

Tax Considerations in Acquisitions and Dispositions of Oil and Gas Assets



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Topics Covered

- **Sales and Leases**
- **Tax Issues in Midstream Sales**
- **Transactions Involving Tax Partnerships**
- **State Tax Considerations**
- **Acquisition Entity**
- **Tax Provisions in Oil and Gas M&A Agreements**

Sales and Leases

Sales and Leases

- **The tax consequences of a sale of oil and gas properties can be significantly different from a lease, but**
- **The difference between a sale and a lease for tax purposes can be subtle.**

Tax Consequences of a Sale

- **Seller generally realizes gain or loss to the extent that the purchase price exceeds the tax basis of the property transferred.**
- **The gain generally is capital gain (taxed at preferential tax rates), except for recapture of prior depletion or depreciation deductions (taxed at ordinary income rates).**
- **Seller generally recognizes gain in year of sale, unless installment sale.**
- **Buyer takes a cost basis in the properties and recovers such basis through depletion and depreciation deductions.**

Tax Consequences of a Lease

- The purchase price is treated as a lease bonus.
- Seller recognizes ordinary income as lease bonus is received or accrued.
- Seller allocates basis in leased property between the bonus and ORRI based on relative FMV of each.
- Seller may take current cost depletion (but not percentage depletion) with respect to the lease bonus.
 - Thus, if most of the value is allocated to the lease bonus and not to the ORRI, Seller would recover most of its basis in the year of sale and lease treatment would result in little difference from sale treatment, except for character.
- Buyer treats lease bonus as an advance royalty and recovers the cost over the life of the property based on units of production.

Transactions Treated as Sales

- **Owner transfers any type of interest without retaining any economic interest in the interest transferred.**
 - **Example: X, the owner of a 50% WI, sells all of its WI to Y for \$1000 and does not retain any economic interest in the property. This is a sale.**
- **Owner transfers a fractional interest that is identical (except as to quantity) with the fractional interest retained.**
 - **Example: X, the owner of a 50% WI, sells a 20% working interest to Y for \$400, retaining a 30% WI. Because the fractional WI transferred is identical to the fractional WI retained (except as to quantity), this is a sale.**
- **Owner of a WI transfers a nonoperating interest in the property and retains a WI.**
 - **Example: X, the owner of a 50% WI, carves out a royalty to Y for \$400. Because X transfers a nonoperating interest and retains a WI, this is a sale.**

Transactions Treated as Leases

- A transaction will be treated as a lease or sublease when the owner transfers an operating interest and retains a continuing, nonoperating interest in production.
- Thus, a “sale” of a WI will be treated as a lease or sublease in any case where the seller retains a royalty (or ORRI) or net profits interest in the property transferred, no matter how small.
- Example: X, the owner of a 50% WI, “sells” its entire WI to Y for \$1000 plus a 2% ORRI. This is a sublease.

Example 1

X owns a 50% WI in property A that X has held for more than one year. X has a \$200 tax basis in the WI. X sells half of its WI (a 25% WI) to Y for \$1000, which is paid in the year of sale.

- **This is a sale for tax purposes.**
 - **X recognizes \$900 of gain (\$1000 minus \$100 basis in the WI sold) in the year of sale.**
 - **Gain should be capital gain unless X is a dealer in oil and gas properties.**

Example 2

Same as Example 1, except that X “sells” the 25% WI in exchange for \$1000 received in the year of sale and a 10% ORRI in the property transferred.

- This is a sublease for tax purposes.
 - The entire \$1000 is taxed at ordinary income rates (as a lease bonus) in the year of sale.
 - X’s \$100 tax basis in the 25% WI transferred carries over and becomes X’s tax basis in the 10% ORRI retained.
 - X allocates basis in the leased property based on the relative FMVs of the bonus and the ORRI. This example assumes that the lease bonus has a \$0 fair market value.
 - X may take current cost depletion (but not percentage depletion) on the \$1000 lease bonus.
 - If most of the value is allocated to the bonus and not the ORRI, X will recover most of its basis in the year of sale.
 - Y must treat the \$1000 lease bonus as an advance royalty and recover such cost over the life of the WI based on units of production.

Alternatives for Avoiding Lease Treatment

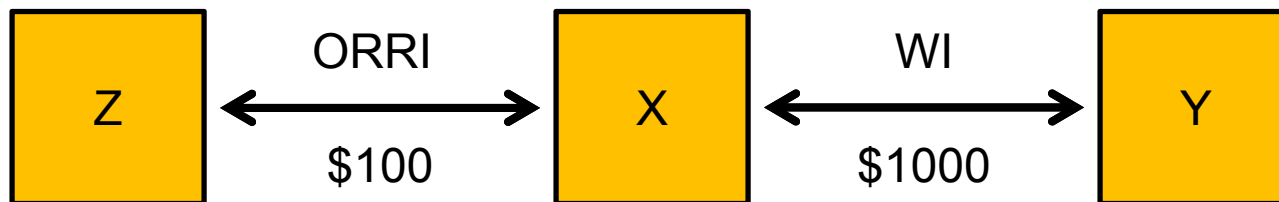
- **Seller carves out an ORRI to a related entity before negotiations with Buyer. After the carve-out, the Seller sells the entire working interest and does not retain an ORRI (but the related party has ORRI). The obvious limitation with this strategy is the need to plan ahead. Also, it is advisable to have a non-tax business purpose for carving out the ORRI.**
- **Seller forgoes retaining an ORRI but retains a WI instead. Of course, this is a different business deal.**
- **Seller forgoes retaining an ORRI but receives additional cash. Again, a different business deal.**

Alternatives for Avoiding Lease Treatment

- **Seller forgoes retaining an ORRI but receives contingent cash payments that mimic a royalty. This would have to be a contractual right of Buyer and not a real property interest. It is less tax efficient for Buyer than a royalty because Buyer cannot deduct the "contingent payments" but rather adds them to basis and recovers them through depletion.**
- **Seller retains a term ORRI (i.e., a production payment). This only works for producing properties. The term must be shorter than the expected life of the burdened properties so that it will be treated as debt for tax purposes.**

Alternatives for Avoiding Lease Treatment – Example 1

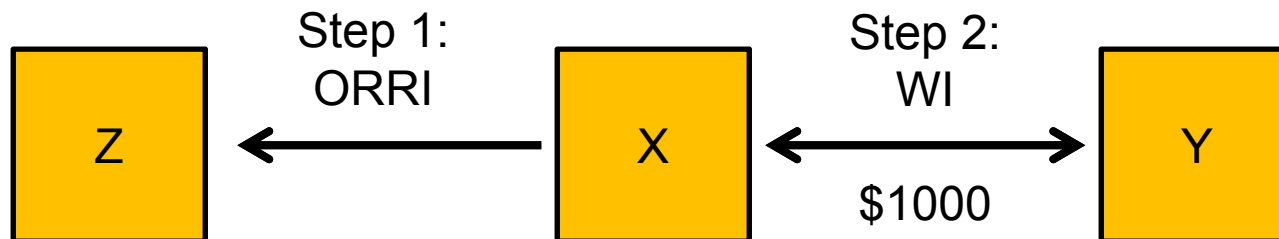
X sells a 50% WI to Y for \$1000 but retains a 10% ORRI. At closing, X also sells the 10% ORRI to Z (an unrelated party) for \$100. Does this structure avoid lease treatment?



Because X has disposed of its entire interest in the property to an unrelated property, this structure should avoid lease treatment and should be treated as a sale. To avoid any doubt, the ORRI should be sold a moment in time before the WI is sold.

Alternatives for Avoiding Lease Treatment – Example 2

Same facts as Example 1, except that prior to entering into negotiations with Y, X assigns the ORRI to Z (a related entity) for a valid business reason. Does this structure avoid lease treatment?



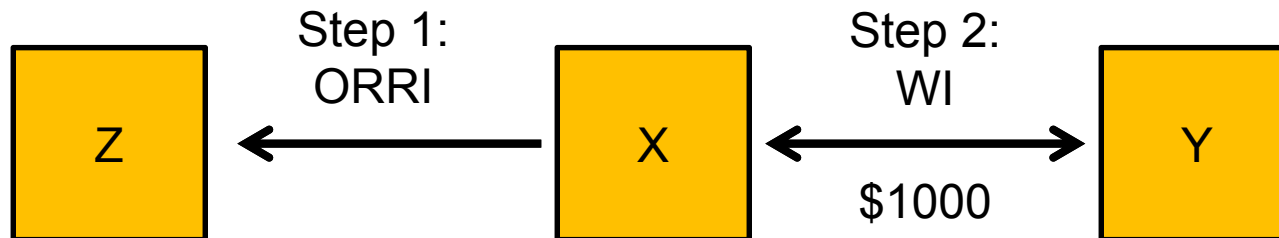
Based on the form of the transaction this is a sale because at the time of the sale to Y, X has already assigned the ORRI to Z, and thus, does not retain anything in the sale to Y.

Can the IRS attack the transaction on substance-over-form or step transaction grounds?

- If a valid business purpose exists for the assignment to Z, the transaction should be respected as a sale.
- Valid business purposes may include: (1) Texas margin tax savings by transferring ORRIs to an LP, (2) shielding ORRIs from contingent liabilities associated with the WI, (3) forming of ORRI partnership as attractive investment vehicle, (4) offering profits interests to employees solely tied to ORRIs, and (5) facilitating estate planning related to ORRIs.

Alternatives for Avoiding Lease Treatment – Example 3

Same facts as Example 2, except that X carves out and sells an ORRI to Z (a related entity) the day before the closing of the sale to Y. Does this structure avoid lease treatment?



- Not the same as Example 1 because the seller retains an interest through a related entity.
- Not the same as Example 2 because of the timing, which makes this structure subject to attack on economic substance or step transaction grounds.

Tax Issues In Midstream Sales

Midstream Asset Categories

- **Hard assets**
 - E.g., pipelines, facilities, easements
- **Contracts**
- **Goodwill and other intangible assets**

Overview of Tax Issues in Midstream Sales

- **Holding period issues**
- **Purchase price allocation issues**

Holding Period Issues in Midstream Sales

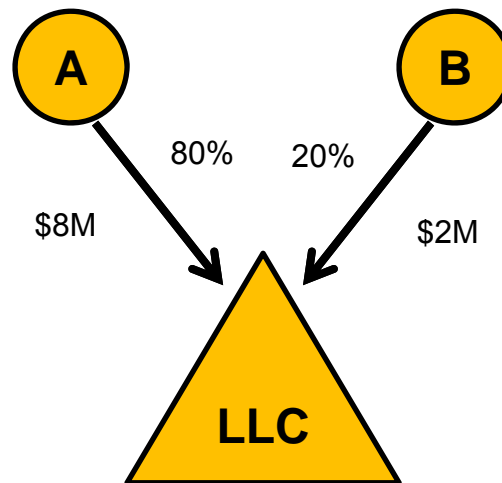
- **Capital contributed over time creates new holding period in portion of partnership interests**
- **Pipeline construction over time creates new holding period in portion of hard assets**
- **Contracts executed over time creates new holding period for newly executed contracts**
- **Rapid appreciation in value could mean short-term holding period in intangible value**

Entity v. Asset Sale

- When midstream assets are held by a partnership or LLC, holding period issues may determine whether the sale should be structured as an entity or asset sale
- If capital has been contributed within 12 months before the sale, it generally is better to sell assets
- Look-through partnership tax rules ensure that any ordinary income that would be recognized upon an asset sale is recognized on an entity sale (“hot assets”)
- However, an entity sale could result in additional ordinary income from short-term holding period in partnership interests
- Asset sale avoids the potential for this “double dip” of ordinary income

Entity v. Asset Sale - Example

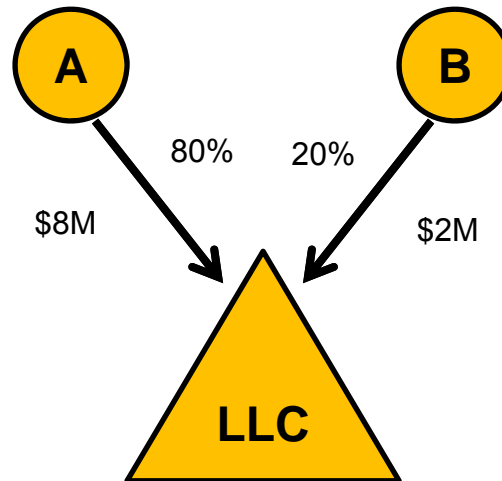
On 1/1/13, A and B form LLC, with A contributing \$8 million for an 80% LLC interest and B contributing \$2 million for a 20% LLC interest.



Also on 1/1/13, LLC begins construction on a pipeline with the \$10 million contributed and enters into Contract 1 with a producer for the transportation of oil and gas. LLC claims \$2 million of depreciation on the pipeline in 2013.

Entity v. Asset Sale – Example (cont'd)

On 1/1/14, A and B contribute an additional \$8 million and \$2 million, respectively. Immediately before such contributions, LLC had a FMV of \$20 million.



LLC uses the additional \$10 million to continue construction of the pipeline. Also on 1/1/14, LLC enters into Contract 2 with a producer for the transportation of oil and gas. LLC claims \$4 million of depreciation on the pipeline in 2014.

Entity v. Asset Sale – Example (cont'd)

A and B want to sell their midstream business 12/31/14, at a time when the tax basis and FMV of LLC's assets are as follows:

Asset	Tax Basis	FMV
Pipeline	\$14 million	\$20 million
Contract 1	\$0	\$10 million
Contract 2	\$0	\$10 million
Goodwill/Other Intangibles	\$0	\$20 million
Total	\$14 million	\$60 million

Entity v. Asset Sale – Example (cont'd)

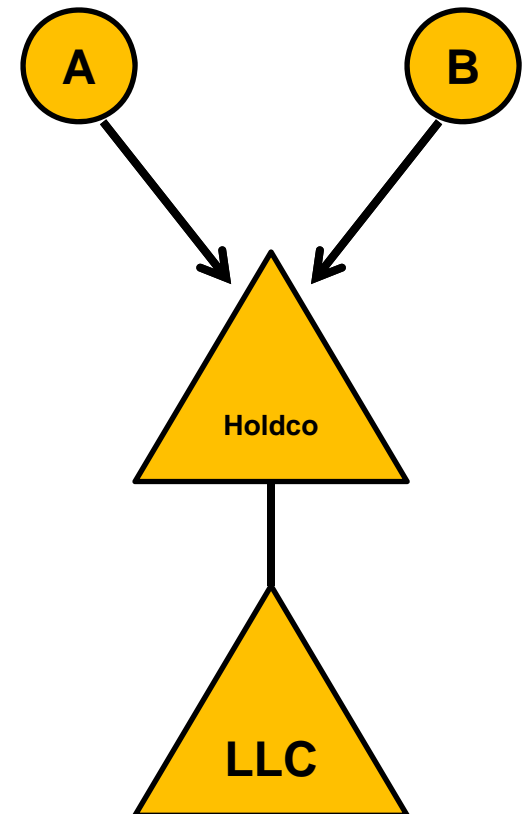
- Should A and B sell the assets or the LLC for \$60 million?
- Asset sale:
 - Ordinary income of \$16 million
 - \$6 million of depreciation recapture on the pipeline
 - \$10 million of short-term capital gain on Contract 2
 - Long-term capital gain of \$30 million on Contract 1 and Goodwill/Other Intangibles
- Entity sale:
 - Ordinary income of \$26 million
 - \$6 million of depreciation recapture on the pipeline
 - \$10 million of short-term capital gain on Contract 2
 - \$10 short-term capital gain on sale of LLC interests because 1/3 of their holding period is short-term
 - Long-term capital gain of \$20 million

Holdco Structure for Entity Sale

Contributing LLC to a Holdco before the sale can allow Holdco to sell LLC interests for state law purposes and have the transaction be treated as an asset sale for tax purposes.

What is the benefit of this structure?

- Seller sells LLC interests for state law purposes (no need to assign contracts, easements, etc.)
- But receives more favorable tax treatment from an asset sale (long-term capital gain of \$30 million instead of \$20 million)



Purchase Price Allocation Issues

- An allocation is necessary in either an entity or an asset sale
- Allocation to hard assets will determine how much recapture income seller will recognize
 - Amount allocated above original cost is capital gain – short-term or long-term depending on when costs were incurred
 - Seller typically wants to allocate the least possible amount to hard assets because of recapture income
 - Buyer typically wants to allocate the greatest possible amount to hard assets because of shorter depreciation recovery periods (generally 7 years)

Purchase Price Allocation Issues

- Amount allocated to contracts may be eligible for capital gain, but the law in this area is not clear
 - Some appraisers take the position that the contracts have no value unless they contain better-than-market terms
- Amount allocated to goodwill or other intangible value generally is taxed at capital gain
 - Sometimes difficult to determine when the holding period begins, which can be especially important when selling the business shortly after the first year of operations
 - Buyer must amortize over 15-year period



Transactions Involving Tax Partnerships

Cash and Carry Transactions

- **Common fact pattern:** An owner of leases agrees to assign a portion of such leases to a grantee in exchange for grantee's upfront cash payment plus an agreement to fund all or a portion of the grantor's share of costs to develop the properties.
- In general, the grantee will want to deduct all of the costs of developing the properties as intangible drilling costs ("IDCs").

Fractional Interest Rule

- The fractional interest rule is a limitation on the deductibility of IDCs
- When a drilling or development project is undertaken for the grant or assignment of a fraction of the operating rights, only that part of the costs attributable to the fractional interest may be deducted as IDCs.
- Example: L grants a 75% working interest to D in exchange for D's agreement to drill a well. D generally will be able to deduct only 75% of its IDCs. The other 25% must be capitalized and recovered through depletion.

Complete Payout Rule

- The complete payout rule is an exception to the fractional interest rule, but it is rarely satisfied.
- If the complete payout rule is satisfied, the drilling party can deduct the IDCs attributable to the interest of the carried party.
- The complete payout rule is satisfied only if (and to the extent that), in all events, the drilling party will hold the operating interest for the complete period ending when the gross income attributable to all the operating mineral interests in the property equals all expenditures for drilling and developing the property, plus the cost of operating the property to produce such amount.
 - Must be satisfied for each separate property; payout cannot be calculated on an aggregate basis.

Use of Tax Partnerships

- If a tax partnership is used, the parties do not have to comply with the complete payout rule for the drilling party to deduct all of its IDCs.
- Instead, the partnership elects to deduct IDCs, and the IDCs are specially allocated to the partner that incurs them.

Tax Partnership Formation Issues

- **The formation of a tax partnership in a cash and carry transaction generally can be characterized in 2 alternative ways:**
 - **A sale followed by a joint contribution to the partnership by both parties**
 - **A contribution of cash by the carrying party, a contribution of the properties by the carried party, and a distribution of cash to the carried party**

Receipt of Upfront Cash – Sale Characterization

- Receipt of cash may be treated under either alternative as if the carried party sold a portion of the properties to the carrying party, followed by a contribution by both parties to the tax partnership.
- Carried party recognizes gain upon the receipt of cash.
- An exception to the disguised sale rules may apply in the second alternative

Receipt of Upfront Cash – Sale Characterization

- **Example: L transfers a 50% working interest to D in exchange for \$200 and D's obligation to pay \$300 of L's share of expenses.**
- **L may be treated as though it sold a 20% working interest to D in exchange for \$200. Thereafter, L may be treated as contributing to the tax partnership its 80% remaining interest (50% retained + 30% sold to D for obligation to fund expenses), and D may be treated as contributing to the tax partnership the 20% interest it purchased for \$200 plus the cash of \$300 to fund expenses.**
- **Note: L must recognize a portion of its gain at the outset.**

Receipt of Upfront Cash – Contribution/Distribution Characterization

- **Alternatively, the transaction could be treated as though the carrying party (D) contributed the \$200 cash to the tax partnership for the 20% interest sold to it and then the tax partnership distributed such cash to the carried party (L).**
- **Generally, contribution of properties by carried party followed by distribution of cash would be a disguised sale for tax purposes.**
- **Thus, L again would have to recognize gain at the outset on the 20% interest deemed sold to D, unless an exception to the disguised sale rules applies.**

Receipt of Upfront Cash – Contribution/Distribution Characterization

- **Example: L transfers a 50% working interest to D in exchange for \$200 and D's obligation to pay \$300 of L's share of expenses. The \$200 cash payment is structured as a contribution of cash by D to the tax partnership and a distribution by the partnership to L.**
- **Disguised sale rules and exception for reimbursement of preformation capex:**
 - L generally would be required to recognize gain under the disguised sale rules.
 - However, if L has incurred capital expenditures during the past two years with respect to the contributed properties, then some or all of the upfront cash may be treated as a distribution rather than as disguised sale proceeds.
 - This exception applies only if the capex does not exceed 20% of the FMV of the property at the time of contribution.
 - However, the 20% limitation does not apply if the FMV of the property does not exceed 120% of the contributing partner's adjusted basis in the property.

Receipt of Upfront Cash – Contribution/Distribution Characterization

- **Example: Reimbursement of Preformation Capital Expenditures**
 - Using the facts from the previous example, D's payment of \$500 total consideration for a 50% interest in the property implies a FMV of \$1000. Thus, the amount that can be treated as a reimbursement of preformation capital expenditures is \$200 (20% of the FMV).
 - If the FMV of \$1000 does not exceed 120% of the adjusted basis, the 20% limitation does not apply.
 - Thus, if the adjusted basis is at least \$835, the transaction will not be treated as a disguised sale.

Receipt of Upfront Cash – Contribution/Distribution Characterization

- **Can parties choose their form?**
 - **Probably so.**
- **What should the parties do so that form of a contribution/distribution is respected?**
 - **Documents should reflect contribution/distribution**
 - **Separate account for tax partnership?**

Carrying Party Issues With Tax Partnerships

- **Primary benefit: IDC deduction**
- **Primary issue: capital account balancing**
 - **The tax partnership must liquidate in accordance with capital accounts for the special allocation of IDCs to be respected.**
 - **The carrying party's capital account typically will be reduced very quickly as IDCs are incurred.**
 - **Example: L contributes working interests worth \$100 to a tax partnership and D contributes \$100 to fund IDCs. After the IDCs are spent, D's capital account is \$0 while L's capital account remains \$100.**
 - **The carrying party's capital account must be "balanced" (i.e. adjusted to equal the amount the carrying party is entitled to under the farmout agreement) before liquidation or the carrying party will not receive its expected business deal.**
 - **The tax partnership agreement should provide that any gain on the sale of a property (or a deemed sale upon liquidation) is allocated in a manner that causes the capital accounts to be balanced.**
 - **The carrying party should resist any provision that could lead to an early termination of the tax partnership before capital accounts can be balanced.**

Carried Party Issues With Tax Partnerships

- Often, tax partnership agreements provide that the carried party's capital account will be credited with the adjusted basis of contributed properties, which tends to lower the carried party's opening capital account.
- Ineligible to do a 1031 like-kind exchange with property held in a tax partnership
 - Must first elect out of or terminate the tax partnership
- Want ability to terminate or elect out of tax partnership as soon as the carry obligation is fulfilled and there is sufficient gain in the properties to balance the capital accounts

State Tax Considerations

Transfer Taxes

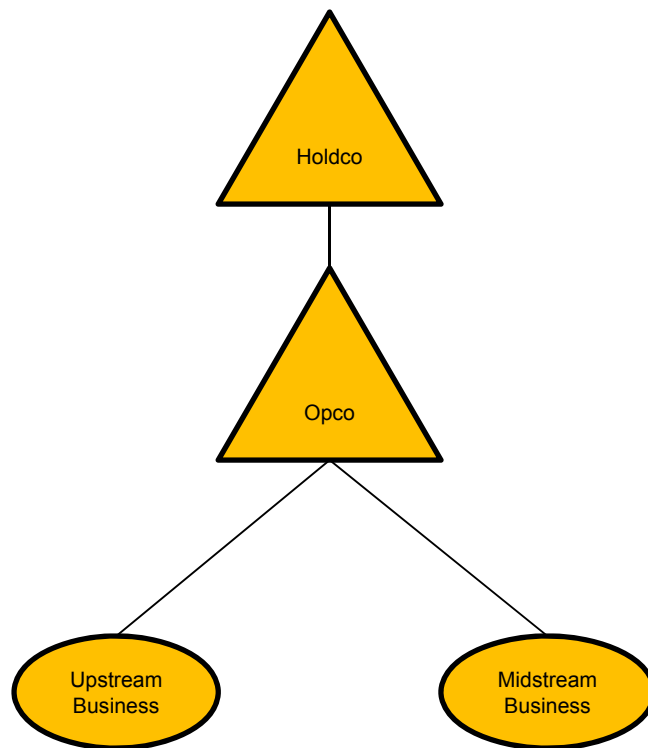
- **Transfer taxes may apply to the sale of tangible personal property**
- **Many states have “occasional sale” exemptions that apply to a bulk sale of assets not in the ordinary course of business**
- **The Texas occasional sale exemption is more narrow**
 - **“Paperclip rule” – must sell all of the assets used in a business, or an identifiable segment of a business**

Transfer Taxes

- **Texas Comptroller rulings treat a sale of working interests and related drilling equipment as a sale of real property for sales tax purposes and thus exempt from sales tax.**
- **Texas Comptroller rulings treat below-ground pipelines as real property and above-ground pipelines as tangible personal property**
 - **Note: Oklahoma has no occasional sale exemption and also has a statute specifically treating all pipelines (even below-ground) as tangible personal property subject to sales tax.**

Transfer Taxes – Example

Holdco owns Opco, which operates an upstream E&P business and a midstream business in Texas. The upstream business consists of working interests and related drilling equipment. The midstream business consists of both above and below ground pipelines. Opco also owns the office furniture located at its place of business.



Transfer Taxes – Example (cont'd)

Opco sells the upstream and the midstream businesses to Buyer but retains the office furniture. What transfer taxes will apply?

- **The Texas occasional exemption will not apply because the office furniture is not included in the sale.**
- **The sale of the upstream business should be treated as a sale of real property not subject to Texas sales tax.**
- **Upon the sale of the midstream business, the sale of the above-ground pipelines will be subject to sales tax.**
- **What are the alternatives for avoiding transfer tax?**

Transfer Taxes – Example (cont'd)

- **Alternative 1: Opco transfers the office furniture to Holdco prior to closing, so that at the time of the sale, Opco sells all of its assets, retaining no assets. In this case, the occasional sale exemption should apply.**
- **Alternative 2: Opco transfers the upstream business and the midstream business to a newly-formed LLC and sells the LLC interests. This is a sale of intangible property (membership interests) and thus not subject to sales tax.**
 - **This structure (a so-called “drop kick”) may also result in favorable Texas margin tax apportionment if the buyer is a non-Texas entity (discussed below).**
 - **Is the drop kick structure respected in Texas?**

Texas Margin Tax Planning for a Sale

- **General apportionment rules**
 - **Gain on sale of tangible property (e.g., real property, equipment, pipelines, facilities, etc.) is sourced to the location of the property**
 - **Gain on sale of intangible property (e.g., interests in an LLC or partnership) is sourced to the location of the payor**
 - **Location of the payor for an LLC or corporation is its state of incorporation**
 - **Location of payor for a partnership is its principal place of business**

Texas Margin Tax Planning – Example

Assume the same facts as the previous example and that Buyer is a Delaware LLC.

If Opco sells the assets of the upstream and midstream businesses:

- **Gain on the sale will be sourced to Texas because the assets are located in Texas.**

Texas Margin Tax Planning – Example

If Opco uses the “drop-kick” structure, transferring the assets to a newly-formed LLC, and sells the LLC:

- **Gain on the sale of the LLC will be sourced outside of Texas because Buyer is a Delaware LLC.**
- **This is the state tax result even though the sale of the LLC would be treated as an asset sale for federal income tax purposes.**
- **Comptroller has stated informally that it is considering changing the rules to follow the federal treatment of a sale of a disregarded entity.**



Acquisition Entity

Federal Income Tax Considerations

- **Why use a flow-through entity to make the acquisition?**
 - **Allows for an efficient allocation of IDCs and deductions to the investors by specially allocating these deductions to the investors who are funding the cash.**
 - **Provides more flexibility to compensate management in a tax preferred manner by issuing profits interests in a tax partnership. Same applies to the upstream promoters (the PE funds).**
 - **Provides for a potentially higher price on a cash sale exit because the buyer receives a step-up in tax basis in either an asset or equity sale. Studies indicate there is as much as a 15% to 20% premium received as compared to sales in C corp form.**
 - **Allows for greater flexibility upon exit/partial exit and more creative approaches. For example, IPOs, asset sales, equity sales and various forms of disguised sales or debt-financed distributions.**

Federal Income Tax Considerations

- **Newly-available Section 336(e) election**
 - **Similar to a 338(h)(10) election, except that the buyer does not have to be a corporation**
 - **Allows a flow-through buyer to purchase a C corporation, receive a basis step-up, immediately liquidate the C corporation after the acquisition at little-to-no tax cost, and hold the assets in a flow-through structure going forward**
 - **Seller must be a C corporation (or target must be an S corporation)**
 - **Must acquire at least 80% of the stock of the target**

Texas Margin Tax Considerations

- **Passive Entity Exemption**
 - LPs (NOT LLCs) are eligible for the passive entity exemption from Texas margin tax
 - Applies to limited and general partnerships and trusts, not LLCs
 - At least 90% of federal gross income must be from passive sources. Passive includes:
 - Net capital gain from sale of real property (e.g., working interests)
 - Royalties, bonuses, and delay rental income from mineral properties
 - Income from non-operating mineral interests (this includes working interests IF the owner is not the operator)
- Generally relevant for upstream businesses, but not midstream businesses
- Partners will be subject to Texas margin tax on distributive share unless also exempt from Texas margin tax – e.g., individuals

Passive Entity Exemption

- **Special Operator Rule – Rule §3.582(d)(2)**
 - **Income received by a non-operator from mineral properties under a JOA qualifies as passive so long as another member of the affiliated group is not the operator**
 - **If the GP owns more than 50% of the partnership and it (or an affiliate) is the operator, the partnership will not be passive.**
 - **If GP owns less than 50%, then passive.**
 - **Many LP Agreements require the GP or an affiliate (not the partnership) to be the operator. Margin tax results.**
 - **Partnerships generally are passive because the partnership is not the operator and the GP does not own more than 50% of the partnership, including post-flip.**



Tax Provisions in Oil and Gas M&A Agreements

Purchase Price Provisions

- **Effective Date v. Closing Date**
 - **Asset taxes typically are allocated as of the effective date**
 - **Income taxes are allocated as of the closing date, when the sale is effective for federal income tax purposes**
- **Purchase Price Adjustments**
 - **Estimate unpaid asset taxes as of closing date?**
 - **True-up taxes paid after closing?**
 - **Balance sheet adjustments**

Purchase Price Allocation

- **To agree or not**
 - Binding on parties, not IRS
 - High-level allocation
- **1060 allocation in an upstream sale typically very simple**
 - Inventory in tanks (Asset Class IV)
 - Properties and equipment (Asset Class V)
- **Allocation in a midstream sale can have more importance**
- **Liabilities**
- **Post-closing payments/adjustments**
- **Appraisal**

Tax Reps and Warranties

- **Functions (due diligence/closing condition/indemnity)**
- **Materiality qualifiers**
- **Knowledge qualifiers**
- **Stock v. Asset deals**
- **Acquisitions of disregarded entities**
- **Disclosure Schedules**

Covenants

- **Filing post-closing tax returns**
- **Straddle period returns**
- **Control over tax audits for pre-closing periods and straddle periods**
- **Entitlement to tax refunds**

Tax Indemnities

- **Breach of tax representations v. special tax indemnity**
- **Define taxes to include successor liability**
- **Survival period – applicable statutes of limitation**
- **Baskets and caps – unusual for taxes to be included**
- **Correlative adjustment provisions**
- **Tax benefit provisions**
- **Coordination with purchase price adjustments**

Escrows

- **Availability of installment method for seller**
- **Who pays tax on income from escrowed proceeds**
- **Tax treatment of release of escrow proceeds**

Takeaways

- **Don't get surprised by a sale/lease issue when retaining an ORRI – by the time negotiations have begun, it's often too late!**
- **Be aware of holding period and purchase price allocation issues in midstream sales.**
- **Remember tax partnerships in cash & carry deals.**
- **When selling Texas assets, “drop kick” sales tax and margin tax to the curb!**
- **Texas nonoperating interests belong in LPs.**
- **C corporations aren't all bad anymore. Consider the 336(e) election.**