

FEDERAL INCOME TAXATION: BAD DEBT RESERVES HELD TAXABLE TO TRANSFEROR IN A SECTION 351 TRANSFER

In *Nash v. United States*¹ the Court of Appeals for the Fifth Circuit determined that a bad debt reserve is taxable to the members of a partnership upon the transfer of accounts receivable to a controlled corporation under section 351 of the Internal Revenue Code.² Prior to June 1, 1960, the petitioners were accrual basis taxpayers who operated several finance businesses as a partnership which used the reserve method of accounting for bad debts.³ Subsequently, the partners incorporated some of the businesses by transferring, pursuant to section 351, accounts receivable and bad debt reserves to new corporations which carried the bad debt reserves as a deduction from accounts receivable in an effort to show the net value of the receivables.⁴ The Commissioner agreed that the reserves were reasonable in amount⁵ but contended that the partnership should have included the reserves in taxable income for its final fiscal year.⁶ In finding for the Commissioner, the Fifth Circuit reversed the district court and placed itself in direct conflict with the Ninth Circuit.⁷

Section 351 permits property to be transferred to a corporation without recognition of gain or loss if the transferor controls the corporation immediately after the transaction and the exchange was solely for stock or securities of the corporation.⁸ This legislation was enacted with the objective of easing the transition from proprietorship to corporation by removing the previous presumption in favor of a taxable exchange.⁹ The premise of section 351 is that

¹ 414 F.2d 627 (5th Cir. 1969), *cert. granted*, 38 U.S.L.W. 3248 (U.S. Jan. 12, 1970) (No. 678).

² INT. REV. CODE of 1954, § 351.

³ 414 F.2d at 629.

⁴ *Id.*

⁵ *Birmingham Trust Nat'l Bank v. United States*, 68-2 U.S. Tax Cas. 87,779, 87,781 (N.D. Ala. 1968).

⁶ 414 F.2d at 629.

⁷ *Id.* at 630, *see* *Estate of Schmidt v. Commissioner*, 355 F.2d 111 (9th Cir. 1968).

⁸ INT. REV. CODE of 1954, § 351. *See generally* B. BITTKER & J. EUSTICE, FEDERAL INCOME TAXATION OF CORPORATIONS AND SHAREHOLDERS § 3.01 (2d ed. 1966) [hereinafter cited as BITTKER & EUSTICE].

⁹ S. REP. NO. 275, 67th Cong., 1st Sess. 11 (1921). "The existing law makes a presumption in favor of taxation. The proposed Act [the predecessor of § 351] modifies that presumption

a transfer which is solely for the purpose of changing the form of a business should not require recognition for tax purposes.¹⁰ There is no legislative history or statutory definition of section 351 "property,"¹¹ but services are explicitly excluded.¹² The property involved in *Nash* was a reserve for bad debts which is provided for in section 166(c)¹³ and established in expectation of future losses on outstanding receivables.¹⁴ When the need for this reserve ceases as it does through collection of the face value of the receivables, the unused reserve must be returned to income.¹⁵ In Revenue Ruling 62-128 the Internal Revenue Service indicated that a bad debt reserve would not be transferrable under section 351 because the transferor's need for the reserve had ceased.¹⁶ However, the cases cited therein did not support this ruling,¹⁷ since both involved liquidations where the business ceased to operate in any form¹⁸ rather than section 351 transactions where operations continue through a different legal organization.

Other sections of the Internal Revenue Code provide illustrations of the transferrability of various reserves without recognition of income to the transferor in a section 351 transaction.¹⁹ The treatment of these reserves provides a useful analogy since they have the potential for later becoming income to the transferee just as the bad debt reserve would have been income to the corporation if the receivables were collected without the anticipated losses. For

by providing that . . . no gain or loss shall be recognized unless the property received in exchange has a readily realizable market value" *Id.* See also H.R. REP. NO. 1337, 83d Cong., 2d Sess. A116 (1954) (no change in basic purpose of section).

¹⁰BITTKER & JUSTICE § 3.01 at 66.

¹¹*Id.* § 3.02 at 69.

¹²INT. REV. CODE of 1954, § 351(a). See also H.R. REP. NO. 1337, 83d Cong., 2d Sess. A117 (1954).

¹³INT. REV. CODE of 1954, § 166(c).

¹⁴Ira Handleman, 36 T.C. 560, 565 (1961).

¹⁵C. Standlee Martin, Inc. v. Riddell, 56-2 U.S. Tax Cas. 56,578 (S.D. Cal. 1956); Bird Management, Inc., 48 T.C. 586 (1967); Cardinal Finance Co., 32 P-H Tax Ct. Mem. 103 (1963); Ira Handleman, 36 T.C. 560 (1961).

¹⁶Rev. Rul. 128, 1962-2 CUM. BULL. 139.

¹⁷66 COLUM. L. REV. 1187 (1966).

¹⁸C. Standlee Martin, Inc. v. Riddell, 56-2 U.S. Tax Cas. 56,578 (S.D. Cal. 1956); Geyer, Cornell & Newell, Inc., 6 T.C. 96 (1946); 53 MINN. L. REV. 1354, 1355 (1969).

¹⁹The fact that the transferrability of other reserves is specifically allowed by the Code may suggest that congressional silence on the transferrability of bad debt reserves should be interpreted as an intent that bad debt reserves be taxed in a section 351 transaction. However, this silence would appear to be neutral since there are no statutory provisions regarding the transferrability of bad debt reserves under any circumstances. See note 74 *infra*.

example, in a section 351 transfer, there is no requirement that depreciation on personal property be recaptured under section 1245,²⁰ and section 1250 likewise exempts the recapture of "excess" or greater than straight line depreciation on realty.²¹ Although section 111²² requires that gross income be increased to the extent of a prior exclusion when a bad debt is collected and thereby indicates a Congressional policy to apply the tax benefit rule to accounts receivable rather than to treat the reserve as reducing basis as is done with depreciated property, this rule would not seem to operate in a section 351²³ transfer since there has been no "recovery" of the bad debt.²⁴ Section 47(b) does not require recapture of an investment credit "by reason of a mere change in the form of conducting the trade or business"²⁵ and an example in the Regulations places a 351 transaction within this exclusion.²⁶ Notes representing installment sales on which the gain is to be postponed under section 453²⁷ may be transferred without recognition of the unrealized profit although there is no specific statutory approval for this treatment.²⁸ Further, at least one commentator states that a reserve for the replenishment of LIFO inventory is transferrable.²⁹

In addition to these sections, which deal with analogous reserves,

²⁰ INT. REV. CODE of 1954, § 1245(b)(3). See generally Blanc, *The Tax Treatment of Reserves Upon a Change in the Form of Doing Business*, U. SO. CAL. 1967 TAX. INST. 433, 442.

²¹ INT. REV. CODE of 1954, § 1250(d)(3).

²² *Id.* § 111.

²³ *Id.* § 351.

²⁴ *Id.* § 111(a). See note 66 *infra* and accompanying text. In the normal case of a taxpayer correcting a prior mistake in the amount of the bad debt reserve, the tax benefit rule does not apply and the mistake is reflected in a lesser amount being transferred to the reserve for the coming tax year. Treas. Reg. § 1.166-4 (1959).

²⁵ INT. REV. CODE of 1954, § 47(b)(2).

²⁶ Treas. Reg. § 1.47-3(f)(6) example (1) (1967); Benjamin, *Problems in Transition From Sole Proprietorship or Partnership to Corporation*, N.Y.U. 26TH INST. ON FED. TAX. 791, 793-94 (1968).

²⁷ INT. REV. CODE of 1954, § 453.

²⁸ Treas. Reg. § 1.453-9(c)(2) (1958); see, e.g., *Sohmer & Co. v. United States*, 86 F. Supp. 670 (S.D.N.Y. 1949). Some cases have gone further by allowing cash basis taxpayers to transfer assets under section 351 without requiring them to transfer the matching expenses of creating the asset. *Commissioner v. South Lake Farms, Inc.*, 324 F.2d 837 (9th Cir. 1963) (growing crops); *Divine v. United States*, 62-2 U.S. Tax Cas. 85,589 (W.D. Tenn. 1962) (inventory); *Thomas W. Briggs*, 25 P-H Tax Ct. Mem. 56-349 (1956) (accounts receivable). *But cf. Rooney v. United States*, 305 F.2d 681 (9th Cir. 1962) (growing crops).

²⁹ Stoffel, *Treatment of Reserve Accounts on Incorporation and Liquidation*, N.Y.U. 26TH INST. ON FED. TAX. 773, 784 (1968).

the doctrine of anticipatory assignment of income³⁰ can be beneficially considered, since it would permit the tax free transfer of bad debt reserves, while requiring the transferor to pay tax on any reserves subsequently returned to income by the transferee. In *H. B. Zachry Co.*,³¹ the Tax Court allowed the tax free transfer of "carved-out"³² oil payments under section 351, but stated that the question of whether or not the subsequent income would be taxable back to the transferor was not before the court.³³ This suggests that a section 351 transfer may be permitted even though assignment of income principles could be applied to require the transferor to pay taxes on subsequent income.³⁴

In *Estate of Heinz Schmidt*,³⁵ the first case after Revenue Ruling 62-128³⁶ and a case identical to *Nash*, the Tax Court held that a partnership's bad debt reserve would not qualify as a tax free transfer under section 351(a) but would constitute taxable income since the partnership no longer had a "need" for the reserve. The purported authority for this holding was a case in which the taxpayer disposed of all of its assets in a tax free transaction pursuant to a plan of complete liquidation under section 337³⁷ but was required to pay tax on the bad debt reserve which was no longer needed.³⁸ The Tax Court in *Estate of Schmidt* indicated that a contrary result would be desirable but refused to so hold since the Internal Revenue Code, while allowing the carryover of basis of transferred assets,³⁹ does not specifically allow the transfer of bad debt reserves.⁴⁰ The Court of Appeals for the Ninth Circuit reversed,⁴¹ placing emphasis not only on the fact that this was the

³⁰For a comprehensive discussion of assignment of income see Biblin, *Assignment of Income in Connection with Incorporating and Liquidating Corporations*, U. SO. CAL. 1969 TAX INST. 383.

³¹49 T.C. 73 (1967), *appeal dismissed per stipulation*, 3 P-H 1969 FED. TAXES ¶ 18,023.

³²"Carved-out" oil payments represent rights to oil and gas in place that extend over a period of time less than the life of the property. 4 P-H 1969 FED. TAXES ¶ 32,561.

³³49 T.C. at 80 n.5.

³⁴Biblin, *supra* note 30, at 387. This contention is bolstered by the fact that there will be an anticipatory assignment of income only in those cases where the bad debt reserve is later returned to income by the transferee.

³⁵42 T.C. 1130 (1964), *rev'd*, 355 F.2d 111 (9th Cir. 1966).

³⁶See note 16 *supra* and accompanying text.

³⁷INT. REV. CODE of 1954, § 337(a).

³⁸*West Seattle Nat'l Bank v. Commissioner*, 288 F.2d 47 (9th Cir. 1961).

³⁹42 T.C. at 1136.

⁴⁰*Id.*

⁴¹*Estate of Schmidt v. Commissioner*, 355 F.2d 111 (9th Cir. 1966).

first attempt since the enactment of the section in 1921 to so limit these transfers⁴² but also on an economic analysis illustrating that the corporate stock received by the transferor represented the net value of the receivables, not the gross value.⁴³ Although two district courts have followed the Ninth Circuit in holding for the taxpayer,⁴⁴ the Tax Court in *Max Schuster*⁴⁵ maintained its original position, with three judges dissenting.⁴⁶ Again, the primary basis for *Schuster* was the lack of specific statutory authorization for the transfer of bad debt reserves.⁴⁷

In *Nash*, the Fifth Circuit accepted the Commissioner's position⁴⁸ on the basis of its interpretation of the postponement objective of section 351⁴⁹ and the fact that a contrary result would change the identity of the taxpayer.⁵⁰ Adoption of the Commissioner's position was an acceptance of the Tax Court's rationale that the taxpayer no longer "needed" the reserve and that the absence of bad debt reserves from the language of section 351 prevents a tax free transfer.⁵¹ Admitting to its lack of preciseness regarding the justification of section 351 tax free exchanges, the court stated that the general purpose of section 351 is merely to

⁴²*Id.* at 112.

⁴³*Id.* at 113.

⁴⁴*Scofield v. United States*, 23 Am. Fed. Tax R.2d 69-1447 (C.D. Cal. 1969); *Rowe v. United States*, 23 Am. Fed. Tax R.2d 69-443 (W.D. Ky. 1968), *appeal authorized*, P-H 1969 FED. TAXES CITATOR 12,107.

⁴⁵50 T.C. 98 (1968), *appeal filed*, P-H 1969 FED. TAXES CITATOR 10,192; *accord*, Robert P. Hutton, P-H TAX CT. REP. & MEM. DEC. ¶ 53.6 (Oct. 13, 1969). *Hutton and Schuster*, unlike *Nash*, involved cash basis taxpayers. The Tax Court distinguished *Hutton* from the Ninth Circuit's determination in *Schmidt* that the Commissioner's taxing of the transferor would create "fictitious income, never realized by the taxpayer in fact," 355 F.2d at 114, by indicating that a cash basis taxpayer, like Hutton, reports income in the year received, and therefore there is *no possibility* that a presently reported item of income will become uncollectible in the future. ¶ 53.6 at 28-53. Perhaps the Commissioner is more justified in resisting this type of "tax benefit" when the income representing the accounts receivable for which the bad debt reserve has been created has not been reported under the cash basis accounting method. The more reprehensible event occurred not at the time of the section 351 transaction, but when the taxpayer was allowed to deduct additions to the bad debt reserve although no income for the accounts receivable had been recognized. A possible remedy, other than the one adopted in this specific instance, would be to require the recognition of the income by the transferor under assignment of income principles.

⁴⁶50 T.C. at 103.

⁴⁷*Id.* at 102.

⁴⁸414 F.2d at 629.

⁴⁹*Id.* at 630.

⁵⁰*Id.*

⁵¹ See notes 36-40 *supra* and accompanying text.

postpone a gain or loss until the gain or loss is actually realized by the transferor.⁵² It was argued that the allowance of a contrary result would amount to recognition of a loss due to the failure of the transferor to collect the receivables and that this would be contrary to the purpose of the statute.⁵³ The court concluded that if any part of the reserve were not needed by the corporation, the tax on the portion returned to income would not only have been postponed, but also the identity of the ultimate taxpayer would have been changed, which would result in taxing any portion of the reserve not used by the transferee at corporate rather than individual rates.⁵⁴

The validity of the Fifth Circuit's conclusion in *Nash* is questionable because it relies on Tax Court opinions based on questionable precedents and incorrectly applies the congressional intent manifested in section 351. The cases and Revenue Ruling⁵⁵ underlying the Tax Court's position⁵⁶ provide poor authority since they involve complete terminations of business operations rather than section 351 transactions where there is merely a change in legal form.⁵⁷ The Tax Court's contention that the transfer cannot be allowed on strict statutory grounds⁵⁸ is based on the indisputable fact that the statute does not mention bad debt reserves and contains no definition of property. According to rules of statutory construction,

⁵²414 F.2d at 630.

⁵³*Id.* The court's determination that a loss will result at the time of the transfer of the accounts receivable to the corporation appears to be premised upon the view that the partnership's basis in the accounts receivable was their face amount, 414 F.2d at 630, and that the corporation bought the receivables for their net amount, *id.*, thereby creating a loss to the partnership in the amount of the bad debt reserves. The assignment of this basis to the partnership, however, requires bringing the bad debt reserves back into income and thus negates the previous determination by the partnership that some accounts receivable would prove uncollectible, for which it had set up the reserve. Thus treatment by the court is necessarily premised upon the view that the reserve was merely an accounting device by which the partnership for income tax purposes deducted the expense before a loss actually took place—when the accounts proved uncollectible or when the accounts were sold for less than their face value. For a discussion of the fallacy of this view see notes 62-64 and 77-81 *infra* and accompanying text.

⁵⁴414 F.2d at 630.

⁵⁵See notes 16-18 *supra* and accompanying text.

⁵⁶See notes 35 & 37-38 *supra* and accompanying text.

⁵⁷See *Estate of Schmidt v. Commissioner*, 355 F.2d 111, 113 n.7 (9th Cir. 1966); Hickman, *Incorporation and Capitalization: The Threat of the "Potential Income" Item and a Sensible Approach to Problems of Thinness*, 40 TAXES 974, 977-78 (1962); 12 N.Y.L.F. 145, 149 (1966); notes 16-18 *supra* and accompanying text.

⁵⁸*E.g.*, Max Schuster, 50 T.C. 98, 102 (1968), *appeal filed*, P-H 1969 F.E.D. TAXES CITATOR 10,192.

however, the single exception of services in section 351(a)⁵⁹ suggests that all other items are to be considered property for section 351 purposes and are therefore transferrable.⁶⁰ Moreover, as the dissent in *Max Schuster* indicates, the carryover from one legal form to another of tax attributes such as undistributed profits and unmortized bond discount has been allowed without specific statutory authorization.⁶¹ The court's reasoning that a contrary result would actually conflict with the purpose of section 351⁶² can be disputed on two grounds. First, assuming that the district court was correct in its finding that the reserve was reasonable,⁶³ the loss due to the predicted failure to collect a portion of the receivables occurred when the reserve was established and not at the time of the transfer.⁶⁴ Second, assuming *arguendo* that the reserves are not needed, they must ultimately be returned to income albeit by the transferee.⁶⁵ Therefore, there has been no tax avoidance⁶⁶ but rather, at most, a change in tax rate. This result actually furthers the postponement objective by delaying the incidence of the tax until the gain is realized by disposition of the receivables. Further, the result in *Nash* is in conflict with congressional intent as expressed by the legislative history⁶⁷ of section 351, since the consequence of *Nash* will be to increase rather than remove impediments to changes in legal form.⁶⁸

Adoption of the court's position would create inconsistencies in the application of section 351 to the transfers of analogous potential income items and would distort the income of both the transferee and transferor. Reserves for depreciation can be transferred without

⁵⁹INT. REV. CODE of 1954, § 351(a) states, "For purposes of this section, stock or securities issued for services shall not be considered as issued in return for property."

⁶⁰"Such a singular and extraordinary exception denotes the scope of the term property under the rule of statutory construction *expressio unius est exclusio alterius*." H.B. Zachry Co., 49 T.C. 73, 80 n.6 (1967).

⁶¹50 T.C. at 103 n.1 (Simpson, J., dissenting).

⁶²See note 53 *supra* and accompanying text.

⁶³*Birmingham Trust Nat'l Bank v. United States*, 68-2 U.S. Tax Cas. 87,779, 87,781 (N.D. Ala. 1968).

⁶⁴53 MINN. L. REV. 1354, 1358 (1969).

⁶⁵See note 15 *supra* and accompanying text.

⁶⁶*Pennell, Current Problems in Partnerships*, U. SO. CAL. 1968 TAX INST. 315, 358.

⁶⁷See notes 9 & 10 *supra* and accompanying text.

⁶⁸*Max Schuster*, 50 T.C. 98, 103-04 (1968) (Dawson & Simpson, JJ., dissenting), *appeal filed*, P-H 1969 FED. TAXES CITATOR 10,192; *Blanc, supra* note 20 at 464, 474; *see BITTKER & FUSTICE* § 3.01 at 66.

requiring the transferor to include them as income,⁶⁹ yet these reserves, like the reserve for bad debts, have the potential for becoming future income to the transferee.⁷⁰ Further, investment credit, which has similar attributes to the bad debt reserve in that it must be "recaptured" if the asset which created the credit is disposed of,⁷¹ is not taxed in a section 351 transaction.⁷² These are examples of items which merely have the *potential* for becoming income in the future. In other instances, section 351 transfers involving installment obligations have been permitted tax free⁷³ although not only are these items *certain* to become income in the future but there has also been a subsequent change in taxpayer identity. It is inconsistent to allow transfers of items which will definitely become income in the future yet disallow the transfer of an item which has only a remote potential for becoming income. The fact that Congress has not prescribed detailed rules regarding the transfer of bad debt reserves⁷⁴ should not be permitted to thwart the apparent policy of section 351,⁷⁵ especially since other transfers of potential income items are permitted without specific statutory authorization.⁷⁶ Indeed, an economic distortion will be created when a section 351 transaction is made under the *Nash* holding.⁷⁷ The "need" for the bad debt reserve from an economic viewpoint transcends changes in legal form since the transferee has received an asset whose true valuation is less than face value.⁷⁸ The Internal Revenue Service evidently considers that the reserve represents untaxed income⁷⁹ while in fact it is the implementation of an accepted accounting principle which recognizes the diminution in the

⁶⁹INT. REV. CODE of 1954, §§ 1245(b)(3), 1250(d)(3). See generally Blanc, *supra* note 20, at 442-48.

⁷⁰INT. REV. CODE of 1954, §§ 1245(a), 1250(a).

⁷¹*Id.* § 47(a).

⁷²*Id.* § 47(b)(2). See note 26 *supra* and accompanying text.

⁷³See note 28 *supra* and accompanying text.

⁷⁴Blanc, *supra* note 20, at 448. "The treatment of bad-debt reserves upon formal business changes is entirely a product of case law, rulings, and Regulations. Unlike depreciation reserves, Congress prescribed no detailed rules for bad-debt reserves when such transactions occur." *Id.*

⁷⁵53 MINN. L. REV. 1354, 1359 (1969).

⁷⁶Max Schuster, 50 T.C. 98, 104 (1968) (Simpson, J., dissenting), *appeal filed*. P-H 1969 FED. TAXES CITATOR 10,192. See note 28 *supra* and accompanying text.

⁷⁷See note 43 *supra* and accompanying text.

⁷⁸See Hickman, *supra* note 57, at 998; Note, "Mid-Stream" Incorporations, 38 U. CIN. L. REV. 96, 110 (1969).

⁷⁹Stoffel, *supra* note 29, at 773.

value of receivables.⁸⁰ According to *Nash*, the transferor would be required to include the reserve in income and the transferee would necessarily be permitted to deduct a like amount from its income to set up a new reserve. This would actually distort the income of the two entities⁸¹ and would therefore be contrary to the principle that the method of accounting should clearly reflect income.⁸² Thus, the holding in *Nash* appears to be questionable since it is based upon dubious precedents, ignores economic reality, lacks support in legislative history, and creates inconsistencies with analogous transactions under section 351.

Rejection of *Nash* would not leave the Internal Revenue Service helpless to deal with section 351 abuses since several feasible alternatives to *Nash* exist that would allow the fulfillment of congressional objectives without permitting tax evasion. A procedure for examining the reasonableness of bad debt reserves has been established⁸³ and could be applied strictly during a section 351 transaction. The Commissioner can require that reserves in excess of a reasonable amount be restored to income⁸⁴ to lessen the probability that the reserves would later become income to the transferee. Utilizing the authority of section 446,⁸⁵ the Commissioner can require that the successor continue to utilize the reserve method of accounting for bad debts rather than an individual charge-off of each receivable which becomes uncollectible. This procedure assures that the transferee could not later charge-off amounts which had previously been allowed for in the reserves of the transferor.⁸⁶ If necessary, the Service may require that excessive reserves be returned to the transferor's income by several approaches. As has been suggested, section 351 does not exclude the utilization of the anticipatory assignment of income doctrine.⁸⁷ Thus the Service can

⁸⁰Blanc, *supra* note 20, at 444; 66 COLUM. L. REV. 1187, 1188-89 (1966); 53 MINN. L. REV. 1354, 1357-58 (1969).

⁸¹Arent, *Reallocation of Income and Expense Items in Connection with Formation and Liquidation of Corporations*, 40 TAXES 995, 998 (1962); 66 COLUM. L. REV. 1187 (1966).

⁸²See INT. REV. CODE of 1954, §§ 446(b), 482; *cf.* Jud Plumbing & Heating, Inc. v. Commissioner, 153 F.2d 681, 685 (5th Cir. 1946).

⁸³Treas. Reg. § 1.166-4 (1959).

⁸⁴*Id.*; Blanc, *supra* note 20, at 471 n.101.

⁸⁵INT. REV. CODE of 1954, § 446(b).

⁸⁶See generally Arent, *supra* note 81, at 999-1000; Biblin, *supra* note 30, at 394-95; Pennell, *supra* note 66, at 358.

⁸⁷Biblin, *supra* note 30, at 387.

exercise its authority under section 482⁸⁸ to allocate income between the transferor and transferee if this is necessary to clearly reflect the income of each.⁸⁹ An example of a possible procedure for handling excess reserves is provided by the Regulation requiring that the investment credit for assets subsequently disposed of by the transferee be "recaptured" by the transferor.⁹⁰ Furthermore, in appropriate cases of extreme abuse, the transferee corporation can be ignored for tax purposes and the entire transaction treated as a sham.⁹¹ In conclusion, the Commissioner should use the above procedures against possible abuse rather than read section 351 narrowly and thereby thwart the section's purpose of encouraging incorporations.

⁸⁸INT. REV. CODE of 1954, § 482.

⁸⁹Biblin, *supra* note 30, at 396; Hickman, *supra* note 57, at 980.

⁹⁰Treas. Reg. § 1.47-3(f)(5), (6), example 2 (1967).

⁹¹Biblin, *supra* note 30, at 394; Blanc, *supra* note 20, at 474 n.108.