

**“C453” FOR THE SALE
OF A BUSINESS**

One of the first questions which an owner of a business faces when he or she considers selling the business is whether the sale will be a sale of the assets of the business or a sale of the ownership interest (e.g., capital stock, partnership interest, or membership in a limited liability company). How that question is decided can have a material impact on issues such as liability for past conduct of the company, representations and warranties, tax treatment, and price.

S.Crow Collateral Corp.

Post Office Box 972
Boise, Idaho 83701-0972

Telephone
(208) 345-7561
(866) 345-7561

Internet
E-mail: SCrowCollateral@aol.com
Web: www.SCrowCollateral.com

In regard to tax treatment, the prospective seller generally prefers to sell the ownership interest, because a sale of the ownership interest is a sale of a capital asset, so that any gain on sale is a capital gain. In contrast, a sale of the assets of the business can result in income that is taxable to the business as ordinary business income, which can be at a higher rate.

On the other hand, the prospective buyer generally prefers to purchase the assets of the business rather than the ownership interest, because the assets can be amortized, depreciated or expensed against income, but a purchase of the ownership interest is a non-deductible capital cost.

Internal Revenue Service's Position

This conflict between the seller's preference and the buyer's preference has led over the years to many efforts to find a way to enable each one to have that one's desired outcome. The Internal Revenue Service doesn't care which way the deal is treated (as a stock sale or an asset sale), but the IRS has succeeded in overturning most strategies which would allow the seller to treat the deal as a stock sale (or sale of the ownership interest in whatever form) and the buyer to treat it as an asset purchase.

To prevent inconsistent treatment of the deal, the IRS has adopted a series of explicit requirements for transactions in which 80% or more of the ownership interest (by vote or value) and the assets change hands within 12 months of each other.

Sale and Purchase of *Both* Stock and Assets

In compliance with those requirements, S.Crow Collateral Corp. buys the assets of the business at their *book* value, to eliminate any gain at the entity level. S.Crow Collateral Corp. separately buys the ownership interest (such as stock), but does so in installments which do not violate the 80% rule. S.Crow

Collateral Corp. does so in a "collateralized installment sale" transaction (also called a "C453" transaction, after Section 453, the installment-reporting section of the *Internal Revenue Code*). The installment purchase allows the selling owner to defer the capital gains tax for as many as 30 years.

S.Crow Collateral Corp. re-sells the assets to the ultimate buyer for the same price the selling company would have used, and agrees with that buyer on an allocation of that selling price among the assets.

Although S.Crow Collateral Corp. is the intermediate buyer contractually, the ownership of the assets passes directly from the selling company to the ultimate buyer, on the selling company's warranties and representations.

Liquidity with Substitute Funds

If the selling owner wishes, he or she may separately borrow from an independent lender an amount of money that is comparable to the resale price for the assets. If that is the selling owner's choice, he or she then enjoys complete liquidity by way of the loan proceeds, as a substitute for liquidity in the form of the sale proceeds. The loan is not made against the installment contract or with a pledge of the installment contract, but through a long-term escrow both the seller and the lender can be assured that S.Crow Collateral Corp.'s installment payments will fully fund the seller's loan payments, both during the term of the loan and at its maturity.

Seek Your Own Legal and Tax Advice

Before engaging in any such transaction, the selling owner should seek the advice of his or her legal and tax advisers, but it is S.Crow Collateral Corp.'s position that a C453 and the separate loan, when properly done, can eliminate the entity-level tax, enable the selling owner to enjoy all-capital-gains treatment,

defer that tax for many years, and provide non-taxable loan proceeds instead of taxable sale proceeds.

Disclaimer

Note: As a principal only, S.Crow Collateral Corp. does not act in the capacity of a broker, sales representative, investment adviser, or tax or legal adviser, does not sell or recommend any security; and does not accept any transaction fee or payment for transaction services. Circumstances may affect tax and legal outcomes. Each transaction is different and unique to each participant. Neither S.Crow Collateral Corp. nor any of its officers or employees may or does provide tax, legal or investment advice. Nothing herein is intended to be, or may be taken to be, tax, legal or investment advice. Interested parties should consult their legal, tax and investment advisers before participating in any transaction.

