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Section 337 Liquidations

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SECTION 337 LIQUIDATIONS

by

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CHAPTER I

INTRODUCTION

The Tax Effects of Liquidation

A liquidation occurs when a corporation winds up its affairs and distributes its assets to the shareholders in cancellation of its stock. A liquidation may be motivated by tax as well as business reasons. Regardless of the purpose, every liquidation can have a tax effect on the shareholders and the liquidating corporation.

The Internal Revenue Code of 1954 provides that shareholders shall treat distributions received in complete liquidation as full payment in exchange for their stock.[1] This will normally result in capital gain or loss to the shareholders to the extent the fair market value of the distribution is more or less than the basis of their corporate stock.

The Code also provides that liquidating corporations will not recognize gain or loss on the distribution of their property even though it may have appreciated or depreciated in value since its acquisition, except as provided in section 453(d) (relating to the disposition of installment obligations).[2] The various recapture rules such as section 1245 and 1250 (depreciated property) and section 47(a)(1) (early disposition of investment credit property) however override this provision by requiring the liquidating corporation to include an appropriate amount in its taxable income when property subject to these provisions is distributed.[3]

Yet, if a corporation sells its assets to a third party before liquidation, gain or loss can be recognized to the corporation on assets that have appreciated or depreciated in value since their acquistion. This situation can thus create a double tax on the same item since the corporation pays tax on the amount the proceeds of the sale exceed the property's basis and then the shareholder again pays tax on the amount the distributed proceeds exceed his basis in the stock of the corporation.

This double taxation can be avoided if the corporation qualifies under Section 337. Section 337 is best explained, by first looking at the developments leading up to its adoption in 1954.

The Need for Section 337

Before 1954, the corporate sale of assets before liquidation always caused the double taxation mentioned above. To avoid this, shareholders sought to have the corporation distribute the assets in kind and sell these assets themselves. However, this procedure generated complex problems and extensive litigation.

A leading case concerned with this procedure was decided in 1945.[4] In this case a closely held corporation had entered into an oral contract for the sale of an apartment building. The shareholders, realizing that a sale by the corporation followed by a liquidation would create a double tax, had the corporation distribute the building to them and they as individuals sold the property. However, the Supreme Court did not allow the form of this transaction to rule over the substance. They imputed the sale back to the corporation, thus causing the corporation to recognize the related gain. The Supreme Court concluded that the sale had in reality been made by the corporation even though the property had been transferred to the shareholders. They said, ". . . the transaction must be viewed as a whole, and each step, from the commencement of negotiations to the consummation of the sale is relevant."[5]

However, in another case decided in 1950, a similar situation was afforded different tax treatment.[6] In this case the stockholders first attempted to sell their stock, but received a counter offer to buy the property directly from the corporation. The stockholders then decided to obtain the property in liquidation and make the sale themselves to the same purchaser. The Court of Claims, although finding that the motive for the liquidation was the avoidance of corporate tax, nevertheless found that the sale was actually made by the stockholders and therefore held there was no corporate tax. The Supreme Court upheld this result and said, "Whatever the motive... sales of physical property by shareholders following a genuine liquidation distribution cannot be attributed to the corporation for tax purposes."[7]

Thus before 1954, stockholders were left unsure of the tax results that would follow from the liquidation and then sale of corporate assets. A definite need for new legislation to clear up this dilemma was apparent.

The Effect of Section 337

The 1954 Code introduced new legislation to eliminate the disparity between the results of the two preceding cases and to provide uniform tax treatment regardless of who was credited with having sold liquidated assets. The new legislation, Section 337, adopted as its principle the elimination of the corporate tax, whether the sale is made by the corporation in anticipation of liquidation or by the shareholders after liquidation. Stockholders still recognize gain or loss on the liquidation measured by the difference between the fair market value of the assets received and the basis of their corporate stock, but double taxation is avoided since the corporation no longer recognizes gain under Section 337.

Section 337 provides that when a corporation adopts a plan of complete liquidation, and within twelve months after the adoption of the plan all of its assets (except assets retained to meet claims) are distributed in complete liquidation, then no gain or loss will be recognized to the corporation from the sale or exchange by it of its property within such twelve-month period.[8] The tax consequences are the same as if the corporation had distributed the assets in kind within the general nonrecognition provisions of Section 336. The application of Section 337 is subject to several detailed statutory definitions and limitations and extensive regulations fill in many more details. Moreover, several aspects of the statute have induced extensive litigation.

ENDNOTES

[1]Internal Revenue Code of 1954, sec. 331(a)(1).

[2]Ibid., sec. 336; Regulation sec. 1.336-1.

[3]Boris I. Bittker and James S. Eustice, Federal Income Taxation of Corporations And Shareholders, Abridged Student Edition (Boston: Warren, Gorham & Lamont, 1971), par. 11.61.

[4]Commissioner v. Court Holding Co., 324 U.S. 331 (1945).

[5]Ibid., p. 334.

[6]United States v. Cumberland Public Service Co., 338 U.S. 451 (1950).

[7]Ibid., p. 455.

[8]Internal Revenue Code of 1954, sec. 337(a).

CHAPTER II

SECTION 337 REQUIREMENTS

Plan of Liquidation

Content of the Plan

The first step in executing a Section 337 liquidation is the adoption of a plan of liquidation. The Code requires the adoption of a "plan of complete liquidation" as an essential element in qualifying under Section 337. However, neither the Code nor the Regulations define a "plan of complete liquidation." The Regulations imply that the appropriate stockholder resolution authorizing the distribution in complete redemption of all stock can serve as the "plan."[1] But this is just an implication and not a definition.

Although no particular corporate formalities must surround the plan of complete liquidation, it is wise to have a stockholder resolution authorizing liquidation as minimum evidence of the plan. The resolution should satisfy the appropriate state laws as well as the requirements of Section 337. Such a resolution should contain the following:[2]

1. Authority for the officers and directors to sell corporate properties
2. Authority for the officers and directors to wind up the ordinary business affairs of the corporation

3. A direction to the proper officers to file dissolution papers
4. A direction to the proper officers that all assets are to be distributed to the shareholders in complete redemption of all the outstanding stock
5. A provision authorizing that property not easily divisible among stockholders be distributed in kind to a trustee for the benefit of the stockholders and
6. A provision that the liquidation should take place as soon as possible

A formal dissolution of a corporation is not required for Section 337. However, stockholders must not reactivate the corporate charter after liquidation since this action will defeat an otherwise acceptable plan of liquidation. This is true whether the reactivated business is the same or different than the business that was liquidated.[3]

Date of Plan Adoption

The date of adoption of the plan of liquidation is important for two reasons:

1. The sale of property must be made within a twelve-month period beginning on this date to receive nonrecognition treatment, and
2. All the assets (other than those retained to meet claims) must be distributed within that twelve-month period

The Code does not state what will determine the date of adoption. However, the Regulations state that:

> Ordinarily, the date of the adoption of a plan of complete liquidation by a corporation is the date of adoption by the shareholders of the resolution authorizing the distribution of

all of the assets of the corporation (other than those retained to meet claims) in redemption of all of its stock.[4]

The Regulations will only follow this general rule though when the corporation sells substantially all of its property before the date of adoption of the plan or sells no substantial part of its property before such date. "In all other cases the date of the adoption of the plan of liquidation shall be determined from all the facts and circumstances."[5]

The date of adoption is presented in this way because Section 337 is susceptible to taxpayer manipulation. Taxpayer manipulation can take the form of a corporation arranging sales to realize losses before a plan of liquidation is adopted and saving gain sales for nonrecognition after a plan is adopted. When this occurs the Regulations state the date of adoption should be determined from all the facts and circumstances. In this way the Regulations hope to stop corporations from straddling Section 337 and cause both gains and losses to be recognized before adoption of the plan or cause both gains and losses to receive nonrecognition treatment after adoption of the plan.

In a Revenue Ruling[6] involving a publicly held corporation which first sold one of its businesses at a loss and a year later adopted a plan of liquidation and sold the other business at a gain, the Service accepted the corporate date of adoption of the plan because the facts demonstrated there was no intention to liquidate at the time of the first sale. This ruling is characterized as one in which the determination of the date was "from all the facts and circumstances." The Ruling leaves little doubt that if the earlier sale had been deemed to be part of a pre-arranged plan of liquidation, the Ruling would have been adverse to the taxpayer.

The Tax Court has been very lenient with corporations that appear to straddle Section 337. The Revenue Service has tried to prove in many of these cases that the date of adoption was from all the facts and circumstances before the stated date so to disallow the splitting of loss and gain sales. But the Service has lost many of these cases.

In Virginia Ice & Freezing Corp.,[7] a corporation sold two of its eight ice plants at a loss on October 1 and 4, 1954, respectively. On October 11, 1954 a majority of the directors met and adopted a resolution recommending that their corporation be dissolved and called for a meeting of the stockholders on October 22, 1954 to act on this matter. At that meeting the stockholders adopted a resolution to completely liquidate the corporation as soon as possible. The Commissioner argued that an informal plan had been adopted prior to the loss sales, thereby bringing these losses within the nonrecognition provisions of Section 337. However, the Tax Court held that a plan of complete liquidation was not adopted until October 22, 1954 and thus the loss sales on October 1 and 4 were recognized by the corporation.

In City Bank of Washington,[8] the stockholders adopted a plan of complete liquidation on May 29, 1959. However, on May 26, 1959, City Bank in anticipation of the adoption of the plan, sold a portion of its government securities at a loss. Again, despite the Commissioners argument that an informal plan was adopted at the time of the loss sale and despite the fact the sale was purposely made to straddle Section 337, the Tax Court held that the loss sale took place prior to the adoption of the plan of liquidation and consequently the loss on such sale was recognized. In this case the Court seemed to say that the existence of an earlier date of an informal plan of liquidation would only be considered when a formal plan has not been adopted. This seems to be contrary to Regulation 1.337-2(b) stating that the date should be determined from all the facts and circumstances.

Thus it is difficult to determine if a straddle of Section 337 will be allowed in the future. However, in this situation a taxpayer has everything to gain and nothing to lose by trying. The correct way to handle a straddle when the gains exceed losses, is to have gain sales and liquidation occur within a years time from the loss sales. Then if the courts find an informal date of adoption at the time of loss sales, the gain sales will still qualify for nonrecognition since liquidation occurs within the required twelve-month period. However, when losses exceed gains, stretch out the time between loss and gain sales to exceed one year. Then if an informal date of adoption is found at the time of loss sales, the liquidation will not qualify for Section 337, since it does not meet the time limit, and the excess of losses over gains will be recognized.[9]

Formality of the Plan

Stockholders of closely held corporations often agree informally to liquidate and sell the corporate assets before taking any formal steps to adopt a plan of liquidation. Since the Code does not define a plan of liquidation, courts have found that an informal plan of liquidation will satisfy the requirement.

In Mountain Water Co. of La Crescenta,[10] the Tax Court held that although the corporation did not formally adopt a plan of liquidation, an informal plan was adopted when the corporation proceeded toward liquidation. Thus the gain on the sale of their property was given nonrecognition treatment under Section 337. The Court said:

> If all the facts and circumstances indicate that the assets were in fact sold as part of a plan to liquidate the company and the corporation in fact goes out of business and distributes its assets in complete liquidation within the 12-month period, it would seem that that purpose has been accomplished. To read into the statute the requirement that formal legal steps be taken would tend to defeat the purpose of the statute rather than accomplish it.[11]

The Tax Court in Alameda Realty Corp.[12] found an informal plan of liquidation to exist when no formal plan of liquidation was adopted. A husband and wife owned all the stock of the corporation in this case. After deciding to let the corporation dissolve for nonpayment of taxes, they sold the corporate assets. The Court found that because of the closely held nature of this corporation and other facts there was a plan to liquidate before the sale even though no formal authorization took place. Thus the gain on the sale of assets was not recognized by the corporation.

However, in Intercounty Development Corp.,[13] the Tax Court rejected the claim that an informal plan predated the sale. The Court said whether a plan of liquidation exists is a question of fact. They held in La Crescenta a plan existed because it was clear from the evidence that a plan was adopted. In this case it was not clear a plan existed before the sale and thus the Tax Court rejected their claim.

The Revenue Service has adopted to some extent the courts position on informal plans and under limited circumstances will recognize them. They ruled[14] that an informal agreement by stockholders owning 75 percent of the stock of a closely held corporation which states that the corporation should sell its assets and distribute the proceeds in complete liquidation will be regarded as the adoption of a plan of liquidation, even though the formal resolution follows the sale.

Although a plan can be adopted informally, whenever possible the plan should be formally adopted so to avoid any doubt as to whether subsequent sales will qualify for nonrecognition of gain. Steps should be taken to establish proof of the date of the adoption of a plan. Form 966 should be filed with the Internal Revenue Service within 30 days of the date of adoption of a plan.[15] The Regulations also require that the corporate tax return set forth the adoption of the plan of liquidation and other pertinent data.[16] The Service has ruled[17] that if the taxpayer does not follow these formalities, it will not be fatal per se to a Section 337 liquidation. But the prudent taxpayer would be wise to follow them.

Extensions to the Plan

The Regulations state that the twelve-month-nonrecognition period begins on the date the plan of liquidation is adopted and no extension of that period may be granted.[18] Therefore, stockholders should be careful not to adopt a plan prematurely, if proposed sales may be delayed or cancelled, since the twelve-month period may expire before a new sale can be completed. But if no steps have been taken under the original plan, it appears proper to revoke that plan and then adopt a new plan.

In Revenue Ruling 67-273,[19] the Commissioner indicated that an old plan of liquidation may be rescinded and a second plan adopted when no sales were effected and no liquidating distribution was made pursuant to the first plan. It was made clear though, that the recision and subsequent adoption of the second plan will not be given separate effect unless the facts and circumstances show that the first plan was actually abandoned and not merely extended.

In West Street--Erie Blvd. Corp., v. U.S.,[20] the Courts approved the adoption of a second plan when the sale contemplated under the first plan could not be completed within the original twelve-month period. The Second Circuit Court said:

> When the Corporation has taken some steps to carry out the original plan of liquidation but abandons it in good faith, the subsequent adoption of a new plan, under different circumstances, should commence a new 12-month period for liquidation under the new plan.[21]

However, if a corporation engages in the leisurely process of disposing of all its assets under a plan more than twelve-months old and then subsequently adopts a second plan to obtain nonrecognition treatment for its final sales, the Tax Court held that the plan does not qualify under Section 337.[22]

A corporation might try adopting a plan of liquidation contingent on the first liquidating sale itself. In this way the corporation will receive the longest possible time in which to carryout the liquidation. There is some authority for believing that such a contingent plan will be accepted,[23] but the issue is still far from settled and not suggested for the taxplanner.

Time Factors

General Requirement

The second requirement of Section 337 is that:

> All assets (less assets retained to meet claims), both tangible and intangible, must be distributed within a 12-month period. Any assets retained after the expiration of the 12-month period for the payment of claims (including unascertained or contingent liabilities or expenses) must be specifically set apart for that purpose and must be reasonable in amount in relation to the items involved.[24]

The regulation goes on to further define this requirement by stating:

> A corporation will be considered to have distributed all of its property other than assets retained to meet claims even though it has retained an amount of cash equal to its known liabilities and liquidating expenses plus an amount of cash set aside under arrangements for the payment after the close of the 12-month period of unascertained or contingent liabilities and contingent expenses. Such arrangements for payment must be made in good faith, the amount set aside must be reasonable, and no amount may be set aside to meet claims of shareholders with respect to their stock. If it is established to the satisfaction of the Commissioner that there are shareholders who cannot be located, a distribution in liquidation includes a transfer to a State official, trustee, or other person authorized by law to receive distribution for the benefit of such shareholders.[25]

The Courts have been lenient in their interpretation of these regulations. In Mountain Water Co. of La Crescenta,[26] the Tax Court held that the distribution requirement was met even though the corporation retained assets after the twelve-month period to redeem shares, representing one-tenth of 1 percent of their stock, for owners which were unknown or could not be located. Although the Regulations specifically state that no amount may be retained to meet claims of shareholders with respect to their stock, the Court seemed to say where an attempt is made in good faith to liquidate under Section 337, the retention of small amounts to redeem shares will not prevent it. This opinion however, seems to hinge on the specific facts and circumstances of this case and should not be used as a general rule.

In O.B.M., Inc. v. Commissioner,[27] the Second Circuit Court reversed the Tax Court and held that the corporations retention of a claim against New York City after the twelve-month period met the distribution requirement where there was a good faith effort to determine the value of the claim and the value of the claim was offset by contingent liabilities.

In John Town, Inc.,[28] the Courts distinguished claims of shareholders with respect to their stock from claims in their position as creditors. According to the Regulations assets can be held after the twelve-month period to meet the claims of creditors. However, in John Town, assets retained after twelve months to pay notes issued to stockholders prevented nonrecognition on gain under Section 337 because the Courts found the notes represented equity investment capital and not bona fide debt. Thus the taxpayer should be careful when shareholders hold both debt and equity claims.

Since the Commissioner has taken a literal approach to the twelve-month rule in almost all cases, a liquidating corporation should do everything in its power to distribute all assets within this period. If the corporation does this in good faith, it should receive favorable treatment from the Courts if not the Revenue Service.

Acceptable Distributions

The Regulation provides that where shareholders cannot be located, a distribution to a trustee for the benefit of such shareholders is permissible. This same technique can also be used for distributing assets within the twelve-month period when the corporation has dissenting shareholders, a problem of disputed stock ownership, or assets to be distributed in kind.

The Revenue Service ruled[29] that the distribution requirement was met when a corporation transferred to trustees for the shareholders a federal tax refund claim that could not be sold or divided. The ruling held that if a corporation divests itself of its assets within the prescribed twelve-month period in a manner equivalent to distributions to the shareholders, it will have satisfied the twelve-month requirement of Section 337. It said:

> Such divestment will result upon a complete transfer of the asset to the stockholders, to a trustee for the stockholders appointed by a court of competent jurisdiction, or to an independent trustee selected by the stockholders.[30]

In Bird Management, Inc.,[31] the Tax Court dispelled the idea that the above ruling listed the exclusive methods to distribute corporate assets. The Courts said those methods are not mandatory procedures for divesting the corporation of title to assets. In Bird Management, the taxpayer did not use any of those methods to distribute a tax refund claim. However, the Tax Court held the liquidation qualified under Section 337 because the refund checks received after the twelve-month period were never part of the property of the corporation since they were immediately deposited in the account of the sole stockholder.

In Revenue Ruling 65-257[32] a corporation was held to have met the distribution requirement of Section 337 when cash equal to the appraised value of stock owned by dissenting shareholders was placed in escrow by the complete transfer of such cash to an independent party until there was a final determination of the value of the stock. The point made in this ruling was that the corporation must completely divest itself of the assets to meet these claims and under no circumstances would any part of these assets be returned to the corporation.

Revenue Ruling 72-137[33] sanctioned the use of an independent trustee to receive property impractical to distribute in kind to shareholders. The ruling authorized the transfer of cash and real estate to an independent trustee where the purpose of the cash transfer was to meet claims and the real estate wasn't readily marketable. The Service recognized that the real estate's marketability would be seriously impaired if distributed in undivided fractional interest to the corporate shareholders.

In Henry Yeckes et al.,[34] a corporation faced the problem of disputed stock ownership. Therefore, they did not distribute all their assets within the required twelve-month period. The Tax Court did not find that the inability of the corporation to choose between competing shareholders relieved it of the requirement to distribute their property within the twelve-month period. They held that where the corporation could not decide which of two persons was in fact the shareholder entitled to receive the liquidating distribution, it could have satisfied the twelve-month requirement by transferring assets to meet this claim to an escrow agent for the benefit of the person ultimately determined to be the true stockholder.

Thus the use of a trust or escrow agent can prove to be a very useful technique in meeting the twelve-month distribution requirement. However, where a trust is to be the recipient of the assets, it should be careful not to conduct any business activities. The activities of the trust should be those of merely winding up the affairs of the liquidated corporation and distributing the assets. If one of the trust's objectives is to carry on a trade or business, it will risk being taxable as a corporation, and depending on the nature of the business activities, possibly cause the liquidation to be disregarded and treated as part of a corporate reorganization.[35]

Eligible Property

Property Defined

The Code defines property qualified for Section 337 treatment by including all property except:

1. Stock in trade or other property which is normally includable in inventory and held primarily for sale to customers in the ordinary course of business (inventory items)
2. Installment obligations received as the result of a sale or exchange, at any time, of inventory items
3. Installment obligations received as the result of a sale or exchange of property other than the inventory items if the sale occurred prior to the date of adoption of the plan of complete liquidation[36]

The rationale for excluding these transactions is predicated upon the idea that Section 337 is directed at giving nonrecognition treatment to only the winding-up sales inherent in a corporate liquidation. This section does not want to allow sales in the normal course of business to be tax-free following the adoption of a plan of liquidation. Nor does it want to allow a corporation to escape recognition of profit from prior operations that have been deferred through the use of the installment election.

Inventory Property

The above exceptions to property will not always apply if these items are sold so as not to be sales in the normal course of business. Section 337 nonrecognition treatment is extended where substantially all the inventory or similar property attributable to a trade or business of the corporation is sold or exchanged to one person in one transaction after the adoption of a plan of liquidation. When the inventory is sold as such on an installment basis, the installment obligation acquired also qualifies as property eligible for nonrecognition of gain.[37]

The Regulations provide that the determination of the substantially-all test is to be made at the time of the bulk sale.[38] This permits sales of inventory in the ordinary course of business to be made after the adoption of a liquidation plan and the bulk sale of the remaining inventory to qualify as substantially all.

In Luff Co.[39] the Tax Court seemed to say that substantially all should mean all inventory in all stages of completion.

In this case the taxpayer was successful in qualifying a sale of work in process inventory under Section 337. The Court, however, noted that the failure to transfer raw material inventory in the same transaction might have disqualified the transaction from Section 337 treatment. However, since the Revenue Service did not raise the argument, the Court specifically refused to pass on it.

A bulk sale of inventory will qualify even though some inventory is retained subject to claims based on a purchase agreement. In Jeanese, Inc., v. U.S.[40] a sale of lots by a liquidating real estate development corporation was held to be a bulk sale of substantially all of its inventory even though certain unsold lots, subject to an executory contract to sell, were retained to meet claims against the corporation. However, it would be more prudent for the taxpayer to either sell the inventory subject to the claims or refrain from selling the inventory in bulk until after the claims were settled.

The Tax Court ruled that the bulk sale must be to one buyer as such and not to an agent. In R.W. Pastene,[41] the Court held that the selling of mink pelts to an auction company which, in turn, sold them to individual purchasers at auction sales was not a bulk sale because the auction sales were not sales to one person in one transaction.

If a corporation engages in more than one trade or business, the bulk-sale rule applies separately with respect to each business. For instance, if a corporation owns a grocery store at one location and a hardware store at another, both being served by a common warehouse, the corporation can sell all of the inventory of the grocery store, including that part of its inventory held in the warehouse, in a bulk-sale without necessity of selling the hardware store inventory in the same transaction.[42]

Installment Obligations

There are only two circumstances in which an installment obligation can be sold without recognition of the deferred gain under Section 337. The first is the sale of installment obligations arising out of a bulk sale of inventory, and the second is the sale of installment obligations arising out of the sale of non-inventory property after adopting a plan of liquidation.

Ordinarily, Section 453 seems to imply installment obligations require two or more payments. However, the term installment obligation has taken on a new perspective in regards to Section 337. In Family Record Plan,[43] the Tax Court held a cash basis corporation's accounts receivable were installment obligations within the meaning of Section 337(b), even though they did not use the installment method of reporting. Thus, they were considered property which did not qualify under Section 337. The Ninth Circuit Court affirmed the Tax Court in this decision, but used a different rationale. The Ninth Circuit held that the sale of a cash basis corporation's accounts receivable resulted in an assignment of income that gives the Commissioner a right under Section 446(b) to disregard the corporation's method of accounting and to require computation by a method that would clearly reflect income.[44]

Consistent with Family Record Plan, the Tax Court in

Coast Coil Co.[45] held that the loss on accounts receivable sold pursuant to Section 337 was recognized to the seller because the accounts receivable were installment obligations and did not constitute property under Section 337(b). In this case however, the taxpayer used an accural method of accounting. The Tax Court followed the Pridemark[46] view that Section 337 does not apply to the sale of noncapital assets. The Ninth Circuit Court affirmed this decision and seemed to imply that the sale of accounts receivable from ordinary sales will always be recognized under a Section 337 liquidation. However, this implication is broader than necessary and probably will be tested in later cases as an overgeneralization rather than a holding. Although Congress in enacting Section 337 focused on the sales of capital assets, Section 337 as written is not so narrowly confined.

The distribution of installment obligations in kind to shareholders will ordinarily cause the corporation to realize gain or loss on the distribution.[47] However, to make the distribution of installment obligations compatible with their sale, if the installment obligations distributed arose out of the bulk sale of inventory or sale of a non-inventory assets in a Section 337 liquidation, no gain or loss should be recognized on their distribution.

Qualified Sale or Exchange

Ambiguious Definition

Only property "sold or exchanged" after the adoption of a liquidation plan and within the next twelve months qualifies for nonrecognition treatment under Section 337. However, the Code and

Regulations do not define a sale or exchange. The Regulations merely say:

> The date on which a sale occurs depends primarily upon the intent of the parties to be gathered from the terms of the contract and the surrounding circumstances. In ascertaining whether a sale or exchange occurs on or after the date on which the plan of complete liquidation is adopted, the fact that negotiations for sale may have been commenced, either by the corporation or its shareholders, or both shall be disregarded. Moreover, an executory contract to sell is to be distinguished from a contract of sale. Ordinarily, a sale has not occured when a contract to sell has been entered into but title and possession of the property have not been transferred and the obligation of the seller to sell or the buyer to buy is conditional.[48]

A problem does not usually arise with regard to this requirement since the occurrence of a sale or exchange is often obvious. Since the date when the sale is completed governs, to avoid uncertainty a sales contract should clearly spell out the conditions under which the sale will be regarded as consummated. Revenue Ruling 57-140[49] endorsed a provision in a sales contract requiring the formal adoption of a resolution by the stockholders approving the proposed sale, as a method of aiding in fixing the time of consummation of the sale.

Condemnation Proceedings

Determining the date when a sale occurs may present problems in a condemnation proceeding. The Revenue Service ruled[50] that a condemnation of real property by a public authority is treated as a sale within the meaning of Section 337(a) and the date of the sale is determined by local law. In other words, the critical date is the date upon which title passes to the condemming authority and that date is fixed by reference to the statute under which the condemnation is made.

In Covered Wagon, Inc. v. Comm.[51] nonrecognition treatment under Section 337 was denied a gain from condemnation of the corporation's land. The Court held that the sale occurred before a plan of liquidation was adopted. For purposes of Section 337(a), the "sale" occurred at the time the U.S. filed a declaration of taking in Court and the title vested in the U.S. even though the fixed price was not yet established. The Court held that the dates of actual payment of the condemnation award or the final payment of the award do not affect the date of sale.

In Place Realty Corp.[52] and many other cases the same situation occurred. Gain was recognized to the corporation because the sale occurred when under local law the condemming authority was vested with title before a plan of liquidation could be adopted. Therefore, the taxpayer should carefully plan and watch to be sure a condemnation doesn't occur prior to his adoption of a plan of liquidation. When the threat of condemnation is present, a plan of liquidation should be adopted immediately. It can be later cancelled if condemnation is delayed, but it is better to adopt and cancel several plans than to incur a tax liability at both the corporate and stockholder levels.

The Regulation permits a sale to precede the adoption of a plan of liquidation if made on the same day such plan is adopted.[53] Therefore, it is possible to adopt a plan of liquidation the same day a condemnation occurs and have the gain receive nonrecognition treatment.

Involuntary Conversion

For a long time the Revenue Service maintained that the receipt of insurance proceeds on a fire loss was not the equivalent of a sale for Section 337 purposes.[54] However, under the weight of several Court decisions, the Revenue Service ruled[55] that an involuntary conversion resulting from a fire loss constitutes a sale or exchange for the purposes of Section 337. The purpose of this ruling was to bring within the protection of Section 337 any gain realized on indemnification received for a fire loss suffered by a corporation which had already adopted a plan of liquidation and which was in the process of winding up its affairs at the time of the fire.

However, it remained unclear what happens when a fire occurs before adoption of a plan of liquidation and the insurance proceeds are received after adoption of the plan. In U.S. v. W.M. Morton Sr.[56] this question was tested. The Eighth Circuit Court held in this case that a fire is only the first step in an involuntary conversion which is not finally complete until either: (1) insurance policy proceeds are received, (2) the settlement figure is agreed on, or (3) a judgement is obtained. Since settlement with the insurance company did not occur until after adoption of a liquidation plan, this case received the benefit of nonrecognition treatment under Section 337 even though the fire preceded the liquidation plan.

But the Sixth Circuit Court disagreed in their decision of Central Tablet Manufacturing Co. v. U.S.[57] They held that the date of the fire is the date of sale for Section 337 purposes. Since the fire preceded the corporations adopted Section 337 plan, the gain on the insurance recovery was not given nonrecognition treatment.

This set the stage for the Supreme Court's review of Central Tablet.[58] They affirmed the Sixth Circuit Court's decision by holding that for Section 337 purposes, the date of sale or exchange is the date of the fire and since this occurred prior to the adoption of a liquidation plan, the taxpayer was not entitled to nonrecognition of the gain realized in the involuntary conversion. However, their strict interpretation seems not in keeping with the purpose of Section 337 and didn't consider the equities due the taxpayer. Four Justices dissented from this majority opinion.

In 1959 the Advisory Group on Subchapter C filed a report recommending that Section 337 be amended to provide that if an involuntary conversion occurred prior to the adoption of a plan of complete liquidation, the taxpayer would have 60 days within which to adopt a plan to qualify for Section 337.[59] But the suggestion was never enacted. Since the Supreme Court has construed Congress did not intend Section 337 treatment for fires occuring prior to the adoption of a plan of liquidation, Congress itself might have to reconsider this issue and amend the statute so that the taxpayer experiencing an involuntary conversion can receive equitable treatment.

ENDNOTES

[1]Regulation sec. 1.337-2(b).

[2]Leonard L. Silverstein, editor, Corporate Liquidations Under Section 337, 18-4th, Tax Management Portfolios (Washington, D.C.: Tax Management, Inc., 1968), pp. A-8,9.

[3]Revenue Ruling 60-50, 1960-1 C.B. 150.

[4]Regulation sec. 1.337-2(b).

[5]Ibid.

[6]Revenue Ruling 57-140, 1957-1 C.B. 118.

[7]30 T.C. 1251 (1958).

[8]38 T.C. 713 (1962).

[9]Raymond T. Mahon, "Section 337 (12 Month) Liquidations: What Constitutes a Plan; Disposition of Assets; Suggested Clauses for a Plan," New York University Twenty-Eighth Annual Institute on Federal Taxation, 1970, pp. 700-701.

[10]35 T.C. 418 (1960).

[11]Ibid., p. 426.

[12]42 T.C. 273 (1964).

[13]Par. 61,217, P-H Memo T.C. (1961).

[14]Revenue Ruling 65-235, 1965-2 C.B. 88.

[15]Internal Revenue Code of 1954, sec. 6043.

[16]Regulation sec. 1.337-6.

[17]Revenue Ruling 65-30, 1965-1 C.B. 155; Revenue Ruling 65-80, 1965-1 C.B. 154.

[18]Regulation sec. 1.337-1.

[19]1967-2 C.B. 137.

[20]411 F. 2d 738 (2nd Cir., 1969).

[21]Ibid., p. 741.

[22]Malcolm C. Howell, 40 T.C. 940 (1963).

[23]Henry H. Adams, Transferee, 38 T.C. 549 (1962).

[24]Regulation sec. 1.337-1.

[25]Regulation sec. 1.337-2(b).

[26]35 T.C. 418 (1960).

[27]427 F. 2d 661 (2nd Cir., 1970).

[28]19 AFTR 2d 1389 (7th Cir., 1967).

[29]Revenue Ruling 63-245, 1963-2 C.B. 144.

[30]Ibid., p.145.

[31]48 T.C. 586 (1967).

[32]1965-2 C.B. 89.

[33]1972-1 C.B. 101.

[34]Par. 66,178, P-H Memo T.C. (1966).

[35]Sheldon M. Bonovitz, "Current Liquidation Problems Under Section 334(b)(2) and Section 337 Distributions and Reserves," New York University Thirtieth Annual Institute on Federal Taxation, 1972, p. 1105.

[36]Internal Revenue Code of 1954, sec. 337(b)(1).

[37]Ibid., sec. 337(b)(2).

[38]Regulation sec. 1.337-3(b).

[39]44 T.C. 532 (1965).

[40]341 F. 2d 502 (9th Cir., 1965).

[41]52 T.C. 647 (1969).

[42]Regulation sec. 1.337-3(c) & (d).

[43]36 T.C. 305 (1961).

[44]Family Record Plan, Inc., (Dissolved) v. Commissioner, 309 F. 2d 208 (9th Cir., 1962).

[45]50 T.C. 528 (1968).

[46]Pridemark, Inc., v. Comm., 345 F. 2d 35 (4th Cir., 1965).

[47]Internal Revenue Code of 1954, sec. 453(d)(1).

[48]Regulation sec. 1.337-2(a).

[49]1957-1 C.B. 118.

[50]Revenue Ruling 59-108, 1959-1, C.B. 72.

[51] 18 AFTR 2d 6172 (8th Cir., 1966).

[52] Par. 62,144, P-H Memo T.C. (1962).

[53] Regulation sec. 1.337-1.

[54] Revenue Ruling 56-372, 1956-2 C.B. 187.

[55] Revenue Ruling 64-100, 1964-1 (Part 1) C.B. 130.

[56] 387 F. 2d 441 (8th Cir., 1968).

[57] 32 AFTR 2d 73-5361 (6th Cir., 1973).

[58] Central Tablet Manufacturing Co., v. U.S., 34 AFTR 2d 74-5200 (Supreme Court, 1974).

[59] Mark H. Kovey, "When Will Section 337 Shield Fire Loss Proceeds? A Current Look At a Burning Issue," Journal Of Taxation 39 (November 1973): 263.

CHAPTER III

LIQUIDATIONS NOT COVERED BY SECTION 337

Elective One Month, Section 333, Liquidations

A corporation that makes an election to use a Section 333 liquidation is not eligible to also use Section 337 to avoid recognition of gain on sales of property during liquidation.[1] Section 333 requires a specific election on the part of the stockholder to come within it and permits the shareholder to defer all or a portion of his gain realized upon distribution in complete liquidation, if all of the corporation's property is distributed within one calender month following a plan of complete liquidation.

It would seem that a liquidating corporation could come within the provisions of Section 337 after its stockholders elected Section 333 if the stockholders revoke their Section 333 election. However, Regulations pertaining to Section 333 state that the election can neither be withdrawn or revoked for any reason.[2] There seems to be judical support for this too. In Raymond v. U.S.[3] and other cases, the Courts held that the election could not be revoked even though the taxpayer argued the election was a mistake of fact. But one case, Meyer's Estate v. Comm.,[4] based upon the particular facts and circumstances, did allow the taxpayer to revoke the election when based on a mistake of material fact.

Section 337 was made inapplicable to a Section 333 liquidation so that taxpayers could not avoid tax at both the corporate and shareholder levels. If both sections could be used in combination, a corporation could sell its assets without recognizing gain and invest the proceeds in desirable property and distribute this property to shareholders who could also avoid tax at their level.

Subsidiary Liquidations Under Section 332

Section 337 does not apply to the liquidation of an 80 percent or more owned subsidiary if under the provisions of Section 332 the liquidation is tax free and the parent takes as its basis for the assets received the basis used by the subsidiary.[5] Since the liquidation is not taxed under Section 332, Section 337 does not apply so that gain realized on corporate sales will not go untaxed forever.

In a ruling[6] involving a parent corporation and a less-than-80 percent owned subsidiary both in simultaneous liquidation, the surrender by the parent of the subsidiary's stock in exchange for property of the latter was held a sale or exchange for Section 337 purposes. Since Section 332 was inapplicable because the parent owned less than 80 percent of the subsidiary, the parent's gain on the exchange of the subsidiary's stock for its property was tax free under Section 337.

Minority shareholders of liquidated subsidiaries are afforded special consideration since Section 332 does not apply to any gain realized by them upon the subsidiary's liquidation.

Section 337(d) gives the minority shareholders a credit against their tax for the share of the tax the corporation would have saved if Section 337(a) had applied to the corporate sales. The minority shareholders, therefore, receive substantially the same tax treatment as if Section 337(a) had applied to the sales by the subsidiary.

Special rules also apply to the application of Section 337 when the liquidation of a newly purchased subsidiary is considered. Under Section 334(b)(2), a corporation that purchases 80 percent of the stock of another corporation within a twelve-month period and then liquidates that corporation within the next two years, receives as a basis for the assets distributed an amount equal to the price paid for the liquidated corporation's stock. The parent corporation does not recognize gain or loss upon the liquidation of the subsidiary. Therefore, only limited nonrecognition of gain is given to the sale of property by the subsidiary. The Section 337 nonrecognition treatment applies to the extent that the portion of the basis of the stock of the liquidated subsidiary in the hands of the parent allocated to the property sold or exchanged exceeds the adjusted basis of such property to the liquidated subsidiary.[7]

The following example illustrates this point:

> A corporation purchases all of the stock of B corporation for $100,000. The sole asset of B corporation is a building with a basis to B corporation of $50,000. A year later A corporation causes the liquidation of B corporation in a transaction to which Section 332(a) applies. During the course of the liquidation the building is sold for $110,000. Of the aggregate gain of $60,000 realized in connection with the sale, Section 337 applies to permit nonrecognition to $50,000 of such gain.

Thus only $10,000, the amount of the sale over the amount paid for the stock, is recognized.

The purpose of this special rule is to achieve the same result whether the sale is made before or after liquidation. Since the purchase of the subsidiary's stock and its liquidation are in such cases merely a purchase of assets, the desired result is achieved by a anticipatory allocation of cost to those assets sold by the subsidiary before liquidation. The cost of the subsidiary's stock may first have to be adjusted for any distribution made by the subsidiary before the adoption of the plan of liquidation and for other items.[8]

Revenue Ruling 69-172[9] provides examples for illustrating the principles by which gain or loss is recognized to a parent corporation or to its wholly-owned subsidiary where the assets of the subsidiary are sold pursuant to a plan of liquidation.

<u>Collapsible Corporation Liquidations</u>

Section 337(a) does not apply to sales made by a collapsible corporation as defined in Section 341(b), unless the special exception of Section 341(e)(4) applies.[10]

A collapsible corporation as defined in Section 341(b) is a corporation formed or availed of principally for the manufacture, construction, or production of property, or the purchase of certain property (ordinary income assets), with a view to the sale or exchange of stock by the shareholders, or a distribution to the shareholders, before realization by the corporation of a substantial part of the income to be derived from the property that was manufactured, constructed, produced or purchased.[11]

In other words a corporation may be collapsible when its shareholders seek to convert ordinary income to capital gain by "collapsing" (through the sale of stock or a liquidation) the corporation before it has realized any substantial income from its appreciated assets. Section 341(a) trys to prevent such a purpose by denying capital gain treatment to the gain realized on the sale of stock of a collapsible corporation or on the distribution in partial or complete liquidation of such a corporation.

Section 341(d) provides limitations to the determination of a collapsible corporation. However, Regulation 1.337-1 requires that for Section 337 purposes, the determination of collapsibility be made without the benefit of the limitations in Section 341(d). One practical consequence of this rule is that once a corporation is considered collapsible, it does not loose that taint at the end of three years for Section 337 purposes.

In Leisure Time Enterprises, Inc., v. Comm.,[12] the Tax Court held that the gain realized on a liquidation sale by a collapsible corporation does not receive Section 337 treatment, regardless of the fact that the corporation's sole shareholder could have sold the corporation's stock at capital gains by reason of the three year holding period exception of Section 341(d).

However, stockholders were given some consolation by Revenue Ruling 58-241.[13] This ruling held that when a collapsible corporation realizes taxable income from liquidation sales because Section 337 is inapplicable, the stockholder's gain upon liquidation is not ordinary income since the corporation realized taxable income and is no longer collapsible.

Section 341(e)(4) provides that if all three of its requirements are met, the corporation is not collapsible and Section 337 will apply to corporate sales. The requirements are as follows:

1. Throughout the twelve-month period commencing with the date the plan of liquidation is adopted, the net unrealized appreciation in ordinary income assets may not exceed 15 percent of the corporation's net worth. Ordinary income assets are as defined in Section 341(e)(5)
2. During this twelve-month period the corporation must sell substantially all the property it held on the date the plan was adopted, but it may not sell to any actual or constructive stockholder owning more than 20 percent of its stock, nor may it sell to certain of his relatives, if in the hands of the stockholder or his relatives, the property would be depreciable, depletable or amortizable, and
3. No depreciable, depletable, or amortizable property may be distributed to any stockholder

Even though Section 341(e)(4) may allow Section 337 treatment to the sale or exchange of assets by a corporation, shareholders can still realize ordinary income upon liquidation. The tax at the shareholder level is governed by Section 341(e)(2). This section contains additional requirements that must be met so that shareholders can receive capital gain treatment upon liquidation. These requirements are highly complex and will not be discussed since they are beyond the scope of this study. However, the taxpayer should be aware that they do exist and consult them if necessary.

ENDNOTES

[1]Internal Revenue Code of 1954, sec. 337(c)(1)(B).

[2]Regulation sec. 1.333-2(b)(1).

[3]269 F. 2d 181 (6th Cir., 1959).

[4]200 F. 2d 592 (5th Cir., 1952).

[5]Internal Revenue Code of 1954, sec. 337(c)(2)(A).

[6]Revenue Ruling 57-243, 1957-1 C.B. 116.

[7]Internal Revenue Code of 1954, sec. 337(c)(2)(B).

[8]Ibid., sec. 334(b)(2); Regulation sec. 1.337-4(c).

[9]1969-1 C.B. 99.

[10]Internal Revenue Code of 1954, sec. 337(c)(1)(A).

[11]Ibid., sec. 341(b).

[12]56 T.C. 1180 (1971).

[13]1958-1 C.B. 179.

CHAPTER IV

SECTION 337 AND REINCORPORATIONS OR REORGANIZATIONS

Reincorporations

Taxpayers who undertake a Section 337 liquidation, either preceded by or followed by a transfer of a significant portion of operating assets to another corporation in which they have more than a nominal stock interest, are in danger of having the transaction challenged as a liquidation-reincorporation. Under the liquidation-reincorporation theory, the Revenue Service considers the Section 337 liquidation a sham when no economic change has occurred and the old shareholders are in substantially the same position after the liquidation as before. The Regulations provide authority for this theory by stating:

> A liquidation which is followed by a transfer to another corporation of all or part of the assets of the liquidated corporation or which is preceded by such transfer, may however, have the effect of the distribution of a dividend or of a transaction in which no loss is recognized and gain is recognized only to the extent of other property.[1]

The effect of the application of this theory is to tax cash and property that remains in the hands of the stockholders as a dividend to the extent of the earnings and profits of the liquidated corporation.[2]

However, in Joseph G. Gallagher,[3] the Tax Court did not accept the reincorporation theory. In this case an old corporation before liquidating sold its operating assets to a new corporation, more than 72 percent owned by stockholders of the old corporation. The new corporation continued the business without any material change. The Revenue Service argued that the liquidating distribution by the old corporation was merely a Section 301 dividend taxable as ordinary income. However, the Court stated that no authority had been presented to it in which a liquidation-reincorporation had been held to give rise to ordinary income except where the result could be accomplished by applying the reorganization provisions. Therefore, the Court held that liquidation-reincorporation transactions fell within the general area of corporate reorganizations and must be dealt with in that area. Since this transaction did not fit within the reorganization provisions, the Court held that this transaction should be treated precisely in accordance with its form. The Court stated: "The fact that the assets of a business are transferred to a new corporation does not by itself change the effect of the liquidation of the original corporation."[4]

Judge Pierce dissented from this majority opinion of the grounds that the liquidating distribution should be taxable as dividends, since he believed there was no actual liquidation. He would have applied the reincorporation theory.

But other than this case, the liquidation-reincorporation theory has remained relatively untested in the courts. The Revenue Service has not pressed for a clear test of this theory because it has found rather strong support in the application of the reorganization provisions.

Reorganizations

The reorganization provisions have found strong support with the Revenue Service and the Courts. They come into play when a significant portion of the old business is carried on by a new corporation that is controlled by the old shareholders. Section 337 treatment will be denied if a transaction is found to be a reorganization.

Liquidating shareholders attempt to use Section 337 in conjunction with sales to controlled corporations so that the liquidating corporation will escape taxation and the new corporation will receive assets at a stepped-up basis for depreciation purposes. However, the Revenue Service will attempt to treat this transaction as a reorganization and cause the new corporation to take a carry-over basis for the assets acquired and the liquidating stockholders to recognize dividend income to the extent of the liquidating corporation's earnings and profits.[5]

In Revenue Ruling 61-156[6] the Service held that a 45 percent ownership continuity may constitute a reorganization. In this ruling a corporation transferred substantially all of its assets to a new corporation for 45 percent of the new corporation's stock, notes and cash. The old corporation then liquidated by distributing the new corporation's stock, notes and cash. The ruling held that the transaction was not governed by the provisions of Section 337, but rather by the reorganization provision of Section 368.

In cases where it appears that a reorganization occurred and the liquidation was only one step in the reorganization, the

Courts have applied the reorganization provisions in lieu of the provisions of Section 337. The Courts did this in Davant v. Commissioner.[7] In this case two corporations, Water and Warehouse, were owned by the same stockholders. The Warehouse stockholders sold all of their stock to a third person who then sold the operating assets of Warehouse to Water before liquidating Warehouse. The stockholders thereby effected a merger of the operating assets and received cash of $914,000. No business reasons were given for the transfer and liquidation. The Fifth Circuit Court held that the use of the third person was a sham and no liquidation had taken place since the stockholders never intended to give up the corporate form of doing business and at all times their intention was to transfer Warehouse operating assets to Water. They held that the transaction was a reorganization and the payments to the former Warehouse stockholders were fully taxable dividends.

However, in cases where the facts don't clearly indicate a reorganization existed, the Courts have not applied the reorganization provisions. In Pridemark Inc. v. Commissioner,[8] the Fourth Circuit Court reversed the Tax Court and held that where a prefabricated homes dealer stopped selling pursuant to liquidation, and transferred as a going business its salesmen, sales list, and sales offices to a prefabricated homes manufacturer, there was a complete liquidation even though the shareholders began selling prefabricated homes through a new corporation. The fact that the shareholders reentered the business of selling prefabricated homes was insufficient to constitute reorganization. Thus Section 337 treatment was applied to corporate sales during the year of liquidation and the distribution to shareholders was afforded capital gain treatment.

The Revenue Service has indicated that it will not issue an advance ruling under Section 337 when property is sold to another corporation and more than 20 percent in value of stock of both corporations is owned by the same persons.[9]

The above cases and rulings illustrate the effect the reorganization provisions can have on Section 337. The decisions, however, are not consistent and appear to be based on how the courts interpret the facts of each case.

An in-depth discussion of the various types of reorganizations is beyond the scope of this study. However, the taxpayer should be aware that the application of the reorganization provisions makes Section 337 inapplicable and results in dividend income rather than capital gain to the liquidating stockholders.

Therefore, taxpayers should carefully plan activities preceding and following a liquidation before deciding if Section 337 will yield the best results.

ENDNOTES

[1]Regulation sec. 1.331-1(c).

[2]David H.W. Dohan, "Recent Developments Under Section 337: Effect of Other Code Sections," New York University Twenty-Fifth Annual Institute on Federal Taxation, 1967, p. 309.

[3]39 T.C. 144 (1962).

[4]Ibid., p. 157.

[5]Byron M. Eiseman, Jr., "Section 337 Liquidations— Their Snares and Uncertainties," Arkansas Law Review 22 (Spring 1968): 305.

[6]1961-2 C.B. 62.

[7]366 F. 2d 874 (5th Cir., 1966).

[8]345 F. 2d 35 (4th Cir., 1965).

[9]Revenue Procedure 72-9, 1972-1 C.B. 719.

CHAPTER V

CONCLUSION

Section 337 eliminated the inconsistent tax treatment of post-liquidation and pre-liquidation sales. It provides that a corporation will not recognize gain or loss on the sale or exchange of property during liquidation, if the property is sold or exchanged within twelve months after adoption of a plan of complete liquidation, and liquidation is completed within twelve months after adoption of the plan.

Section 337 liquidations have become highly complex and require careful study when used. They have produced many cases and rulings with sometimes seemingly inconsistent decisions. The Courts appear to be ruling upon the facts of each case. Generally, decisions are favorable to taxpayers who have made a good faith attempt to comply with Section 337.

Four requirements that should receive special consideration in planning a Section 337 liquidation are (1) the plan of liquidation, (2) the twelve-month liquidation period, (3) eligible property, and (4) a qualified sale or exchange. If any of these requirements are not fully satisfied, a tax may be incurred at the corporate level during liquidation.

The limitations placed upon Section 337 can generate difficulties too. This is especially true when a corporation is considered collapsible. Even the best taxplanners may have problems with the monstrous complexity and uncertainty of the collapsible provisions.

The reincorporation theory and reorganization provisions can also prevent a liquidation from receiving Section 337 treatment. However, an awareness of this problem should generate careful planning so that these difficulties can be avoided.

Consequently all Section 337 liquidations should be pursued with diligent planning and careful consideration. A careful examination of all activities before, during and after the liquidation period is not only wise, but necessary.

Tax Services

Prentice-Hall. Federal Taxes, 1975, Vol. 2. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1975.

U.S. Code Congressional & Administrative News. Federal Tax Regulations: 1975. St. Paul, Minnesota: West Publishing Co., 1975.

U.S. Code Congressional & Administrative News. Internal Revenue Code: 1975. St. Paul, Minnesota: West Publishing Co., 1975.

Treasury Rulings & Procedures

Revenue Ruling	56-372,	1956-2	C.B.	187.
	57-140,	1957-1	C.B.	118.
	57-243,	1957-1	C.B.	116.
	58-241,	1958-1	C.B.	179.
	59-108,	1959-1	C.B.	72.
	60- 50,	1960-1	C.B.	150.
	61-156,	1961-2	C.B.	62.
	63-245,	1963-2	C.B.	144.
	64-100,	1964-1	C.B.	130.
	65- 30,	1965-1	C.B.	155.
	65- 80,	1965-1	C.B.	154.
	65-235,	1965-2	C.B.	88.
	65-257,	1965-2	C.B.	89.
	67-273,	1967-2	C.B.	137.
	69-172,	1969-1	C.B.	99.
	72-137,	1972-1	C.B.	101.
Revenue Procedure	72- 9,	1972-1	C.B.	719.

Cases

Alameda Realty Corp., 42 T.C. 273 (1964).

Bird Management, Inc., 48 T.C. 586 (1967).

Central Tablet Manufacturing Co., v. U.S., 34 AFTR 2d 74-5200 (Supreme Ct., 1974), affirming 32 AFTR 2d 73-5361 (6th Cir., 1973).

City Bank of Washington, 38 T.C. 713 (1962).

Coast Coil Co., 50 T.C. 528 (1968).

Comm. v. Court Holding Co., 324 U.S. 331 (1945).

Davant v. Comm., 366 F. 2d 874 (5th Cir., 1966).

Family Record Plan, Inc., (Dissolved) v. Comm., 309 F 2d 208 (9th Cir., 1962), affirming 36 T.C. 305 (1961).

Henry H. Adams, Transferee, 38 T.C. 549 (1962).

Henry Yeckes et al., Par. 66,178, P-H Memo T.C. (1966).

Intercounty Development Corp., Par. 61,217, P-H Memo T.C. (1961).

Jeanese, Inc., v. U.S., 341 F. 2d 502 (9th Cir., 1965).

John Town, Inc., 19 AFTR 2d 1389 (7th Cir., 1967).

Joseph G. Gallagher, 39 T.C. 144 (1962).

Leisure Time Enterprises, Inc., v. Comm., 56 T.C. 1180 (1971).

Luff Co., 44 T.C. 532 (1965).

Malcolm C. Howell, 40 T.C. 940 (1963).

Meyer's Estate v. Comm., 200 F. 2d 592 (5th Cir., 1952).

Mountain Water Co. of La Crescenta, 35 T.C. 418 (1960).

O.B.M. Inc., v. Comm., 427 F. 2d 661 (2nd Cir., 1970).

Place Realty Corp., Par. 62,144, P-H Memo T.C. (1962).

Pridemark, Inc. v. Comm., 345 F. 2d 35 (4th Cir., 1965).

Raymond v. U.S. 269 F. 2d 181 (6th Cir., 1959).

Richard W. Pastene, 52 T.C. 647 (1969).

The Covered Wagon, Inc. v. Comm., 18 AFTR 2d 6172 (8th Cir., 1966).

U.S. v. Cumberland Public Service Co., 338 U.S. 451 (1950).

U.S. v. W.M. Morton Sr., 387 F. 2d 441 (8th Cir., 1968).

Virginia Ice & Freezing Corp., 30 T.C. 1251 (1958).

West Street-Erie Blvd. Corp. v. U.S., 411 F. 2d 738 (2nd Cir., 1969).