

Book Review: MERGERS, ACQUISITIONS, AND BUYOUTS by Martin D. Ginsburg and Jack S. Levin

Reviewed by Robert W. Wood • Wood & Porter • San Francisco

It has been a while since I opened up a copy of the beefy Ginsburg and Levin multi-volume Bible on acquisitions. Its familiar four red soft-cover volumes are in my firm's library, which is on another floor, and I confess I had somehow not had occasion to open them again until recently. It is truly a mammoth and incredibly impressive piece of work, and in its successive editions, it seems to get ever more so.

Let me start with a correction on the title. As befitting a four-volume set that is fully a foot thick, the title of this work is actually MERGERS, ACQUISITIONS, AND BUYOUTS: A TRANSACTIONAL ANALYSIS OF THE GOVERNING TAX, LEGAL, AND ACCOUNTING CONSIDERATIONS. Anyone who struggles (as I do) with compression-bound binders and hardback books will welcome the soft-cover format. Each volume states clearly on the cover which chapters it contains, and that too is helpful. It probably is fair to say these volumes aren't as portable as say a BNA Tax Management Portfolio, but having now carried at least one volume to and from the office recently, their portability isn't half bad either.

It is unquestionable that the July 2008 edition of the four-volume Ginsburg-Levin red Bible is a serious work. Yet moments of mirth emerge, as the "About the Authors" pages prove. Despite the academic bent that Professor Ginsburg might understandably be

expected to have, this is an immensely practical guide, chock full of examples and diagrams. One might occasionally feel inadequate that a somewhat pedestrian corporate or even acquisition practice might not measure up to the examples and esoterica contained within this set. Amazingly, both the basic and the exotic is addressed here.

Organization

Ginsburg and Levin start off with taxable transactions, beginning with taxable stock purchases and taxable reverse subsidiary mergers. Then come taxable purchases of target assets and taxable forward mergers. They then examine acquisition expenses, allocations of basis, the amortization of intangibles and covenants not to compete. All of this is still in Volume I, capped off with a discussion of different ways to attend to unwanted assets.

Volume II begins with a helpful discussion of the basic principles of tax-free reorganizations. The authors commence their methodical examination of reorganizations with what it means to be "solely for voting stock," as well as when this rigid rule is inapplicable. They cover Code Sec. 351, the ever-popular spin-off transactions, and a discrete chapter giving special considerations in both taxable and tax-free acquisitions involving S corporations.

Their S corporation chapter, incidentally, is the last one in Volume II, and it is worth the price of the set all by itself. S corporations often do not get the attention they deserve, particularly in the acquisition field. Not so in the Ginsburg and Levin set.

Volume III commences with subjects that, these days, are ever-present: cancellation of debt income, net operating losses and other special considerations in acquiring or restructuring financially distressed companies. There are obviously many considerations here, and this discussion is heavily practice-oriented. Like the S corporation chapter in Volume II, this entrée to Volume III is itself worth the price of the set.

The authors then turn (in Chapter 13 *et seq.*) to tax aspects of financing leveraged buyouts, tax aspects of structuring them, and management compensation issues (another very important topic area these days). The authors then turn to partnership entities. This is not your father's discussion of Subchapter C. In Chapter 16, I found the discussion on acquisitions and dispositions using partnerships, LLCs and REITs to be immensely practical and helpful.

Chapter 17, the last one in Volume III, contains a miscellany of helpful information. For example, it includes a précis of corporate and securities law, plus accounting, fraudulent conveyance, antitrust reporting, ERISA group liability issues, and various other nontax considerations. The authors pack a lot into this chapter about both taxable and tax-free acquisitions, in a true issue-spotting and problem resolution format.

All in

Volume IV is, though I hate to say it again, also worth the price of the entire set. For Volume IV contains the form documents that many will want to turn to right away. There's an old adage about jumping to the end of a book first, and I recognize that's supposed to be a bad thing.

Moreover, it would be a disservice to the rest of the set to focus unduly on the forms. Still, it seems worth quite a lot of money to have this particular set of forms. Not only that, but there are step-by-step instructions starting with an

introduction to the agreements, a list of key issues, a plethora of examples and plenty of pointers on both tax and nontax issues. In addition, there are diagrams to periodic summaries that I suspect would appeal to both the experienced practitioner and the neophyte. While this is probably not a set ideal for someone inexperienced, it pretty effectively runs the gamut and leaves no stone unturned.

There are even tables and charts showing in graphic format provisions that are pro-buyer, pro-seller or neutral. You can use this almost as a cheat sheet, or you can get much more in depth. If all of this is confusing (although it shouldn't be), and if you simply want something more straight ahead, you can turn to the various acquisition agreements neatly titled at the top of each page so there's no mistake.

You'll have plenty of choices. You can pick from a pro-buyer stock purchase agreement, a pro-seller stock purchase agreement, a neutral stock purchase agreement, an agreement contemplating the purchase of an S corporation, a pro-buyer asset purchase agreement, a pro-seller asset purchase agreement or a neutral asset purchase agreement, *etc.* There are even divisional purchase agreements, again split between pro-buyer, pro-seller and neutral. Lastly, you'll find tax-free merger documents.

These days, it's becoming a near-necessity to have such sample documents in electronic form. Fortunately, you can buy this set with a CD-ROM covering the sample acquisition agreements, making them even easier to implement.

Conclusion

It's difficult to classify the Ginsburg and Levin set, simply because it is in a class by itself. M&A TAX REPORT readers should all have a copy, since they presumably already do (or are interested in) merger and acquisition transactions. Yet even if you have a more general corporate or tax practice and only occasionally participate in an acquisition, I would argue it is all the more important that you have Ginsburg and Levin by your side. This is a set that's truly worth its price several times over. It is available from Aspen Publishers at www.aspenpublishers.com for \$472.00, \$488.00 for the CD-ROM alone and \$732.00 for the combined set.