



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

IRB No. 2004-4

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OFFICE OF
CHIEF COUNSEL

ACTION ON DECISION

SUBJECT: Sidney L. Olson and Miriam K. Olson v. Commissioner
48 T.C. 855, supplemented, 49 T.C. 84 (1967), acq., 1968-2 C.B.
2.
Docket Numbers: 1713-65, 1714-65, 1715-65, 1716-65, 3328-65

Issue:

1. Whether the distribution of the stock of a controlled corporation by a distributing corporation to the shareholders of the distributing corporation to prevent the potential union of the distributing corporation from claiming that the distributing and controlled corporations constitute a single employer for labor law purposes qualifies as a valid corporate business purpose under § 1.355-2(b) of the Income Tax Regulations. 0355.04-00, 0316.00-00, 0301.01-00, 301.02-00

Discussion:

This Revised Action on Decision withdraws the Service's acquiescence in the original Action on Decision issued for this case regarding issue (1) of the original Action on Decision. This Revised Action on Decision does not affect the Service's acquiescence regarding issue (2) of the original Action on Decision.

In Olson, the stock of Olson Electronics of Cleveland, Inc. ("Cleveland") was held by four individuals and a corporation, Sidal Corp. ("Sidal"), all of the stock of which was owned by two of the individual shareholders of Cleveland. Olson Electronics of Buffalo, Inc. ("Buffalo") was a wholly owned subsidiary of Cleveland. Cleveland was subject to union activities and although an attempt to unionize Cleveland failed, the union threatened to make another attempt after the twelve-month statutory minimum waiting period. Based on advice of labor counsel, Cleveland distributed the stock of Buffalo to its shareholders (except Sidal) to prevent the union (should it win the potential future election) from claiming that Cleveland and Buffalo constituted a single employer, thereby giving it the right to represent the employees of both Cleveland and Buffalo.

The Service determined that (1) the transaction did not constitute a nontaxable distribution

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under section 355 of the Internal Revenue Code because it lacked a valid business purpose and was a transaction used principally as a device for the distribution of the earnings and profits of Cleveland or Buffalo, or both, and (2) the portion of the distribution that should have been made to Sidal constituted a constructive dividend by Sidal to its shareholders. Regarding issue (1), the court held for the taxpayer stating that it was satisfied that the primary purpose for the distribution was to contain the labor difficulties being experienced by Cleveland and to avoid to the extent possible a spread of the organizing attempts of the union to Buffalo and that the distribution was not used principally as a device for the distribution of the earnings and profits of Cleveland or Buffalo or both. Regarding issue (2), the court agreed with the Service that part of the distribution had to be treated as a taxable dividend to Sidal's shareholders but made its own determination with regard to the fair market value of the Buffalo stock.

Following the court's decision, the Service has made significant changes to the business purpose regulations under section 355. Under the current regulations, a distribution is carried out for a valid business purpose if it is motivated, in whole or substantial part, by one or more corporate business purposes. In addition, the current regulations provide that if a corporate business purpose can be achieved through a non-taxable transaction that does not involve the distribution of stock of a controlled corporation and which is neither impractical nor unduly expensive, then the distribution is not carried out for that business purpose. Upon reconsideration of the facts of Olson, at the time of the distribution, it was not clear that the distribution could have achieved the taxpayer's stated business objective or that that objective could not have been achieved through means other than a distribution. Specifically, the court did not analyze the implications of labor law and it was not clear that the distribution could have impeded the union's claim that Cleveland and Buffalo constituted a single employer. Hence, it was not clear that the distribution was motivated by the taxpayer's stated business purpose. Had the court employed the analysis now required by the current regulations, it may not have reached the conclusion that the distribution had a valid business purpose. Accordingly, we withdraw our acquiescence in issue (1) of the original Action on Decision.

Recommendation:

1. Withdraw acquiescence.

Reviewers:

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