Buy Me, I'm Deductible

by Robert W. Wood • San Francisco

I was sure this title would get your attention. Actually, I can do little more than quote this verbatim, since this article title from the November 3, 1997 issue of *Forbes Magazine* speaks for itself. Rather than comment on this notion, I'd like to ask our readership to write in *their* comments to this if they have any. If you wish to e-mail, do so at wood@taxinstitute.com. Without further ado, the quote:

> "How's this for a tempting deal: You take over a manufacturing business, and most of your purchase price becomes a tax deduction. Under a remarkable provision written into the 1986 tax law, Johns Manville gets a corporate tax deduction for every dollar that its main shareholder (a trust for the benefit of asbestos plaintiffs) collects either from Manville dividends or by selling Manville securities. As far as we know, there's nothing else like this in the federal tax code.
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> Example: Last year Johns Manville sold its forest products division for $1.1 billion, enabling it to pay a special dividend of $6 a share. The trust collected $770 million—and the company got a $770 million tax deduction.
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> Think about it. If the Ford Foundation collects a dividend on Ford Motor Co. stock, that dividend is not taxable. But imagine that *Ford Motor* got a tax deduction when the foundation pocketed a dividend or sold shares. That would be weird.
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> Yet there is a certain arcane logic to Manville's loophole. Profits siphoned off by the trust, whether from dividends or from the sale of Manville shares, are a cost of doing business. Someone who sells cars can, in effect, deduct the money spent to settle cases about exploding gas tanks. Someone who sells insulation should be able to deduct the money spent to settle cases about defective building products.
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> Although the plaintiffs' trust has $1 billion in cash, it paid out $245 million in claims last year, so it's likely to run out of money sometime. The trust could sell shares a little at a time, but it might do better to put its whole block up for sale, says Robert Falise, chairman of the trust.
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> What would the company fetch? A buyer might be willing to pay $20 a share, or $3.3

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billion. That's a lot for a company with $460 million in debt and an operating profit last year (net before depreciation, interest and taxes) of only $308 million. But at $20, the new owner would get an immediate $2.6 billion tax deduction, which it probably could claim against its own profits—say, from making cars." ("Buy Me, I'm Deductible," *Forbes*, Nov. 3, 1997, p. 3.)

The M&A Tax Report invites reader comments: fax 415/834-1888; e-mail wood@taxinstitute.com. ■