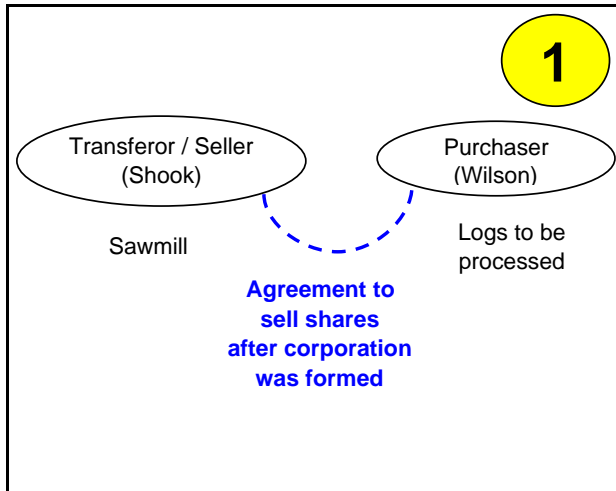


Intermountain Lumber v. Com'r
65 T.C. 1025 (1976)

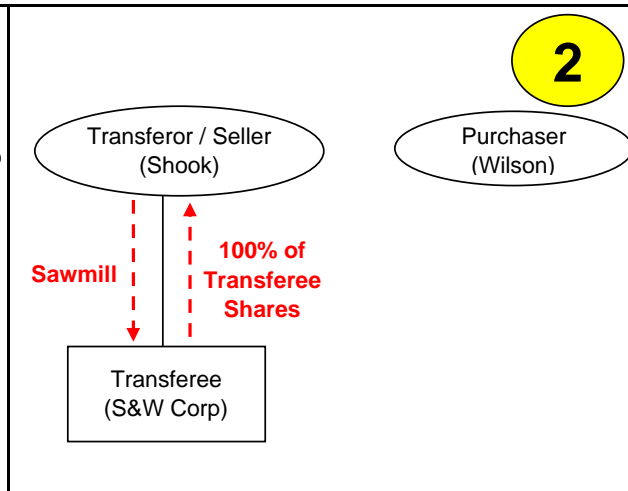
Busted 351 Exchange

Copyright © 2006 Andrew Mitchel LLC
 International Tax Services
 www.andrewmitchel.com

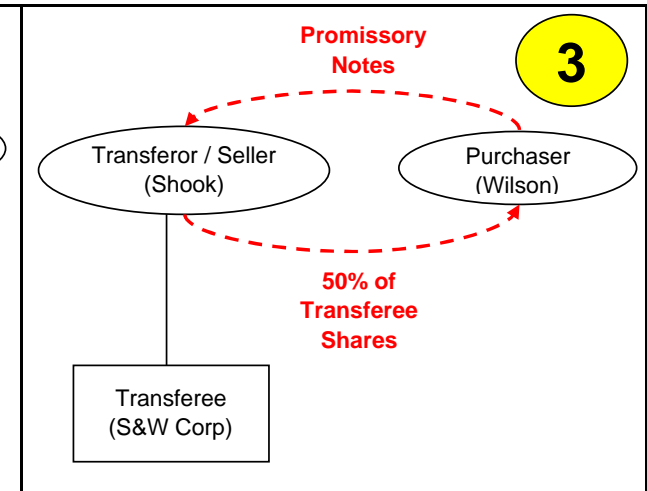
Initial Structure



Formation of Corporation (Purported 351 Exchange)



Sale of Shares



Intermountain Lumber acquired the shares of S&W Corp after the above transactions had already occurred. The posture of the case was unusual: the taxpayer was arguing that the exchange was taxable and the Commissioner was arguing that it was nontaxable. Taxpayer wanted a step-up in basis on the transferred assets.

Section 351 generally has three requirements: 1) a transfer of property, 2) in exchange for stock, and 3) the transferor(s) must control the transferee. In this case the control requirement was at issue. Wilson was not a transferor.

The basic premise of section 351 is to avoid recognition of gain or loss resulting from transfer of property to a corporation which works a change of form only. If the transferor sells his stock as part of the same transaction, the transaction is taxable because there has been more than a mere change in form. The following is an excerpt from Rev. Rul. 2003-51:

Courts have held that the control requirement of section 351 is not satisfied where, pursuant to a binding agreement entered into by the transferor prior to the transfer of property to the corporation in exchange for stock, the transferor loses control of the corporation by a taxable sale of all or part of that stock to a third party who does not also transfer property to the corporation in exchange for stock.

Ending Point

