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royalty owners one-eighth of the actual "proceeds" from the sale of the gas, the term "amount realized from such sale" should be incorporated into the lease.[30]

Arthur W. Zeitler

Federal Income Tax — Kimbell-Diamond, Section 334(b)(2) and the "Indirect Purchaser"

Over a period of about fourteen months, and through two separate tender offers, American Potash and Chemical Corporation (Potash) acquired all of the outstanding stock of Western Electrochemical Corporation (Wecco). Thereafter, for a period of about seven months, Potash operated Wecco as a wholly owned subsidiary, advancing operating capital, and assuming all of Wecco's liabilities.[1] Finally, Wecco was liquidated completely, and Potash assumed direct ownership of the Wecco assets. For the four following taxable years, Potash depreciated the Wecco assets on the basis of the cost to Potash of the assets. The Commissioner, believing that the proper basis from which to compute the depreciation was the basis of the assets in the hands of Wecco prior to liquidation (*i.e.*, a carry-over basis), determined a deficiency in Potash's tax returns for those years.[2] After payment of the deficiency and denial of its claim for refund, Potash instituted suit, contending that a cost basis was proper for the assets received. Potash claimed first that no reorganization had occurred. This would make inapplicable section 362(b),[3] which requires assets received in a reorganization to be taken with a carry-over basis. Secondly, Potash maintained that although section 334(b)(1)[4] requires assets received in

[30] For an example of a royalty clause which will cover most situations, see 6 W. FLITTIE, SUMMERS OIL & GAS § 1131, at 19 (1967).

[1] Potash advanced $646,293 to Wecco and assumed $4,934,448 in liabilities. Because under INT. REV. CODE of 1954, §§ 368(a)(1)(B), (C), the consideration must be "solely voting stock," Potash attempted to prove that such items as the cash payment for fractional shares, the advanced operating capital and the assumed liabilities should be included in the total consideration for the purpose of disqualifying the transaction as a reorganization. However, the court did not reach this question.

[2] Potash's "cost" basis in the Wecco assets was $7,085,551. The basis which these assets had in the hands of Wecco prior to liquidation was $3,788,779. Use of a cost basis gave Potash an annual increase in its depreciation deductions of $100,843. It was this sum which the Commissioner determined to have been a deficiency in Potash's returns for each of the four preceding years.

[3] INT. REV. CODE of 1954, § 362(b) provides:

> If property was acquired by a corporation in connection with a reorganization to which this part applies, then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain recognized to the transferor on such transfer. This subsection shall not apply if the property acquired consists of stock or securities in a corporation a party to the reorganization, unless acquired by the issuance of stock or securities of the transferee . . . as the consideration in whole or in part for the transfer.

[4] INT. REV. CODE of 1954, § 334(b) provides:

> (1) In general.—If property is received by a corporation in a distribution in complete liquidation of another corporation (within the meaning of section 332(b)), then, except as provided in paragraph (2), the basis of the property in the hands of the distributee shall be the same as it would be in the hands of the transferor. If property is received by a corporation in a transfer to which section 332(c)

liquidation of a subsidiary to be taken with a carry-over basis, the rule of *Kimbell-Diamond Milling Co. v. Commissioner*[5] allows the transaction to be treated as one purchase of assets rather than as several steps culminating in liquidation. *Held*: Where no reorganization has occurred, assets received through a stock acquisition and subsequent liquidation may be depreciated on a cost basis under the *Kimbell-Diamond* rule, despite failure of the transaction to qualify for the cost basis exception of section 334(b)(2). *American Potash & Chemical Corp. v. United States*, 399 F.2d 194 (Ct. Cl. 1968).

I. "Indirect Purchase" Prior to 1954

The acquisition by one corporation of the assets of another corporation may be effected either directly or indirectly. Typical of a direct acquisition is the simple purchase[6] of all or a part of the transferor's assets. Typical of the indirect acquisition is the purchase or exchange of property for the transferor's stock, followed by liquidation of the acquired corporation.[7] Under the Internal Revenue Code of 1939 the form of the acquisition greatly affected the tax treatment of the assets acquired. For example, in a direct acquisition, the transferee generally took the acquired assets with a cost basis under section 113(a),[8] which provided that the basis of property should be its cost except as provided otherwise in the Code. However, strict application of the Code prevented the "indirect purchaser" from receiving identical treatment[9] because section 113(a)(15)[10]

applies, and if paragraph (2) of this subsection does not apply, then the basis of the property in the hands of the transferee shall be the same as it would be in the hands of the transferor.

(2) Exception.—If property is received by a corporation in complete liquidation of another corporation (within the meaning of section 332(b)), and if—

(A) the distribution is pursuant to a plan of liquidation adopted—

(i) on or after June 22, 1954, and

(ii) not more than two years after the date of the transaction described in subparagraph (B) (or, in the case of a series of transactions, the date of the last such transaction); and

(B) stock of the distributing corporation possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and at least 80 percent of the total number of shares of all other classes of stock (except non-voting stock which is limited and preferred as to dividends), was acquired by the distributee by purchase (as defined in paragraph (3)) during a 12-month period beginning with the earlier of—

(i) the date of the first acquisition by purchase of such stock, or

(ii) if any of such stock was acquired in an acquisition which is a purchase within the meaning of . . . paragraph (3), the date on which the distributee is first considered under section 318(a) as owning stock owned by the corporation from which such acquisition was made,

then the adjusted basis of the property in the hands of the distributee shall be the adjusted basis of the stock with respect to which the distribution was made.

[5] 14 T.C. 74, *aff'd*, 187 F.2d 718 (5th Cir.), *cert. denied*, 342 U.S. 827 (1951).

[6] Here, "purchase" refers merely to an acquisition of the transferor corporation's assets without resort to a purchase or acquisition of stock followed by liquidation. However, it is important to realize that "purchase" has a specific meaning in § 334(b)(3).

[7] *See* cases cited at note 51 *infra*.

[8] Int. Rev. Code of 1939, ch. 1, § 113(a), 53 Stat. 43 (now Int. Rev. Code of 1954, § 1012).

[9] B. Bittker & J. Eustice, Federal Income Taxation of Corporations and Shareholders § 9.44 (2d ed. 1966).

[10] Int. Rev. Code of 1939, ch. 1, § 113(a)(15), 53 Stat. 43 (now Int. Rev. Code of 1954, § 334(b)(1)).

required all property received by a corporation upon a distribution in liquidation of another to be taken with a carry-over basis.[11] The inequitable consequences of this discrimination caused the courts to look to the substance of such transactions, rather than to the form.[12]

Kimbell-Diamond Milling Co. v. Commissioner[13] is often cited for the proposition that the individual steps of a transaction may be considered together in attaching tax consequences.[14] In that case corporation *K* attempted to acquire replacement assets for business facilities destroyed by fire. Not being able to purchase such assets directly it acquired for cash the stock of corporation *W*, an owner of such assets. Pursuant to a resolution of *K*'s directors, *W* was liquidated approximately one week after the acquisition of stock. The most important issue was whether the stock purchase and subsequent liquidation could be treated as one purchase of assets, or whether each transaction had to be considered separately. If the former represented the proper treatment, a cost basis would obtain under section 113(a).[15] If the latter was correct, the assets would be treated as though received in liquidation of a subsidiary, and would be taken with a carry-over basis under the applicable provision of the 1939 Code.[16] Because the purchaser's sole intention was to acquire assets rather than stock, the court held that the two transactions should be treated as one purchase of assets.[17] Accordingly, a cost basis was required. The "*Kimbell-Diamond* rule" served as the "indirect purchaser's" only route to a cost basis until 1954.[18]

II. "Indirect Purchase" After 1954

The 1954 Code carried forward to section 334(b)(1)[19] the general rule[20] requiring a carry-over basis for assets received in liquidation of a subsidiary. However, with the new Code came enactment of section 334(b)(2),[21] a statutory exception to the general rule. This section embodies a principle underlying the *Kimbell-Diamond* rule, *viz.*, that a stock purchase and subsequent liquidation which are actually part of a plan to obtain assets should be treated like a direct purchase of assets.

[11] Liquidation being the common denominator of all indirect acquisitions, this provision prevented any assets acquired indirectly from being taken with a cost basis.

[12] Kimbell-Diamond Milling Co. v. Commissioner, 14 T.C. 74, *aff'd*, 187 F.2d 718 (5th Cir.), *cert. denied*, 342 U.S. 827 (1951), citing Commissioner v. Ashland Oil & Ref. Co., 99 F.2d 588 (6th Cir. 1938); *see* 2 J. Rabkin & M. Johnson, Federal Income, Gift, and Estate Taxation § 23.11(4) (1967) and cases cited therein.

[13] 14 T.C. 74, *aff'd*, 187 F.2d 718 (5th Cir.), *cert. denied*, 342 U.S. 827 (1951).

[14] *See* Kanawha Gas & Util. Co. v. Commissioner, 214 F.2d 685, 691 (5th Cir. 1954); Ashland Oil & Ref. Co. v. Commissioner, 99 F.2d 588, 591 (6th Cir. 1938). *See also* B. Bittker & J. Eustice, *supra* note 9, § 1.05.

[15] The government contended that corporation *K* should hold the assets with a cost basis.

[16] Int. Rev. Code of 1939, ch. 1, § 113(a)(15), 53 Stat. 43. *See* note 10 *supra*, and accompanying text.

[17] 14 T.C. 74, 80 (1950).

[18] It is interesting to note that in the case of *Kimbell-Diamond*, the cost basis which the taxpayer was forced by the decision to use was lower than the basis which the assets had in the hands of transferor.

[19] Int. Rev. Code of 1954, § 334(b)(1); *see* note 4 *supra*.

[20] This was the rule of Int. Rev. Code of 1939, ch. 1, § 113(a)(15), 53 Stat. 43 (now Int. Rev. Code of 1954, § 334(b)(1)).

[21] Int. Rev. Code of 1954, § 334(b)(2); *see* note 4 *supra*.

However, unlike the *Kimbell-Diamond* rule, section 334(b)(2) looks solely to the form of the transaction. The statute requires that five basic conditions be met: (1) that eighty per cent control be obtained within a period of twelve months; (2) that a plan of liquidation be adopted within twenty-four months following the qualifying purchase; (3) that the liquidation be completed within three years following the close of the year in which the first distribution is made; (4) that eighty per cent of the voting stock and eighty per cent of all other stock (except non-voting preferred) be purchased; and (5) that the stock be "purchased" (thus eliminating the use of this technique when stock is obtained in a tax-free transaction such as a reorganization).[22]

The inflexible requirements of section 334(b)(2) present two principal problems. First, no intent to "purchase" or "acquire" assets is required under the statute. It is only necessary that the transferee have adopted a plan of liquidation within two years after the acquisition of the transferor's stock. Although the statute presumably was enacted to equalize the tax position of "indirect purchasers" with that of "direct purchasers," it can apply equally well to taxpayers which have not intended to be purchasers at all.[23] Thus many "indirect purchase" transactions may be manipulated to meet, or fall short of, the statutory requirements. Accordingly, a corporate taxpayer is afforded some choice in the tax treatment of its transaction if section 334(b)(2) is the only way to obtain a cost basis.[24]

The second problem created by section 334(b)(2) is that many indirect acquisitions may be excluded from its ambit, notwithstanding the fact that they are undertaken for the sole purpose of obtaining assets.[25] Thus, a taxpayer may desire a cost basis but be unable to get it under the statute because of failure to meet the mechanical statutory requirements.[26] This problem would be remedied if the *Kimbell-Diamond* rule remains operative despite the enactment of section 334(b)(2). However, authorities are divided on this point.[27] If, as some writers have suggested, the statute is the only route to a cost basis from a stock acquisition and subsequent

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[22] A. CHOKA, BUYING, SELLING AND MERGING BUSINESSES 125 (1965).

[23] Rev. Rul. 60-262, 1960-2 CUM. BULL. 114; 3A J. MERTENS, LAW OF FEDERAL INCOME TAXATION § 21.167, at 476 (1968); 2 J. RABKIN & M. JOHNSON, LAW OF FEDERAL INCOME, GIFT, AND ESTATE TAXATION § 23.11(5) (1967).

[24] That Congress was aware of this possibility can scarcely be doubted, for whenever the Code provides a time limit or mechanical procedure, the taxpayer is afforded some measure of choice.

[25] *See, e.g.*, Brief for Plaintiff (Response to Defendant's Motion for Summary Judgment) at 19, American Potash & Chem. Corp. v. United States, 399 F.2d 194 (Ct. Cl. 1968). *See also* note 28 *infra*.

[26] This was the situation in American Potash & Chem. Corp. v. United States, 399 F.2d 194 (Ct. Cl. 1968).

[27] J. RABKIN & M. JOHNSON, FEDERAL INCOME, GIFT, AND ESTATE TAXATION § 23.11(4) (1967); Brookes, *Corporate Liquidations*, 1960 So. CAL. TAX INST. 233; Cohen, Gelberg, Surrey, Tarleau & Warren, *Corporate Liquidations Under the Internal Revenue Code of 1954*, 55 COLUM. L. REV. 37 (1955); Freling, *What is New in Subchapter C: The Service's Current Ruling Policy*, 23 N.Y.U. INST. ON FEDERAL TAXATION 421 (1965); Goldman, *The C Reorganization*, 19 TAX L. REV. 31 (1963); Mansfield, *The Kimbell-Diamond Situation: Basis to the Purchaser in Connection with Liquidation*, 13 N.Y.U. INST. ON FEDERAL TAXATION 623 (1955); Schwartz, *Acquisition of Stock in Another Corporation in Order To Acquire Assets*, 1957 So. CAL. TAX. INST. 45, 65-66.

liquidation, many taxpayers[28] are in no better position than they would have been under the 1939 Code.

III. American Potash & Chemical Corp. v. United States

A conclusion that Potash could be entitled to a cost basis in assets received from the Wecco liquidation required two findings.[29] First, because section 362[30] requires a carry-over basis for assets received in a section 368[31] reorganization, the court had to determine that neither a type B[32] nor a type C[33] reorganization had occurred. Second, the transaction had to be considered a single purchase of assets under the *Kimbell-Diamond* rule. This required a finding that the *Kimbell-Diamond* rule was not rendered obsolete by enactment of section 334(b) (2).[34]

The most curious aspect of the court's opinion is its initial dismissal of the possibility that a "B" reorganization occurred.[35] It took this position on the ground that "control of Wecco was not obtained . . . within a 12 month period . . . as is required by the applicable regulations."[36] Only on rehearing[37] did the court seem to admit that the regulation in question

[28] For example, if business necessitates the postponement of a liquidation past the two-year statutory limit, the transaction will not qualify under § 334(b)(2) even though it may meet all other requirements. Likewise, if corporation X has owned 30 per cent of the stock of corporation Y for more than one year, and liquidates Y immediately after purchasing the remaining 70 per cent, the transaction will fail to qualify under the statute. The acquiring corporation has not in the latter case, acquired 80 per cent of the transferor's stock within 12 months.

[29] It was conceded that Potash could not obtain a cost basis under § 334(b)(2), because control of Wecco assets was not obtained within 12 months as required by the statute. *See* 399 F.2d 194, 207 (Ct. Cl. 1968). The "12-month issue" involved at this point is to be distinguished from the "12-month issue" involved in determining whether a "B" reorganization occurred. *See* note 38 *infra*, and accompanying text.

[30] INT. REV. CODE of 1954, § 362(b); *see* note 3 *supra*.

[31] INT. REV. CODE of 1954, § 368 provides, in pertinent part:

> (a) Reorganization
>
> (1) In general.—For purposes of parts I and II and this part, the term "reorganization" means— . . . (B) the acquisition by one corporation in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation) of stock of another corporation if, immediately after the acquisition, the acquiring corporation has control of such other corporation (whether or not such acquiring corporation had control immediately before the acquisition); (C) the acquisition by one corporation, in exchange solely for all or a part of its voting stock (or in exchange solely for all or a part of the voting stock of a corporation which is in control of the acquiring corporation), of substantially all of the properties of another corporation, but in determining whether the exchange is solely for stock the assumption by the acquiring corporation of a liability of the other, or the fact that property acquired is subject to a liability, shall be disregarded [except as provided in section 368(a)(2)(B)] . . . .

[32] INT. REV. CODE of 1954, § 368(a)(1)(B); *see* note 31 *supra*. If a "B" reorganization occurred, the assets received would be taken with a carry-over basis under § 362 or § 334(b)(1). The applicable section would be determined by whether the liquidation is given independent tax significance or not—an approach reminiscent of *Kimbell-Diamond*. *See* American Potash & Chem. Corp. v. United States, 399 F.2d 194, 200 (Ct. Cl. 1968). *See also* B. BITTKER & J. EUSTICE, *supra* note 9, § 12.13(6).

[33] INT. REV. CODE of 1954, § 368(a)(1)(C); *see* note 31 *supra*. This section involves a stock for asset exchange, and accordingly the assets received are taken with a § 362 carry-over basis.

[34] This was true because even if the transaction was not a reorganization, a carry-over basis could be imposed under § 334(b)(1) if *Kimbell-Diamond* was found unavailable. (The parties agreed that the transaction failed to qualify for cost basis treatment under § 334(b)(2)).

[35] 399 F.2d 194, 200 (Ct. Cl. 1968).

[36] *Id.*

[37] 402 F.2d 1000 (Ct. Cl. 1968) [rehearing].

should not be given the weight of statutory authority. The regulation actually provides that a series of transactions can constitute a "B" reorganization if such transactions take place "over a relatively short period of time such as 12 months."[38] The case was returned to the trial commissioner for further inquiry on the matter, with the observation that a series of transactions taking place over a period in excess of twelve months might be found to be a "B" reorganization if the several transactions were part of a continuing offer to purchase.[39]

Also interesting was the government's insistence that the Potash transaction could qualify as a "C" reorganization, a stock for asset exchange. The government had to rely upon the *Kimbell-Diamond* rule and Potash's admitted intent to acquire the Wecco assets in order to show that an exchange of stock for assets had occurred. It was this same basic argument upon which Potash later relied to avoid becoming subject to the carry-over basis provision of section 334(b)(1). The court rejected the government's contention, observing that intent to acquire assets does not constitute proof that a reorganization has occurred.[40] The court noted that a seriatim or "creeping" acquisition is not permissible under section 368-(a)(1)(C).[41]

Kimbell-Diamond and Section 334(b)(2). Potash contended that section 334(b)(2) is not the only way to obtain a cost basis where assets have been received in liquidation of a subsidiary. Its position was that the *Kimbell-Diamond* rule remains available for the purpose of finding a purchase of assets in substance where in form there has been a receipt of assets in liquidation. The government's response was not inconsistent with its former position. Without attacking the general validity of the step transaction doctrine,[42] it argued that section 334(b)(2) is the only way to obtain a cost basis for assets received in liquidation of a subsidiary. The government insisted that because Potash had failed to qualify for a cost basis under section 334(b)(2) (both parties agreed that Potash failed to obtain the requisite eighty per cent control within twelve months) the Wecco assets were held with a carry-over basis under section 334(b)(1).

The court agreed with Potash, holding that the well known judicial rule had not been rendered obsolete by enactment of section 334(b)(2).[43] Recognizing that Congress intended to provide an "objective route for ob-

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[38] Treas. Reg. § 1.368-2(c) (1960).

[39] 402 F.2d 1000, 1001 (Ct. Cl. 1968) [rehearing].

[40] 399 F.2d 194, 201 (Ct. Cl. 1968).

[41] *Id.* at 202.

[42] The step transaction doctrine is a broad rule which finds application in many areas of tax law. In a technical sense, the *Kimbell-Diamond* rule is merely one application of it. To be precisely accurate, it is the step transaction doctrine which permits the steps of an "integrated" transaction to be considered together in attaching tax consequences. The *Kimbell-Diamond* rule merely allows this to be done (under the facts of that case) in an "indirect purchase" situation. Accordingly, the government could admit the existence of the step transaction doctrine and still argue with consistency that the *Kimbell-Diamond* rule is no longer viable. It is only because *Kimbell-Diamond* is often cited as authority for the step transaction doctrine that there appears to be inconsistency in the government's position.

[43] 399 F.2d at 207.

taining a cost basis,"[44] the court nevertheless held that resort to proof of subjective intent to acquire assets was not obviated by enactment of the statute. The principle of section 334(b)(2), said the court, is merely one application of the broader doctrine of *Kimbell-Diamond*.[45] The court also observed that by abandoning all resort to proof of subjective intent, a taxpayer would be allowed to choose the tax treatment most beneficial to it. The court believed that such an elective situation was not contemplated by Congress.[46] Finally, the court observed that section 334(b)(2) applies only to corporate taxpayers, and that Congress would not have intended to differentiate between individuals and corporations by leaving the *Kimbell-Diamond* rule available to the former while denying it to the latter.[47] The case was returned to the trial commissioner to determine the applicability of the *Kimbell-Diamond* rule to the facts of *Potash*.[48]

IV. CONCLUSION

Whether the court should have reached the issue of *Kimbell-Diamond* and section 334(b)(2) is arguable, but its conclusions in that part of the opinion are highly significant. The argument advanced by Potash and adopted by the court is subtle and not to be confused with qualification for cost basis treatment under section 334(b)(2). Section 334(b)(2) is concerned exclusively with the liquidation of a subsidiary corporation. Under section 334(b)(2) it is possible to acknowledge that a parent-subsidiary relationship existed at the time of liquidation and still obtain a cost basis in assets received. Although the statute may have been designed to effectuate certain principles of the *Kimbell-Diamond* rule, it in no way requires that the attributes of a typical parent-subsidiary relationship be absent. The argument under the *Kimbell-Diamond* rule, on the other hand, requires proof of an object to obtain assets rather than a subsidiary. Under the *Kimbell-Diamond* rule it must be argued that section 334 is inapplicable, because for tax purposes there has been no subsidiary, and no liquidation.[49] Thus, while section 334(b)(2) provides an exception to the general rule that assets received in liquidation of a subsidiary are taken with a cost basis, *Kimbell-Diamond* provides an alternate route.

Because neither a cost basis nor a carry-over basis is consistently desirable, the court's decision in *American Potash* is neither a victory for taxpayers nor for the government. Whether actually desirous of a cost basis or not, the taxpayer who qualifies under section 334(b)(2) is assured of

[44] *Id.* at 207, 208.

[45] *Id.* at 208. *See* S. REP. No. 1622, 83d Cong., 2d Sess. 257 (1954).

[46] 399 F.2d at 208.

[47] *Id.* However, an opposite conclusion could be reached from a reading of the legislative history of § 334(b)(2). Because the House Report on the proposed statute would have had § 334(b)(2) apply to *both* corporations and individuals, and the Senate Report modified the House proposal so as to make the statute applicable to corporate taxpayers alone, it could be concluded that Congress *did* intend to differentiate between individual and corporate taxpayers. *See* American Potash & Chem. Corp. v. United States, 399 F.2d 194, 208, 209 (Ct. Cl. 1968).

[48] *Id.* at 209.

[49] Brief for Plaintiff (Response to Defendant's Motion for Summary Judgment) at 15, American Potash & Chem. Corp. v. United States, 399 F.2d 194 (Ct. Cl. 1968). *See also* 399 F.2d at 206.

cost basis treatment. However, for the taxpayer who seeks a carry-over basis, there is no safety in purposely failing to qualify for section 334-(b) (2) if the *Kimbell-Diamond* rule remains viable. The court may still find intent to obtain assets and impose a cost basis.

For the taxpayer such as Potash, seeking a cost basis but failing to qualify for section 334(b) (2), problems of proof remain. A liberal interpretation of the objective standards of the statute will not suffice to determine what transactions should qualify under the *Kimbell-Diamond* rule. Because the latter rule is principled on intent to obtain assets, time limits and specific procedures are significant only in relation to the business background of each case. Nevertheless, several characteristics of a true "indirect purchase" may be stated on the basis of prior decisions and analogy to a direct purchase situation. Primarily, evidence should exist that the acquisition of stock by the taxpayer corporation was for the ultimate purpose of acquiring assets. Although section 334(b) (2) encompasses transactions where the plan to liquidate was formulated after the acquisition of the stock, it seems reasonable that under *Kimbell-Diamond* a "purchase of assets" should be found only where stock is acquired with a prior purpose of obtaining assets by liquidation. Evidence of such a purpose might be found in the minutes or resolutions of the transferee corporation.[50] It can also be persuasive that the transferee has engaged in prior, unsuccessful attempts to purchase such assets directly,[51] that the assets were ultimately integrated into the transferee's business,[52] and that the transferor's business activities were discontinued.[53]

Also, if liquidation is alleged to be but one step in the acquisition of assets and therefore is to be ignored for tax purposes, it should be effected as soon as practicable after acquisition of the transferor's stock. Under the *Kimbell-Diamond* rule, the taxpayer can scarcely stress the transitory nature of the parent-subsidiary relationship if the subsidiary is operated for an unnecessarily extended period of time. Although liquidation of the subsidiary in *Kimbell-Diamond* was effected within one week after purchase of the subsidiary's stock, Potash operated Wecco for seven months. No precise time limit has been suggested by the courts,[54] but it seems necessary that a cost basis proponent show the existence of business justification for any significant delay in effecting liquidation.

S. David Blinn

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[50] Such evidence in the corporate records was abundant in *Kimbell-Diamond*. *See also* Trianon Hotel Co. v. Commissioner, 30 T.C. 156 (1958).

[51] Long Island Water Corp. v. Commissioner, 36 T.C. 377, 389 (1961) [dictum]; George Haiss Mfg. Co., P-H Tax Ct. Mem. ¶ 57,241 (1957); Kimbell-Diamond Milling Co. v. Commissioner, 14 T.C. 74 (1951).

[52] North Am. Serv. Co. v. Commissioner, 33 T.C. 677, 691 (1960); Kimbell-Diamond Milling Co. v. Commissioner, 14 T.C. 74 (1951).

[53] Trianon Hotel Co. v. Commissioner, 30 T.C. 156 (1958); Simmons Co. v. Commissioner, 25 T.C. 635 (1955).

[54] Although under § 334(b)(2), liquidation only need be within two years after control of the transferor is acquired, the courts, while not uniform, are more restrictive in applying *Kimbell-Diamond*. A six-month delay has qualified under *Kimbell-Diamond*. Kanawha Gas & Util. Co. v. Commissioner, 214 F.2d 685 (5th Cir. 1954); Snively v. Commissioner, 19 T.C. 850 (1953). A one-year delay qualified as an acquisition of assets under *Kimbell-Diamond* in Commissioner v. Ashland Oil & Ref. Co., 99 F.2d 588 (6th Cir. 1938), but failed to do so in Trianon Hotel Co. v. Commissioner, 30 T.C. 156 (1958).