be taxable. See, e.g., Mo. Rev. Stat. section 144.011.1(3) (retain sale does not include “the transfers of tangible personal property to a corporation solely in exchange for its stock or securities”); and, Wyo. Stat. section 39-15-101(a)(vii)(E) (“which transfer is solely in exchange for stock or securities of the subsidiary”). (Emphasis added.)

⁶¹20 NYCRR 526.6(d)(5)(v) excludes debts and liabilities assumed from the definition of retail sale if the property transferred is the security for those debts and liabilities. Inversely, if non-secured property or property is secured by other than the property transferred, then the assumption of debts and liabilities would be taxable. See also Op. of Counsel (N.Y.S. Dep’t of Taxation and Fin. Nov. 3, 1965).

⁶²As addressed in note 12, *supra*, both the IRS and courts have permitted IRC section 351 transactions in which no shares of stock are issued, because the issuance would be a meaningless gesture because the transferor already owned 100 percent of the outstanding transferee stock. This fact can allow the avoidance of what otherwise is hard to term anything other than a trap for the unwary. See, e.g., *In the Matter of the Petition of Robert E. Weichbrodt d/b/a McDonalds*, DTA Nos. 817950 and 817951 (N.Y.S. Div. of Tax App. Jan. 31, 2002) (transfer of assets to an existing corporation entirely owned by one person for stock is a retail sale subject

⁵³See Texas Tax Code Ann. section 151.304(b)(3). (Emphasis added.)

In addition to the taxation of cash and property, the assumption of liabilities raises interesting questions. Under the IRC, when a transferee assumes a shareholder's liability in an IRC section 351 exchange, those assumptions generally will not be treated as money or other property received by the shareholder to the extent that the sum of the amount of the liabilities assumed does not exceed the total adjusted basis of the property transferred.⁶³ Accordingly, from the perspective of the federal tax practitioner, little thought may be given further to that item, particularly when it's been determined that there will be no FIT cost. That is a dangerous state of mind to bring to the world of SALT, because given that the assumption of liabilities is economically equivalent to the receipt of cash, SUT administrators frequently argue that there should be no difference in the tax consequences associated with a tax sale paid for by cash or the assumption of the transferor's liabilities. For the frequency with which that problem arises, it is surprising how little law exists on point, creating further traps for the unwary.

Other types of exemption limitations: The above exemption limitations represent an illustrative sampling of what can create adverse SUT consequences in an IRC section 351 transfer. Other exemption limitations exist and may need to be carefully considered depending on the facts and circumstances of the particular transaction. For instance, other types of exemption limitations address the requirement of federal tax-free treatment⁶⁴; carve-outs for instrumentalities of commerce⁶⁵; retailers that hold a resale certificate or sell similar property in the regular course of business⁶⁶; and the number of transactions that may occur in a 12-month period.⁶⁷

to tax). To the chagrin of the taxpayer, the tax could have been simply avoided by contributing the assets without taking back stock that had no independent economic significance. Let the taxpayer beware the importance of form in the SUT area. *See also, Prospect Dairy, Inc. v. Tully, supra* note 47 (sale of assets to a subsidiary can trigger sales tax, even if a transfer would qualify as exempt).

⁶³Note that IRC section 357(c) does not apply to transfers between members of a U.S. consolidated group. *See* Treas. reg. section 1.1502-80(d). *See also*, discussion of when an assumption of liability may be treated as the distribution of money in the text preceding and following *supra* note 29.

⁶⁴*See, e.g.,* R.I. Gen. Laws section 44-18-20(d)(2)(iii) ("any gain or loss to the transferor is not recognized for income tax purposes under the provisions of the federal income tax law and treasury regulations and rulings issued thereunder").

⁶⁵Kan. Stat. Ann. section 79-3606(1) ("except isolated or occasional sale of motor vehicles").

⁶⁶A retailer may not claim a casual sale if the property sold is similar to property sold by the retailer in the regular course of business.

⁶⁷Ky. Rev. Stat. Ann. section 139.010(27)(3) (no more than two retail sales during any 12-month period).

Property Taxes

As a practical matter, the transfer of real property in an IRC section 351 transaction that results in the retitling of that real property may trigger a reassessment that can lead to greater (or lesser) taxes. That can be particularly costly (or beneficial) in states that have adopted a limitation on property tax assessment increases, such as that found in California.⁶⁸

Referred to by the section number added to the California Constitution, Proposition 13 requires the reappraisal of real property when there is a change in ownership. The California State Board of Equalization issued a letter to county assessors that outlines how the change of ownership rules apply to transfers from and to legal entities.⁶⁹ Generally, any transfers to or from a legal entity and individual, or any transfer between legal entities, will result in a reassessment. Also, transfers of more than 50 percent of voting stock or an ownership interest in an entity will trigger a reassessment. Exceptions include transfers of real property when the proportional ownership interests in the property remain identical before and after the transfer, and transfers of interests in legal entities in which 50 percent or less of the voting stock or ownership interests are transferred by any of the original co-owners in one or more transactions.⁷⁰

Unemployment Taxes

For unemployment taxes, the form of the transaction is typically not the focus. It is whether there has been a transfer of employees to a new employer for a bona fide business purpose, for nontax economic reasons, and not the principal purpose of tax avoidance. For most IRC section 351 transfers that the authors have worked on over the years, the organizations do not involve the relocation of employees to a new job location. Accordingly, in these instances, the unemployment work to be done is more driven by administrative matters.⁷¹ When, however, a transfer does involve the acquisition of a

⁶⁸Under Proposition 13, a change in ownership after the 1975 lien date triggers a full cash value reassessment of the property as of the date the change in ownership occurred. *See also, e.g.,* "Proposition 2 1/2" enacted by Massachusetts voters in 1980.

⁶⁹*See* BOE Letter to Assessors No. 2011/016 (Apr. 27, 2011).

⁷⁰*Id. Also see,* Calif. Revenue and Taxation Code section 61(j) and Cal. Code Regs., tit. 18, section 462.180(a) (2013).

⁷¹*See e.g.,* Wis. Stat. section 108.16(8). (Transferor and successor are jointly liable for predecessor's unemployment taxes. Both must notify the Department of Revenue within 30 days. The successor is proportionately liable. Generally successor liability for unemployment taxes exists and notice is required to absolve this liability.)

new business, positive and negative cost questions can arise as a consequence of the changes in the business.⁷²

When a resulting new business is part of a transfer, state rules governing the transfer of the wages and experience from the predecessor to the successor will need to be determined and complied with. Some jurisdictions mandate the transfer of experience and wages when a whole business is acquired either in the year of the transfer or the following year. If the transfer involves a partial acquisition, some states allow the option to carry over the wages and experience rating, unless there is common ownership.⁷³

Taxpayers are well advised to cautiously evaluate any proposed planning transactions that are aimed at securing a lower tax rate given the SUTA [state unemployment tax acts] Dumping Prevention Act of 2004.⁷⁴ The law provides minimum compliance standards that the states must comply with through their laws. The federal law was enacted in response to concerns that state unemployment insurance trust funds were losing hundreds of millions of dollars per year due to tax avoidance/evasion techniques.⁷⁵

The SUTA Dumping Prevention Act makes it illegal for an employer to manipulate businesses to get a lower tax rate either by (1) transferring some of their workforce to another business they own, or where they manage and control at least 10 percent of the two businesses; or (2) acquiring another business for the sole purpose of securing a lower tax rate when the employer was not previously taxable. In New York the penalty is the larger of 10 percent of taxable wages in the previous completed payroll year, or \$10,000. Furthermore, anyone advising to violate is subject to a civil penalty of \$10,000 and a Class E felony that can result in imprisonment.⁷⁶

Transfer Taxes

The scope and cost of transfer taxes will be directly related to the property transferred in the IRC section 351 transaction. Although normally imposed at modest tax rates, those taxes can collec-

tively represent a sizable cost when the transactions involve large amounts of property.

Other Taxes and Considerations

When time and resources permit, the identification and analysis of other taxes and considerations (miscellaneous matters) will be guided by the facts and circumstances surrounding the proposed transfers and the relevant taxing jurisdictions. It is not uncommon for taxpayers to forgo consideration of miscellaneous matters not involving legal obligations, assuming that the potential benefits do not warrant the costs involved.

When time and resources do permit, however, miscellaneous matters can present saving opportunities for the diligent taxpayer. For instance, Kansas and various other states do not impose a tax registration fee or capital formation tax.⁷⁷ Thus, even if for various reasons those jurisdiction are not chosen for matters including the incorporation of the parent entity, they may be suited and appropriate for subsidiary operations.

Of course, cost benefit analysis aside, various miscellaneous matters will require the resources of SALT lawyers to ensure compliance with subnational tax legal obligations, which can include various administrative burdens that frequently accompany restructurings. For instance, document recording fees are imposed by various jurisdictions,⁷⁸ and corporate formation and dissolution fees, as well as notices, are imposed by various jurisdictions.⁷⁹

Conclusion

IRC section 351 is a relatively straightforward statutory provision designed to allow a corporation to organize federal income to be tax free if one adheres to its limitations. From a subnational tax perspective, however, an IRC section 351 transaction can trigger many multistate/multitax questions to consider, depending on the facts and circumstances.

⁷²See, e.g., *Pavlakos and G.H.P. Corp. v. IL Department of Revenue*, 128 Ill. App. 3d 783 (1984) (purchasers of business liable for unpaid contributions, interest, and penalties).

⁷³But see, e.g., Hawaii — no carryover until calendar year immediately following the date of acquisition. Haw. Rev. Stat. Ann. section 383-6; Wyoming — no carryover until calendar quarter following the date of acquisition. Wyo. Stat. section 27-3-507.

⁷⁴SUTA Dumping Prevention Act of 2004, P.L. 108-295 (2004) (amending Social Security Act of 1935, section 303(k) (42 U.S.C. section 503(k)).

⁷⁵See, e.g., GAO report, "Unemployment Insurance: Survey of State Administrators and Contacts With Companies Promoting Tax Avoidance Practices" (June 19, 2003).

⁷⁶See New York State Department of Labor website advising of SUTA dumping.

⁷⁷("There is no business registration fee. However, if you require a cigarette retailer's license a \$25 fee must be submitted with the application."), <http://www.ksrevenue.org/faqs-taxbusreg.html> (last visited Feb. 16, 2013).

⁷⁸See, e.g., Ala. Code section 40-22-1 (recordation tax imposed on mortgages and other specified deeds or instruments); D.C. Code section 42-1103(a); and D.C. Code Mun. Regs. tit. 9 section 502.1 (recordation tax on real property deeds, transfers of economic interests in real property, and security interest instruments).

⁷⁹See, e.g., Ga. Code Ann. section 14-2-1403 (notice of intent to dissolve); N.H. Rev. Stat. section 77-E:12 (tax certifications for dissolution, withdrawal, and good standing); and, Del. Code Ann. tit. 8, section 391 (fee payable to secretary of state).

The potential to minimize subnational taxes and administrative burdens must first start with a detailed knowledge of federal, state, and local tax laws, which generally requires close consultation with a team of specialists who work in each of those areas. By extending the combined knowledge of that team, informed by the facts and circumstances, tax and administrative savings may be possible. In the end, there is no substitute for knowledge and application of the nonuniform laws to achieve the business objectives in the most tax-efficient manner possible.

In the next installment, we will return to take a closer look at corporate liquidations and their effect on the dissolving company and its shareholders. ☆

Craig B. Fields is a partner with Morrison & Foerster LLP, New York. He is also co-chair of the firm's tax department and chair of the firm's State & Local Tax Group. Fields can be contacted at cfields@mof.com or (212) 468-8193. Philip M. Tatarowicz is of counsel with Morrison & Foerster, Washington. He is a professor of law and Distinguished Visitor From Practice at the Georgetown University Law Center. Tatarowicz can be contacted at ptatarowicz@mof.com or (202) 887-8728.

The views expressed in this article are those of the authors only, are intended to be general in nature, and are not attributable to Morrison & Foerster LLP or any of its clients. The information provided herein may not be applicable in all situations and should not be acted on without specific legal advice based on particular situations.

© Copyright 2013 Morrison & Foerster LLP.