

One More Word: Section 355 and Business Purpose

by Robert W. Wood • Bancroft & McAlister

Recently, we noted an article from the *Journal of Corporate Taxation* concerning the importance and basis of the business purpose doctrine as it applies to spinoffs under Section 355. (See “Business Purpose for a Spinoff: Is Nothing Sacred?,” 1 *M&A Tax Rep’t* 4 (November 1992), p. 6.) Our intent was not to demean the argument that the business purpose requirement *should* not be imported into Section 355. A better-known article several years ago made some of the same arguments, although more persuasively (see Faber, “Business Purpose and Section 355,” 43 *Tax Lawyer* 4 (Summer 1990)).

We would be interested in hearing from anyone currently arguing with the Service or in court that there is no (valid) business purpose requirement.

The more intriguing argument is that a shareholder purpose is sufficient. The Service has long recognized that some shareholder purposes (*e.g.*, hostility, or the desire to pursue different businesses) will suffice. But it will not leap from such cases, generally involving closely held corporations, to the public company, where advisers suggest that shareholders want—and market price will be improved by—a spinoff. ■

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