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Tax Accounting in Mergers and Acquisitions

2013 Edition

Glenn R. Carrington

Ernst & Young LLP



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Dedication

This book is dedicated to Gladys Marie Brown Carrington, my devoted mother, who passed in March of 2005. She instilled in me a "can do" attitude for which I am so grateful. She always told me that "if someone else did, you surely can too" and "what others have should never make you jealous, but rather challenge you." As a result of her guidance, I have always approached life as though the glass is half full and have undertaken seemingly insurmountable challenges, including writing this book.

I want to thank my family—my sons, my father, my sister and brothers, my aunts, uncles and cousins and my line brothers—for their support and devotion over the years. Your love, affection and belief have been an invaluable source of strength to me. I also want to thank my friends, colleagues and mentors. The experience and knowledge I gained from each one of you is reflected through out this book.

Preface

All deals raise issues involving tax accounting. The tax accounting issues presented in these deals are often numerous and complex and often put a significant amount of money at stake. These issues, however, are frequently overlooked or only are cursorily considered. One reason for this is that there is very little guidance available on tax accounting issues in the context of mergers and acquisitions. This treatise is intended to provide guidance on tax accounting issues from a transactional perspective.

As noted, the tax accounting issues that arise in mergers and acquisitions are numerous and varied. In this edition of this treatise, we have attempted to cover some of the more significant tax accounting issues that arise in deals. In subsequent editions, we hope to address additional issues, such as the installment sale rules, cancellation of indebtedness issues, debt versus equity issues, and financial accounting implications of various transactions.

Glenn R. Carrington

September 2012

Acknowledgments

The subject matter of tax accounting issues in mergers and acquisitions is expansive and involves issues from a number of diverse and complex areas of tax law. In writing this treatise, I was fortunate to have substantial contributions from my colleagues who have added their considerable expertise. This treatise had genesis in an outline prepared by myself and Mark Schneider over 15 years ago and this original outline has served as the basis for this treatise. Over the years this outline has been expanded and revised, with considerable input from Amy Sargent. Her tremendous contribution continues to be reflected in the treatise.

I wish to express my gratitude for the invaluable contributions of several of my colleagues at Ernst and Young. Through the efforts of these contributing authors, the outline has evolved into the first treatise focused on tax accounting issues in mergers and acquisitions. Amy Sargent not only assisted me with the outline, but made substantial contributions to most of the chapters—especially, those dealing with capitalization and contingent liabilities and consequences from the discharge of indebtedness. Kim Golightly was a primary author of the chapter addressing the treatment of intangibles under section 197. Jane Rohrs was a primary author of the chapter dealing with accounting for transactions under sections 351, 338, 381, 721 and 1001, which was substantially revised by Scott Garrison and Chris Netram to reflect the final section 381 regulations. Brian Peabody was the principal author of the chapter dealing with corporate equity reduction transactions, a highly complex area, and made substantial contributions to the chapter addressing consolidated return issues. In addition, Andrea Mouw contributed greatly by reviewing many sections of the book dealing with tax accounting issues.

Many others have contributed to the preparation of this treatise, through research, editing and reviewing. Their efforts contributed greatly to the quality of this treatise. I want to thank Pat Anderson for her assistance with the original chapter dealing with accounting for transactions under sections 351, 338, 381, 721 and 1002. I am grateful to Richard Larkins and Tom Coony for their review of the chapters dealing with debt modifications and original issue discount and to Marc Countryman's review of the chapter dealing with the consequences of discharge of indebtedness. I would also like to acknowledge Colleen O'Connor's review of many sections dealing with tax accounting issues in past editions of the book. I would also like to thank Lynn Edelstein, who assisted in drafting the section 197 chapter and Jeff Erickson and Robert Honigman, who provided invaluable input on partnership issues arising under section 197. Barry Tovich and Brandon Carlton's expertise on issues relating to LIFO are reflected in many chapters of the book. Matthew S. Blum's review of the sections dealing with section 163(j) contributed greatly to the quality of this book. Special thanks to Karen Messner for her assistance in proofreading many chapters of this book.

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Summary of Contents

<i>Preface</i>	v
<i>Acknowledgments</i>	vii
<i>About the Author</i>	ix
<i>Contents</i>	xiii
Chapter 1 Taxable and Tax-Free Acquisitions	1001
Chapter 2 Basic Concepts in Deductibility and Capitalization	2001
Chapter 3 Accounting for Restructuring Transactions under Sections 351, 338, 381, and 1001	3001
Chapter 4 Treatment of Contingent Liabilities	4001
Chapter 5 Treatment of Transaction Costs Prior to the Final Capitalization Regulations	5001
Chapter 6 Final Capitalization Regulations	6001
Chapter 7 Debt Modifications in Connection with Mergers and Acquisitions	7001
Chapter 8 Original Issue Discount (OID) in Mergers and Acquisitions	8001
Chapter 9 Amortization of Intangibles under Section 197	9001
Chapter 10 Limitation on Loss Carrybacks—Corporate Equity Reduction Transactions	10,001
Chapter 11 Consolidated Return Tax Accounting Issues	11,001
Chapter 12 Tax Accounting Issues in Bankruptcies and Work-outs	12,001
<i>Appendix: Comprehensive Example</i>	13,001
<i>Table of Internal Revenue Code Sections</i>	14,001
<i>Table of Treasury Regulations</i>	15,001
<i>Table of Treasury Rulings</i>	16,001
<i>Table of Cases</i>	17,001
<i>Table of Statutes</i>	18,001
<i>Index</i>	19,001

Contents

<i>Preface</i>	v
<i>Acknowledgments</i>	vii
<i>About the Author</i>	ix

Chapter 1

Taxable and Tax-Free Acquisitions

PART 1—TAXABLE STOCK AND ASSET ACQUISITIONS	1003
¶ 101 INTRODUCTION	1003
¶ 102 TAXABLE ACQUISITIONS	1004
¶ 102.1 Taxable Stock Acquisitions	1004
¶ 102.1.1 Tax Consequences to Target Shareholders	1005
¶ 102.1.1.1 Gain or Loss	1005
¶ 102.1.2 Installment Sale Reporting	1006
¶ 102.1.3 The Receipt of Contingent Consideration by the Seller	1008
¶ 102.1.3.1 Closed Transactions	1008
¶ 102.1.3.2 Open Transactions	1008
¶ 102.1.3.3 Characterization of Contingent Consideration as Debt or Equity	1009
¶ 102.1.3.4 Imputed Interest	1010
¶ 102.1.3.5 Contingent Consideration Examples	1011
¶ 102.1.4 Transaction Costs	1012
¶ 102.2 Tax Consequences to Acquirer	1013
¶ 102.3 Tax Consequences to the Target Corporation	1014
¶ 103 TAXABLE ASSET ACQUISITIONS	1014
¶ 103.1 Tax Consequences to the Target Corporation	1015
¶ 103.1.1 Gain or Loss	1015
¶ 103.1.2 Code § 1060	1016
¶ 103.1.2.1 Applicable Asset Acquisition	1016
¶ 103.1.2.2 Residual Allocation Method	1017
¶ 103.1.2.3 Examples of Residual Allocation Method	1018
¶ 103.1.2.4 Allocation by the Parties	1019
¶ 103.1.2.5 Redeterminations of Consideration Received	1020
¶ 103.1.2.6 Transaction Costs	1021

	¶ 103.1.3	Character of Gain or Loss	1021
	¶ 103.1.3.1	Definition of Capital Asset— Code § 1221	1022
	¶ 103.1.3.2	Code § 1231	1023
	¶ 103.1.3.3	Code § 1239	1024
	¶ 103.1.3.4	Code §§ 1245 and 1250— Depreciation Recapture	1025
	¶ 103.1.3.5	LIFO Inventory Recapture	1025
	¶ 103.1.4	Installment Sale Reporting	1026
¶ 104	¶ 103.2	Tax Consequences to the Purchaser	1028
	CODE § 338		1029
	¶ 104.1	Code § 338(g) Elections	1029
	¶ 104.2	Code § 338(h)(10) Elections	1030
	¶ 104.3	Making a Code § 338(g) and 338(h)(10) Election	1031
	¶ 104.4	Tax Consequences to Old Target	1031
	¶ 104.4.1	Code § 338(g) Election	1031
	¶ 104.4.1.1	Grossed-Up Amount Realized	1031
	¶ 104.4.1.2	Liabilities of Old Target	1032
	¶ 104.4.1.3	Allocation of ADSP Among the Target Assets	1033
	¶ 104.4.1.4	Redetermination of ADSP	1033
	¶ 104.4.1.5	Installment Sale Reporting	1034
	¶ 104.4.2	Code § 338(h)(10) Election	1034
	¶ 104.4.2.1	In General	1034
	¶ 104.4.2.2	Installment Sale Reporting	1034
	¶ 104.5	Tax Consequences to New Target	1035
	¶ 104.5.1	Code § 338(g) Election	1035
	¶ 104.5.1.1	Grossed-Up Basis	1035
	¶ 104.5.1.2	Liabilities of New Target	1036
	¶ 104.5.1.3	Allocation of AGUB Among the Target Assets	1037
	¶ 104.5.1.4	Redetermination of AGUB	1037
	¶ 104.5.2	Code § 338(h)(10) Election	1037
	¶ 104.6	Tax Consequences to Selling Shareholders in a Code § 338(h)(10) Transaction	1038
	¶ 104.7	Proposed Regulations Under Code § 336(e)	1038
PART 2—	TAX-FREE REORGANIZATIONS		1039
¶ 105	INTRODUCTION		1039
¶ 106	STATUTORY MERGERS (“A” REORGANIZATIONS)		1039
	¶ 106.1	Statutory Requirements	1039
	¶ 106.2	Judicial Doctrines	1042
	¶ 106.2.1	Business Purpose	1042
	¶ 106.2.2	Continuity of Interest	1043
	¶ 106.2.3	Continuity of Business Enterprise	1044
¶ 107	TRIANGULAR A REORGANIZATIONS		1045
	¶ 107.1	Forward-Triangular Mergers—Statutory Requirements	1045

	¶ 107.2 Reverse-Triangular Reorganizations—Statutory Requirements	1048
¶ 108	“STOCK-FOR-STOCK” OR “B” REORGANIZATIONS	1051
	¶ 108.1 In General	1051
	¶ 108.2 Statutory Requirements	1051
¶ 109	“ASSETS-FOR-STOCK” OR “C” REORGANIZATIONS	1053
	¶ 109.1 In General	1053
	¶ 109.2 Statutory Requirements	1053
¶ 110	“ASSETS-FOR-CONTROL” OR “D” REORGANIZATIONS	1055
	¶ 110.1 In General	1055
	¶ 110.2 Statutory Requirements	1056
¶ 111	RECAPITALIZATIONS OR “E” REORGANIZATIONS	1058
	¶ 111.1 In General	1058
	¶ 111.2 Statutory Requirements	1058
¶ 112	“F” REORGANIZATIONS	1059
	¶ 112.1 In General	1059
	¶ 112.2 Statutory Requirements	1060
¶ 113	BANKRUPTCY OR “G” REORGANIZATIONS	1061
	¶ 113.1 In General	1061
	¶ 113.2 Statutory Requirements	1061
¶ 114	ECONOMIC SUBSTANCE	1064

Chapter 2

Basic Concepts in Deductibility and Capitalization

¶ 201	INTRODUCTION	2002
¶ 202	ALL EVENTS TEST	2003
	¶ 202.1 Fixed Requirement	2004
	¶ 202.1.1 Contingent Fee Arrangements and the “Fixed” Requirement	2005
	¶ 202.1.2 Contracts for Future Services	2009
	¶ 202.1.3 Contested Liabilities: Code § 461(f)	2015
	¶ 202.1.3.1 The Taxpayer Contests an Asserted Liability?	2016
	¶ 202.1.3.2 The Taxpayer Transfers Money or Other Property in Satisfaction of the Asserted Liability?	2016
	¶ 202.1.3.3 Does the Contest Exist after the Transfer Has Been Made?	2020
	¶ 202.1.3.4 The Economic Performance Requirements of Code § 461(h) Are Satisfied	2021
	¶ 202.1.4 Compensation Related Issues	2022
¶ 202.2	Determinable Requirement	2026

¶ 203	ECONOMIC PERFORMANCE: CODE § 461(h)	2027
¶ 203.1	Payment Liabilities	2028
¶ 203.2	Property or Service Liabilities	2032
¶ 203.2.1	Services or Property Provided to the Taxpayer	2032
¶ 203.2.1.1	Future Services	2033
¶ 203.2.2	Services or Property Provided by the Taxpayer	2036
¶ 203.2.3	Use of Property by the Taxpayer	2036
¶ 203.2.4	Barter Transactions	2037
¶ 203.3	Special Rules	2037
¶ 203.3.1	Recurring Item Exception	2037
¶ 203.3.1.1	The All Events Test (Apart from Economic Performance) Must Be Met as of the End of the Year	2038
¶ 203.3.1.2	Economic Performance with Respect to These Items Must Occur No Later Than 8 ¹ / ₂ Months after the End of the Taxable Year	2039
¶ 203.3.1.3	Item Must Be Recurring in Nature and Treated Consistently by Taxpayer	2039
¶ 203.3.1.4	Item Is Not Material or Its Accrual for that Year Results in a Better "Match" against Income	2040
¶ 203.3.2	Exception for Liabilities Assumed in Connection with the Sale of a Trade or Business	2042
¶ 204	CLEAR REFLECTION	2044

Chapter 3

Accounting for Restructuring Transactions under Sections 351, 338, 381, and 1001

¶ 301	OVERVIEW	3003
¶ 302	TAXABLE SALE OF A BUSINESS	3004
¶ 302.1	Taxable Sale of Stock	3004
¶ 302.1.1	Determining Proceeds of Sale	3004
¶ 302.1.2	Determining Seller's Basis in Target	3004
¶ 302.1.3	Pre-Transaction Method Changes to Optimize or to Correct Improper Accounting Methods	3008
¶ 302.1.4	Issues Created by Short Taxable Years or Desired Changes in Taxable Years	3009
¶ 302.2	Taxable Sale of Assets	3011

¶ 303	STOCK PURCHASE	3015
¶ 304	TREATMENT OF PURCHASER OF ASSETS OR STOCK WITH CODE § 338(h)(10) ELECTION	3023
¶ 304.1	Methods Affected by Gross Receipts	3024
¶ 304.2	Depreciation	3025
¶ 304.3	Inventories	3026
¶ 304.4	Deferred Revenue	3026
¶ 305	CODE § 351 TRANSACTION	3030
¶ 305.1	Treatment of Transferor in a Code § 351 Transaction	3030
¶ 305.1.1	Acceleration of Deferred Revenue	3031
¶ 305.1.2	Effect on Transferor's Deductions	3032
¶ 305.1.3	Acceleration of Prior Years' Positive Code § 481(a) Adjustments	3035
¶ 305.1.4	Transferor's Erroneous Accounting Methods	3036
¶ 305.2	Treatment of Transferee in Code § 351 Transaction	3037
¶ 305.2.1	Transferee Succeeds to Liability Incurred by Transferor	3039
¶ 305.2.2	Transferee Succeeds to LIFO Inventories	3039
¶ 305.2.3	Transferee Succeeds to Long-Term Contracts of the Transferor	3041
¶ 305.2.4	Transferee Succeeds to Obligation under Deferred Revenue Contracts	3042
¶ 305.2.5	Transferee Succeeds to Supplies and/or Prepaid Expenses	3042
¶ 306	CODE §§ 381(c)(4) AND (c)(5)	3043
¶ 306.1	General Rules	3048
¶ 306.2	Determination of Method	3049
¶ 306.2.1	Acquiring and Target Use the Same Accounting Methods	3049
¶ 306.2.2	Acquiring and Target Use Different Accounting Methods	3050
¶ 306.2.2.1	Separate and Distinct Trade or Business	3050
¶ 306.2.2.2	Integrated Trade or Business	3053
¶ 306.3	Principal Method Determination	3054
¶ 306.3.1	Principal Overall Method	3054
¶ 306.3.2	Specific Item Principal Method	3058
¶ 306.3.3	Principal Inventory Method	3061
	(1) Fair Market Value Comparison	3062
	(2) LIFO Method Election	3062
	(3) Clarification to Specific Rules for Changing Inventory Methods	3064
¶ 306.3.4	Limitations on Use of Principal Method	3065
¶ 306.3.5	Determination of Proper Method in Other Cases	3068
¶ 306.4	Code § 381 Method Change Rules	3069
¶ 306.4.1	Change to Principal Method	3069

	¶ 306.4.2	Effect of Prior Elections	3073
	¶ 306.4.3	Change to Different Method	3073
		(1) Principal Method Cannot Be Used	3073
		(2) Request to Use Different Method	3074
	¶ 306.4.4	Method Change Principles	3074
	¶ 306.4.5	Time and Manner of Making Application	3075
¶ 306.5		Special Inventory Combination Rules	3076
	¶ 306.5.1	Combining Dollar-Value and Specific Goods LIFO Methods	3076
	¶ 306.5.2	Target Corporation Does Not Use LIFO	3077
	¶ 306.5.3	Change to Specific Goods LIFO	3078
	¶ 306.5.4	Acquiring Corporation Uses FIFO	3078
	¶ 306.5.5	Acquiring Corporation and Target Corporation Use FIFO	3079
	¶ 306.5.6	No Cut-Off Method Change Permitted	3080
¶ 307	¶ 306.6	Character of Items of Income and Deduction	3080
		DUE DILIGENCE	3084
¶ 308		PLANNING AROUND TAXABLE YEARS	3088
	¶ 308.1	Short Periods Affect the Ability to Defer Income Recognition from Advance Payments under Either Rev. Proc. 2004-34 or Reg. § 1.451-5	3089
	¶ 308.2	Short Periods Affect the Ability to Deduct Deferred Compensation	3090
	¶ 308.3	Short Periods Affect the Ability to Deduct Expenses under the Recurring Item Exception Election	3092
	¶ 308.4	Short Periods Affect the 12-Month Rule under Reg. § 1.263(a)-4(f)	3092
	¶ 308.5	Structure of a Transaction Causes the Less Desirable Taxable Year to Survive	3093
	¶ 308.6	Change in Taxable Year before the Transaction	3096
	¶ 308.7	Short Periods Accelerate the Amortization of Code § 481(a) Adjustments	3097
¶ 309		PLANNING FOR CORPORATIONS IN BANKRUPTCY	3097
		APPENDIX A—LIFO POOL COMBINATION: Illustration Combining Dollar-Value and Specific Goods LIFO Inventories	3100

Chapter 4

Treatment of Contingent Liabilities

¶ 401	INTRODUCTION	4003
¶ 402	IS THE LIABILITY ASSUMED?	4004
	¶ 402.1	Effect of Post-Acquisition Events
	¶ 402.2	Financial Statements
	¶ 402.3	Expressly Assumed
	¶ 402.4	Reflected in Purchase Price
		4008

¶ 402.5	Whether the Liability Arose from Actions of Seller or Buyer	4009
¶ 402.6	Was the Buyer Aware of the Liability?	4009
¶ 403	CODE § 1060	4010
¶ 403.1	Introduction	4010
¶ 403.2	Treatment of Buyer in Actual Asset Sale under Code § 1060	4011
¶ 403.2.1	Possible Approaches	4011
¶ 403.2.1.1	Capitalize Immediately	4011
¶ 403.2.1.2	Capitalize When Economically Performed	4012
¶ 403.2.1.3	Immediate Deduction When Paid	4012
¶ 403.2.2	Treatment of Assumed Deferred Compensation Liabilities	4013
¶ 403.2.2.1	General Rules Relating to Contributions to Pension Plans	4013
¶ 403.2.2.2	Qualified Pension Plans	4014
¶ 403.2.2.3	Treatment of Assumed Liabilities Related to Qualified Pension Plans	4015
¶ 403.2.2.4	Nonqualified Deferred Compensation	4018
¶ 403.2.3	Deferred Revenue Liabilities	4018
¶ 403.2.3.1	Assumed Liability Approach	4019
¶ 403.2.3.2	The Bifurcation Approach	4021
¶ 403.2.3.3	Deemed Payment Approach	4022
¶ 403.2.4	Nuclear Decommissioning Liabilities	4027
¶ 403.2.4.1	Treatment of Decommissioning Liabilities Associated with a QDT	4028
¶ 403.2.4.2	Treatment of Decommissioning Liabilities Associated with an NQDT	4028
¶ 403.3	Treatment of Seller under Code § 1060	4030
¶ 403.3.1	Timing of Income Recognition	4031
¶ 403.3.2	Deduction or Offset	4031
¶ 403.3.2.1	Reg. § 1.461-4(d)(5)	4031
¶ 403.3.2.2	The <i>Pierce</i> Case	4033
¶ 403.3.2.3	Impact of Code § 267 on Deductions under Reg. § 1.461-4(d)(5) and <i>Pierce</i>	4034
	(1) Code § 267(a)(1)	4035
	(2) Code § 267(a)(2)	4035
	(3) Deferral under Code § 267(f)	4037
¶ 403.3.3	Deferred Compensation Issues	4040
¶ 403.3.3.1	Code § 404(a)(5) Principles	4042

	¶ 403.3.3.2	Clear Reflection of Income Principles	4043
	¶ 403.3.3.3	Impact of Economic Performance Regulations	4045
	¶ 403.3.3.4	Treating the Assumed Deferred Liability as an Offset	4045
	¶ 403.3.4	Miscellaneous Code § 453 and § 453A Issues	4046
	¶ 403.3.4.1	Code § 453 Contingent Payment - Installment Sales	4046
	¶ 403.3.4.2	Code § 453A Interest Limitation on Contingent Payment - Installment Sales	4047
¶ 404	CODE § 338		4049
	¶ 404.1	In General	4049
	¶ 404.2	Treatment of Buyer under Code § 338	4050
	¶ 404.3	Treatment of Seller under Code § 338	4051
	¶ 404.4	Basis Allocation	4053
	¶ 404.4.1	In General	4053
	¶ 404.4.2	False Bargain Purchase	4053
	¶ 404.5	Indemnification Payments	4054
¶ 405	CODE § 351 TRANSFERS		4056
	¶ 405.1	Tax Effect to Transferor	4056
	¶ 405.2	Tax Effect to Transferee	4060
¶ 406	CONTINGENT LIABILITIES UNDER CODE § 381		4063
	¶ 406.1	In General	4063
	¶ 406.2	Code § 368(a)(1)(D) Transfers	4064
	¶ 406.2.1	Tax Effect to Transferor	4065
	¶ 406.2.2	Tax Effect to Transferee	4065

Chapter 5

Treatment of Transaction Costs Prior to the Final Capitalization Regulations

¶ 501	INTRODUCTION	5002
¶ 502	THE <i>INDOPCO</i> DECISION	5003
	¶ 502.1	Facts
	¶ 502.2	The Lower Court Decision
	¶ 502.3	The Supreme Court Decision
	¶ 502.3.1	Clear Reflection
	¶ 502.3.2	Capitalization Is the Norm
	¶ 502.3.3	"Separate and Distinct" Test
	¶ 502.3.4	"Future Benefit" Test
	¶ 502.4	The Scope of <i>INDOPCO</i>
¶ 503	COSTS INCURRED IN HOSTILE TAKEOVERS	5007
	¶ 503.1	In General
	¶ 503.2	IRS Position

	¶ 503.2.1	Prior to the <i>INDOPCO</i> Tax Court Decision	5007
	¶ 503.2.2	After the <i>INDOPCO</i> Tax Court Decision	5008
	¶ 503.2.2.1	IRS Letter Ruling 8945003	5008
	¶ 503.2.2.2	Technical Advice Memoranda 9043003 and 9043004	5008
	¶ 503.2.3	After the <i>INDOPCO</i> Third Circuit Decision	5009
¶ 503.3		Unsuccessful Defenses Against Hostile Takeovers	5010
	¶ 503.3.1	<i>A.E. Staley Manufacturing v. Commissioner</i>	5010
	¶ 503.3.2	Federated Department Stores	5013
	¶ 503.3.3	Field Service Advice 200103004	5014
¶ 503.4		Redemptions of Stock	5016
¶ 503.5		Pac-Man Defense	5017
¶ 503.6		Poison Pills	5017
¶ 503.7		Abandoned Transactions	5017
¶ 504		COSTS INCURRED IN FRIENDLY ACQUISITIONS	5017
	¶ 504.1	In General	5017
	¶ 504.2	Target Corporation's Expenses	5018
	¶ 504.2.1	<i>Wells Fargo v. Commissioner</i>	5018
	¶ 504.2.2	<i>Victory Markets, Inc. v. Commissioner</i>	5026
	¶ 504.2.3	Compensation Related Payments	5027
	¶ 504.2.3.1	Internal Salaries	5027
	¶ 504.2.3.2	Payments to Terminate Unexercised Stock Options	5029
	¶ 504.2.3.3	Golden Parachutes	5029
¶ 504.3		Acquiring Corporation's Expenses	5031
	¶ 504.3.1	In General	5031
	¶ 504.3.2	Bifurcation of Costs Between Investigatory and Facilitative	5031
	¶ 504.3.2.1	Technical Advice Memorandum 9825005	5032
	¶ 504.3.2.2	Technical Advice Memorandum 199901004	5034
	¶ 504.3.2.3	1993 Field Service Advice Lexis 222	5035
	¶ 504.3.2.4	Revenue Ruling 99-23	5035
¶ 504.3.3		Stock Acquisition Costs	5037
	¶ 504.3.3.1	Hilton Hotels Corp.	5037
	¶ 504.3.3.2	Ellis Banking	5038
¶ 504.3.4		Severance Pay	5038
	¶ 504.3.4.1	Revenue Ruling 67-408	5038
	¶ 504.3.4.2	Revenue Ruling 94-77	5038
	¶ 504.3.4.3	Technical Advice Memoranda 9721002 and 9731001	5039
¶ 505		SHAREHOLDER COSTS	5040
¶ 506		BOND REDEMPTION EXPENSES	5040
¶ 507		NONPROFIT CONVERSIONS	5041