split holding period, the split basis approach is a logical corollary. In contrast, the single aggregated basis approach has the effect of averaging the basis of more than one share. Thus, it is inconsistent with the tracing regime.

**Coordination with Code Sec. 1036**

Code Sec. 1036 provides that no gain or loss is recognized if common stock is exchanged for common stock (or preferred stock is exchanged for preferred stock) in the same corporation. Code Sec. 1031 provides rules for determining the basis of the common (or preferred stock) received in an exchange described in Code Sec. 1036.

According to the IRS, the same policies that support the tracing regime in reorganization transactions support a tracing regime in transactions governed by both Code Sec. 1036 and Code Sec. 354 and/or 356. Thus, the tracing rules will apply when there is an overlap of these sections. Yet, the IRS has reserved judgment whether the tracing rules should be adopted in regulations under Code Sec. 1036 for transactions governed solely by Code Sec. 1036, but not Code Sec. 354 or 356.

**Conclusions**

The final regulations, while lengthy and complex, are at least logical. Little of the new rules should entirely surprise practitioners, and many of us have probably been following and even advising on these types of rules prior to the proposed regulations being issued two years ago. Although the final regulations expressly disavow the averaging method, this should presumably not come as a surprise, since averaging is not consistent with reorganizations and Code Sec. 355 distributions. Overall, these regulations should be a welcome relief, as taxpayers can now rely on these coherent and taxpayer-friendly rules.

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**Book Review: NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS, by Lou R. Kling and Eileen T. Nugent**

Reviewed by Stuart M. Vogt • Wood & Porter • San Francisco

Lou R. Kling and Eileen T. Nugent, partners at Skadden, Arps, Slate, Meagher & Flom in New York, have issued yet another update to their NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS practice guide book. While the title of this practice guide book may seem focused on one particular area of corporate transactions, do not be put off by the title. This two-volume loose-leaf set covers most kinds of corporate transactions that a practitioner is likely to face.

The authors’ purpose of this book is to provide lawyers with a broad overview of mergers and acquisitions and to provide insightful guidance on dealing with every topic critical to successful transaction execution. It does the sorts of things you want. Most significantly, it goes through the structure of a purchase agreement, comments on all of the clauses and explains the regulatory and tax issues. It is plainly written, updated often and has chapters dedicated to leveraged buyouts and spin-offs.

**Practice Driven**

In this guide book, a practitioner can learn many of the “shop secrets” behind negotiating corporate transactions. This is an excellent resource that brings you an analysis of the relevant law with a healthy dose of practical insights—i.e., how to structure deals, negotiate agreements, analyze issues and solve the real problems that are likely to arise. Veterans of numerous corporate transactions, the authors provide expert practical advice, from the planning stages to post-closing.

NEGOTIATED ACQUISITIONS OF COMPANIES, SUBSIDIARIES AND DIVISIONS is divided into four parts:

1. Planning the corporate transaction and structuring the deal
2. General provisions of the acquisition agreement
3. Special provisions of the acquisition agreement
4. Special topics, such as leveraged buyouts and troubled companies
Each part is further subdivided into more detailed topics.
You will find everything from basic corporate, tax and accounting considerations to detailed analysis of representations, warranties, covenants and closing conditions. Novices as well as experienced practitioners will benefit from the book’s discussion of mergers of equals, cash election mergers, fairness opinions and special committees of disinterested directors. You will also learn about the latest developments, including techniques for handling economic uncertainty and stock market instability. The guidance and the tools found in this two-volume reference create a framework for considering every detail of a transaction.

It’s All in the Updates
The authors update their guide book regularly by issuing loose-leaf updates for the reader to replace with pages in the book. In the most recent update, Release #24, the authors focus on special due diligence issues relating to intellectual property and include a detailed checklist of intellectual property considerations. Intellectual property issues have become increasingly important, as the value of IP assets have become a more central focus of many acquisitions. Today, technology and other propriety rights are often critical to a buyer’s ability to continue to operate a business and maintain a competitive position post-acquisition. A thorough due diligence review of intellectual property assets has become a critical element in the corporation transaction world. Kling and Nugent do an admirable job of covering this important topic.

Release #24 also addresses a number of important intellectual property licensing issues (as they relate to corporate transactions):
• Issues that arise when a reverse subsidiary merger results in the licensee violating an anti-assignment clause when it becomes a wholly owned subsidiary of the licensor’s competitor
• The transfer of intellectual property licenses
• The seller’s representations and warranties with respect to the existence, scope and status of its intellectual property

This book is recommended for any professional that will be involved in any type of corporate transaction. The authors’ expertise is diverse and their guide book is thorough and helpful, going far beyond the kind of issue-spotting on which many books rest. This book is available for $395 from Law Journal Press (www.lawcatalog.com or (800) 603-6571).

Second Helpings on Sandwiches
By Robert W. Wood & Richard C. Morris • Wood & Porter • San Francisco

In the December 2005 and January 2006 issues of the M&A TAX REPORT, we wrote about the Tax Court’s voluminous opinion (at 135 pages, there must be a better word!) denying tax-free reorganization benefits to Times-Mirror. [See Wood and Morris, Those Were the Days: Times-Mirror and How to Make a Sandwich (Part I of II), M&A TAX REPORT, Dec. 2005, at 1; Wood and Morris, Those Were the Days: Times-Mirror and How to Make a Sandwich (Part II of II), M&A TAX REPORT, Jan. 2006, at 1.]

Leftovers?
Recently, the Tax Court issued another opinion in this continuing saga. [See Tribune Company, 91 TCM 678, Dec. 56,418(M), TC Memo. 2006-12.] As M&A TAX REPORT readers remember, Tribune purchased Times-Mirror in the interim between Times-Mirror undertaking the supposedly tax-free Sandwich transactions and the Tax Court’s initial decision last year denying tax benefits.

For those not wanting to review our prior article in full, a brief review of the sandwich transactions may be helpful. In 1998, Times-Mirror divested itself of its legal publishing unit, Matthew Bender. It consulted numerous professional advisors, choosing a PriceWaterhouseCoopers (“PwC”)—developed structure called the “Domestic Sandwich.” PwC claimed the Sandwich would allow Times-Mirror to divest itself of Matthew Bender in a tax-free transaction while simultaneously obtaining control of the cash proceeds, a whopping $1.375 billion, which the purchaser contributed to the capital of one of the many companies layered within the Sandwich. (We’ll call it the “Bender Sandwich”.) Notably,