INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

JULY 18, 2002

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CASE MIS No.: TAM-115870-02/CC:CORP:B6

Attention:

Taxpayer's Name:
Taxpayer's Address:
Taxpayer's Identification No:
Years Involved:
Date of Conference:

LEGEND:

Corp 1 =

Corp 2 =

Corp 3 =

Corp 4 =

New P =

AA =

nonAA =

Person 1 =

Person 2 =

TAM-115870-02

Person 3	=
Person 4	=
Person 5	=
Activity 1	=
Group 1	=
AMs	=
NonAMs	=
PM	=
NPs	=
PVs	=
LLX	=
LLY	=
XO	=
Month 1	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
State A	=
City 1	=

Country 1	=
#a	=
#b	=
#c	=
#d	=
#e	=
#f	=
#g	=
#h	=
#i	=
#j	=
#k	=
#l	=
#m	=
#n	=
#o	=
#p	=
#q	=
#r	=
#s	=
#t	=
#u	=

ISSUE : Whether Corp 1 (a) sold goodwill to Corp 2, thus realizing a capital gain of #a, and if so, whether Corp 1 then (b) distributed these sales proceeds to its AA shareholders as a constructive dividend.

CONCLUSION: Corp 1 did not sell goodwill to Corp 2 and thus did not realize a capital gain of #a. The AA shareholders of Corp 1 did not receive the sales proceeds as a dividend distribution. Pursuant to the terms of the Management Services Agreement and the Option Agreement, the AAs effectively sold to Corp 2 beneficial interests in their Corp 1 stock in exchange for cash, promissory notes and rights to Corp 2 stock. The shareholders of Corp 1 thus realized a capital gain on the sales of beneficial interests in their Corp 1 stock.

A share in the profits of Corp 1 (hereinafter referred to as the “Profits Interest”) as conveyed in the Management Services Agreement, was not only a means to compensate Corp 2 for providing services (to manage the PM) to Corp 1, but also served as a means to compensate Corp 2 for its investment in Corp 1, i.e., the right as an owner of Corp 1 to share in its profits.

FACTS:

In Month 1 of Year 1, Corp 2, an XO approached, Person 1, Person 2, Person 3, and Person 4 (“AAs”) about acquiring the AAs’ Activity 1 in City 1, State A. Corp 2 is in the business of managing Activity 1 throughout Country 1.

State A Corporate Law prohibits the practice of LLX by a corporation unless all of its shareholders are licensed AAs. Accordingly, Corp 2 could not directly purchase the stock or assets of a State A Group 1.

Corp 2’s transaction with Corp 1 was accomplished through a variety of detailed agreements. The transaction essentially consists of four key elements. The first element included the direct purchase by Corp 2 of all the nonAMs of Corp 3 that can be legally purchased under state law by a nonAA, including the building, equipment, accounts receivable, and supplies. This was accompanied by the hiring by Corp 2 of the NPs of Corp 3. In addition, Corp 3 transferred its AMs to Corp 1 in exchange for Corp 1’s assumption of liabilities with respect to these AMs. The second element was entering into a long-term agreement, the Management Services Agreement, under which Corp 2 agreed to provide management services to Corp 1 in exchange for substantial consideration. The Management Services Agreement also gave Corp 2 the right to designate two of the four Policy Board Members. Policy Board Members have responsibility for the management, administrative policies and overall operation of Corp 1 (the entity for which the AAs practice LLX) to the extent not otherwise given directly to Corp 2 as manager. This effectively allows Corp 2 veto power over the management of the PM, capital expenditures, new AA recruitment and other operational decisions to the extent not directly covered by the Management Services Agreement itself. The third element is an employment and noncompetition agreement between each of the AAs and Corp 1. This element gives value to the Management Services Agreement by ensuring that the PM of the AAs will generate revenues to Corp 1. The fourth element is an option agreement between Corp 2 and the AAs that purports to give Corp 2 (through an employee of Corp 2 licensed to practice LLX in State A) an option to purchase each AA shareholder's formal stock interest in Corp 1 at a price of #b per AA. Corp 2's rights to acquire the Corp 1 stock resulting from the option allows Corp 2 to consolidate for financial accounting purposes the Corp 1 earnings with its own earnings.

<u>The Form of the Transaction</u>

A. Immediately prior to closing on Date 3, the following events occurred in the order indicated below (per section 2.01 of the Master Transaction Agreement);

1. The AAs each granted Person 1 a power of attorney to sign closing agreements on their behalf;

2. The AAs, as officers and shareholders of Corp 3, an S corporation, through which the AAs had conducted their PM for at least #h years, approved minutes on behalf of Corp 3 authorizing and approving the Corp 2 transaction, including approval of the sale of substantially all of the corporate assets to Corp 2;

3. Person 3 and Person 4 terminated their employment agreements with Corp 3;

4. Corp 1, a C corporation, was formed by the AAs on Date 2;

5. The AAs and Corp 1 entered into buy-sell agreements providing for the purchase of AA stock by Corp 1 upon the death or disability of a AA; and

6. The AAs formed New P (a partnership) and caused it to enter into the long-term management agreement ("Management Services Agreement") with Corp 1. Partnership interests were determined on the basis of relative AA production and not on the basis of stock ownership in Corp 1.

B. At the Date 3 closing, the following events occurred in the order, indicated below (per Section 2.02 of the Master Transaction Agreement):

1. The AAs sold their interests in New P to Corp 2 in exchange for (a) #c cash, (b) promissory notes having a face value of #d and calling for payments over #t years ("Notes"), and (c) the promise of Corp 2 that it would deliver #f shares of Corp 2 stock to the AAs over the following #t years ("stock rights"). These stock rights had a present value of #g as of

the closing date. From the sale, each AA received consideration in proportion to their relative revenue production history, rather than in proportion to their stock ownership.

2. Also, pursuant to the Purchase Agreement, Corp 3 sold its nonAMs to Corp 2, and Corp 2 hired all of the administrative and NP's of Corp 3, in exchange for #i of cash and the assumption of #j of debt. As a cash-method Subchapter S taxpayer, Corp 3 reported the gain on this sale. Corp 3 distributed the net proceeds to the AAs in their liquidation of Corp 3.

3. Corp 3 transferred its AMs, which consisted of #k worth of LLY inventories, to Corp 1 in exchange for Corp 1's assumption of #k worth of Corp 3's liabilities with respect to these AMs. After this sale Corp 3 had no operating assets and retained only de minimis assets to satisfy contingent liabilities. It formally liquidated on Date 4.

4. The AAs each signed #o year employment agreements and covenant-not-to-compete agreements with Corp 1. The AA shareholders agreed not to compete with Corp 1 within the practice territory without Corp 1's permission during the #o year term of the AA shareholders' employment agreement and also for #p year following the termination of the agreement. The AAs, however, could terminate for cause the covenant-not-to-compete agreement.

5. Corp 2 liquidated New P and then transferred the rights under the management contract to its wholly owned subsidiary, Corp 4

6. A AA employee of Corp 2 entered into an option agreement on Date 3, effective Date 1 with the AA shareholders of Corp 1.

Effective Date 5, the AAs, Corp 1 and Corp 2 reached an agreement to terminate the management agreement and the option agreement in exchange for a single payment by the AAs to Corp 2 of #l. In addition, Corp 1 repurchased from Corp 2 Management, for net book value, the nonAMs used in its practice.

<u>Management Services Agreement-Key Provisions</u>

The Management Services Agreement entered into on Date 3, between Corp 1 and New P for an initial #m year term was made effective as of Date 1. Under this agreement, Corp 1 engaged New P as its agent for the management and administration of the business functions and business affairs of Corp 1.

Article V of the agreement requires Corp 1 to maintain and enforce for a period of #o years the employment agreements entered into between Corp 1 and the AAs.

Section 5.9 (c)&(d) of the Management Services Agreement provides that the employment agreements described in Section 5.1 shall contain covenants of the AA shareholders and the nonshareholder AAs pursuant to which the AAs agree not to compete with the Corp 1 for #p year after termination of the employment agreement.

The financial terms are set fourth in Article VI. The monthly management fee payable to Corp 2 is equal to the sum of #n plus #e of the sum of the Adjusted Gross Revenue (defined in section 1.1 of the Management Services Agreement as the sum of (a) the Professional Service Revenue and Ancillary Revenues and (b) the Subcontractor Capitation Revenues as defined in Section 1.9 of the Management Agreement).

According to the Management Services Agreement, various management fees were paid to Corp 2. Specifically, Corp 2 was entitled to all the profit remaining after the payment of AA compensation (including AA performance fees) and all other expenses of the practice, including the #n paid to Corp 2 as a fixed monthly management fee and the #e of the sum of Adjusted Gross Revenue and Subcontractor Capitation Revenues paid to Corp 2 as a variable management fee. AA compensation (overall) was based on a formula: #s of Corp 1 gross net revenue plus #r of any amount remaining (referred to as the AA performance fees) after Corp 2 paid all of the practice expenses, AA compensation, (based on #s of Corp 1 net revenue) and paid itself the various fixed and variable monthly management fees.

Corp 2 was also to receive a Performance Fee. The Performance Fee entitled Corp 2 to #r of the remaining net profits after paying the AAs' compensation and all other practice expenses. The Management Services Agreement provides the following priority ordering for payments in section 4.9(b):

1. Office Expenses (ordinary business operation expenses - lease payments, staff salary,etc), except the Base Management Fee;
2. Corp 1 Expenses (including AA compensation based on #s of Corp 1 gross net revenue);
3. Base Management Fee;
4. Performance Fees; and
5. the remaining balance as directed by Corp 1

The Management Services Agreement gives Corp 2 the right to designate two of the four practice Policy Board Members. Policy Board Members have responsibility for the management, administrative policies and overall operation of the practice to the extent not otherwise given to Corp 2 as manager. (Section 3 of the Management Services Agreement.) This right effectively gives Corp 2 veto power over practice management, capital expenditures, new AA recruitment and other operational decisions to the extent not covered by the Management Services Agreement itself.

Section 7.2 of the agreement provides that the Management Services Agreement can be terminated by Corp 2 or Corp 1 for cause or by written agreement of the parties. Section 7.2(b)(iv) provides that Corp 1 may terminate the Management Services Agreement for cause if there is an event of default under the notes or if Corp 2 breaches its delivery obligation for the shares of Corp 2 common stock and such event or default or failure to deliver the stock continues for ten days after notice has been given to Corp 2.

The agreement provides for Corp 2 to succeed to all of the partnership's rights and obligations under the Management Services Agreement. The Management Services Agreement was originally entered into between New P (the Partnership) and Corp 1. Corp 2 purchased the partnership interests from the AA partners and then liquidated the partnership.

Option Agreement-Key Provisions

The Option Agreement, effective on Date 1, was entered into between the AA shareholders and Person 5, an Corp 2 AA employee, as the optionee on Date 3. Each AA shareholder granted an irrevocable #m year option to Person 5 to purchase all of the AAs' stock interests in Corp 1. The exercise price for each shareholder's interest was #b. The option was immediately exercisable. (Recital d (iii) of the Option Agreement).

Section 4 of the Option Agreement provides that the option shall be immediately exercisable as of the date of the Management Services Agreement and any time thereafter, except as limited by section 6 of the Option Agreement, which provides that an option cannot be exercised if Corp 1 has already given notice to Corp 2 of a default under the Management Services Agreement. However, section 7 of the Management Services Agreement provides that Corp 1 cannot terminate the Management Services Agreement after the exercise of the option, unless optionee (Corp 2) has made a good faith determination that there is actual cause to terminate the Management Services Agreement. However, Corp 1's right to terminate the Management Services Agreement for cause discussed in section 7.2 (b) thereof is limited to uncured material breaches of performance (or nonpayment of the Notes or Stock Rights) by Corp 2 itself. Corp 2, however, cannot unilaterally terminate the Management Services Agreement without cause. The Option Agreement is between the AAs and Corp 2; while the Management Service Agreement is between Corp 1 and Corp 2.

If the Management Services Agreement is terminated for cause after the option has been exercised, the AA employees will have the option to purchase the shares of Corp 1 stock that optionee acquired by its exercise of the option. The AA employee's exercise price for that stock will be the same as the optionee's exercise price for the stock. (Recital d (v) of the Option Agreement).

During the notice period, no AA shareholder can sell, transfer, exchange, encumber, and attempt to restrain, or otherwise alienate his shareholder interest without the optionee's written consent. (Recital d (xiv) of the Option Agreement).

The option is transferable by the optionee to any person who lawfully may hold an ownership interest in Corp 1; however, Corp 2 has the exclusive right to designate who that assignee will be. Optionee is under no obligation to exercise the option. (Recital d (x) of the Option Agreement).

The Option Agreement provides, that the #u AA shareholders are the only shareholders of Corp 1 and no other person will be permitted to become a shareholder in Corp 1 (other than by exercise of the option) without consent of the optionee and the agreement of the new shareholder to grant to the optionee a similar option on such person's shareholder interest. (Recital d (xii)(c) of the Option Agreement).

Neither Corp 1 nor the AA shareholders can amend or modify Corp 1's articles of incorporation, by laws, or buy-sell agreement in any manner that would adversely affect the optionee's rights without the optionee's written consent. No shareholder can transfer his shareholder interest without the consent of the optionee unless subordinate or subject to the option. (Recital d (xiv) of the Option Agreement).

<u>AA Shareholder Agreement-Key Provisions</u>

The AA Employment Agreement is between Corp 1 and the AA shareholders. Each AA entered into a #o-year, employment agreement which included a restrictive covenant not to compete for a period which extended #p year beyond the employment termination date. (Section 4.1 of the AA Employment Agreement).

Section 6.4 of the AA Employment Agreement provides that the AA shareholder may compete with Corp 1 within the practice territory after the termination of the employment agreement by purchasing the covenant for #q.

The amount of liquidated damages for terminating an AA's employment agreement is determined by a formula in section 4.3(b) of the AA Employment Agreement and is either the greater of a percentage of the consideration the AA received from the sale of his partnership interest and the sale of the nonAMs or #q.

Under Section 4.2(c), of the AA Employment Agreement, an AA shareholder can terminate his employment agreement without payment of liquidated damages only if the termination is for cause which is defined to occur: (i) if Corp 1 dissolves and the AA does not vote in favor of the dissolution; (ii) Corp 1 materially breaches the employment agreement; (iii) there is an event of default under the notes or Corp 2 breaches its delivery obligations for the shares of the Corp 2 stock; (iv) Corp 1 becomes unable to operate as a State A professional corporation; or (v) the death or permanent disability of the AA shareholder. In all other circumstances, the AAs can terminate the employment agreements only by paying liquidated damages.

LAW AND ANALYSIS:

Issue-Was Goodwill Sold By Corp 1 To Corp 2?

Area Counsel contends that Corp 1 sold goodwill to Corp 2 and thus realized a capital gain of #a.

Both the taxpayer and Area Counsel agree that the goodwill consists of the earnings power generated from the AAs' professional services. Such goodwill became an asset to Corp 1 as a result of the AAs' employment contracts. The AAs by entering into these employment and covenant not to compete agreements with Corp 1, effectively contributed this goodwill value to Corp 1.

No goodwill was transferred by Corp 1 to Corp 2. Rather, any goodwill acquired by Corp 1 remained an asset of Corp 1. Any goodwill related to Corp 1 is associated with the AAs and their PM which remained inside of Corp 1 and was not transferred. The Management Services Agreement required Corp 2 to perform services, i.e., to manage the AAs' PM of Corp 1. All the AMs were held by Corp 1 and the AAs' salaries were paid by Corp 1. Further, per the facts of the case, "the employment and noncompetition agreements were between the AAs and Corp 1, the corporation in which the AAs conducted their PM". These agreements did not serve to retransfer the AAs and their PM from Corp 1 to Corp 2, but rather to ensure that such AAs and their PM remained inside of Corp 1 for its benefit. In addition, the goodwill associated with the AAs and their PM can not be a corporate asset in the absence of an employment/noncompete agreement between the corporation and the shareholder. See Martin Ice Cream v. Commissioner, 110 T.C. 189 (1998). Therefore, such goodwill remained an asset of Corp 1, because Corp 1, rather than Corp 2, entered into the employment and covenant-not-to-compete agreements with the AAs.

Substance Of What Was Sold Was A Beneficial Ownership Interest In Stock.

The substance of the above transaction was that: (1) Corp 3 liquidated, with any goodwill of Corp 3 associated with the AAs' PM reverting back to the AA shareholders; (2) the former shareholders of Corp 3 contributed the distributed property (cash from the sale of nonAMs) received in liquidation along with their own goodwill, (their PM which reverted back to them from Corp 3) to Corp 1 in exchange for stock of Corp 1; (3) pursuant to the terms of the Management Services Agreement and the Option Agreement, the AAs effectively sold beneficial interests in their Corp 1 stock to Corp 2 in exchange for cash, promissory notes and rights to Corp 2 stock. The shareholders of Corp 1 thus realized a capital gain on the sale of these beneficial interests.

Beneficial ownership of stock, instead of mere legal title is normally determinative of who is the true shareholder for tax purposes. See, e.g. Cepeda v. Commissioner, 67 T.C.M. 2181 (1994). (for purposes of Federal income taxation, a sale of stock depends upon transferring sufficient incidents of beneficial ownership rather than upon technical requirements for the passage of title under State law.); Maher v. Commissioner, 55 T.C. 441, 451-452 (1970), supplemented by 56 T.C. 763 (1971), affd. in part and remanded in part 469 F.2d 225 (8th Cir. 1972).

Specifically, the court in *Cepeda* stated:

As to inclusion of dividends in income, courts have consistently held that record ownership of stock, standing alone, is not determinative in answering the question as to who is required to include any dividends attributable to such stock in gross income. Rather, beneficial ownership is the controlling factor. Walker v. Commissioner*,* 544 F.2d 419 (9th Cir. 1976), rev'g. T.C. Memo. 1972-223.

For the purpose of determining ownership of stock, the court in Himmel v. Commissioner, 338 F.2d 815, 817 (1964), stated that: ownership of stock can involve three important rights: (1) to vote, and thereby exercise control, (2) to participate in current earnings and accumulated surplus, and (3) to share in net assets on liquidation. Ownership of common stock generally involves all of these. Ownership of preferred stock, however, generally involves the last two, but only to a limited extent.

Other cases have similarly stated that with some modification, the ownership of stock involves, (1) The ability to vote and therefore maintain a voice in the management of the affairs of the corporation; (2) to participate in current earnings; (3) to share proportionately in liquidating distributions by the corporation. See Community T.V. Association Of Havre v. United States, 203 F. Supp. 270 (D. Mont. 1962).

As discussed below, Corp 2 acquired these ownership rights through the Management Services Agreement and the Option Agreement.

A. The Right To Vote And Exercise Control Or Maintain A Meaningful Voice In Management

Article III Section 3.1 of the Management Services Agreement provides that Corp 2 shall have the power to designate 2 of the 4 members on the Corp 1 Policy Board (created by this same section). The Policy Board is responsible for developing and implementing management and administrative policies for the overall operation of Corp 1.

Section 3.2 of the Management Services Agreement sets out the duties and obligations of the Policy Board, which taken together are the typical functions of a corporation's board of directors. Specifically, the Policy Board is responsible for authorizing capital improvement and expansion plans; marketing and advertising; determining fee schedules for AA and ancillary services; establishing and maintaining PVs; developing strategic plans; assessing hiring needs (including AA hires); and determining grievance procedures for disputes under the Management Services Agreement.

As the Policy Board has the ability to implement and develop management policies for Corp 1, Corp 2's ability to designate 2 of the 4 members on the Policy Board is the equivalent of voting rights in Corp 1. In order for a proposal to be enacted, a majority approval of the members is required. These voting rights allow Corp 2 to maintain a meaningful voice in the management and the affairs of Corp 1. These voting rights gave Corp 2 the ability to block proposals advanced by the other two Policy Board members. Through the ability to block proposals by other Policy Board members, Corp 2 has an interest in the control of Corp 1 and therefore, can exercise control over management affairs of Corp 1.

In addition, the Option agreement gives Corp 2 the right to exercise an option which would allow them to purchase all the stock of Corp 1 from the AAs, and therefore own 100% of the vote and value of the stock in Corp 1. This option indirectly affords Corp 2 a mechanism to exercise complete control of Corp 1.

B. The Right To Share In Current Earnings.

Section VI of the Management Services Agreement sets out the financial terms. Section 6.1 provides that Corp 2 is to receive a fixed amount of #n per month, plus an amount equal to #e of the sum of Adjusted Gross Revenues and the Subcontractor Capitation Revenues. Corp 2 is also entitled to receive a Performance Fee. The Performance Fee is equal to #r of the remaining profits after paying all expenses. Again, section 4.9(b) sets forth the following priority order for payments:

1. Office Expenses (ordinary business operation expenses such as lease payments, staff salary, etc), except the Base Management Fee;
2. Corp 1 Expenses (including AA compensation based on #s of Corp 1 gross net revenue);
3. Base Management Fee
4. Performance Fees; and
5. the remaining balance as directed by Corp 1.

The Corp 1 expenses involving AA compensation were allocated based on productivity.

The Management Services Agreement states that all fees received under Article VI are for services rendered. Corp 2 could not have received all of its share of Corp 1 current income as consideration for performing services, i.e., services of managing Corp 1. Rather, Corp 2 acquired a portion of its Profits Interest in Corp 1 in exchange for its substantial purchase price investment (i.e., the consideration it has paid out to the AAs, including the cash, promissory note and the right to Corp 2 stock).

Thus, the Profits Interest conveyed by the Management Services Agreement was not only the means to compensate Corp 2 for providing services (to manage the PM) to Corp 1, but also served along with the Option Agreement as the means to compensate Corp 2 for its investment in Corp 1 (i.e., the right as the owner of Corp 1 to share in its profits).

Through the Management Services Agreement Corp 2 obtained a Profits Interest In Corp 1. However, the fact that Corp 2 obtained a Profits Interest in Corp 1 does not mean that goodwill of Corp 1 was transferred to Corp 2 through the Management Services Agreement. As mentioned above, any goodwill of Corp 1 remained with Corp 1.

C. Right To Liquidation Proceeds

The Option agreement provides that Corp 2, at any time during the #m year term, can exercise its right to acquire one or all of the AAs' stock interests in Corp 1. The option terminates if Corp 1 terminates the Management Services Agreement for cause, as described in Section 7.1(b). However, Corp 1's right to terminate the Management Services Agreement for cause, as described in Section 7.1(b) thereof, is limited to uncured material breaches of performance (or nonpayment of the Notes or Stock Rights) by Corp 2 itself. This type of restriction is not a substantial restriction upon exercise of the option, since only Corp 2 can cause the restriction to apply. Since Corp 2 has the right to purchase some or all of the Corp 1 stock from the AAs, Corp 2 thus has the ability to receive the liquidation proceeds in Corp 1. The fact that the options were not exercised is irrelevant. The right to exercise the options at any time, for what is a nominal price of #b per AA shareholder, except if there is a breach of the Management Services Agreement, is sufficient to demonstrate that Corp 2 has ultimate rights to the liquidation proceeds.

In addition, the AAs cannot transfer their Corp 1 stock without the prior written consent of the option holder Corp 2. This is further evidence that no other party could defeat Corp 2's right to exercise the option with respect to Corp 1 stock. Therefore, no other party could defeat Corp 2's right to receive the liquidation proceeds of Corp 1.

In addition, the option permits Corp 2 for financial statement purposes to consolidate Corp 1's earnings with its own earnings. This further demonstrates that Corp 2 is recognized as the owner of the Corp 1 stock, because it has the ability to liquidate Corp 1.

Corp 2 through its option agreement has the power and the right to receive the liquidation proceeds simply by exercising its option for what is a nominal exercise price of #b per AA shareholder. Therefore, Corp 2 has the ultimate power to preclude the AAs from obtaining any of the liquidation proceeds.

Corp 2 possesses a voting interest in Corp 1 and thus an interest in the control of Corp 1. In addition, Corp 2 has a right to the current earnings of Corp 1 along with a right to share in any liquidation proceeds of Corp 1.

Although the AAs are technically the shareholders of record of Corp 1, Corp 2, through its rights under the Management Services Agreement and its right (through the option agreement) to exercise an option to purchase all of the Corp 1 stock has acquired a beneficial ownership in the Corp 1 stock. Therefore, in substance the AAs sold beneficial interests in their Corp 1 stock to Corp 2 in exchange for cash, notes and stock rights in Corp 2.

AAs Received No Dividend Distribution

Since the AAs, as the shareholders of Corp 1, received the consideration (the cash, promissory notes and rights to Corp 2 stock) directly from Corp 2, such consideration was not received from Corp 1 as a dividend distribution.

The Partnership Was Born To Die

Since New P was “born to die”, it can be ignored. Therefore, in substance, the AAs entered into the Management Services Agreement with Corp 2.

CAVEAT

We express no opinion on whether or not the AA shareholders of Corp 1 sold all of their beneficial ownership interests in Corp 1 stock to Corp 2 in exchange for cash, promissory notes and rights to Corp 2 stock.

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.