



S-Corporations: Should They Sell Assets in 2013?

BY LOUIS VLAHOS

This year began with two federal tax developments that will impact sales of assets owned by S corporations: the increase in the long-term capital gain rate, and the imposition (in some cases) of a new tax on net investment income.

Notwithstanding these tax increases, 2013 may be a good time for certain S corporations to consider a sale of assets.

Built-in Gain Tax

Unlike C corporations, S corporations generally pay no corporate-level federal income tax. Instead, corporate income passes through to each shareholder, who takes his share into account on his individual tax return. Thus, any gain recognized by an S corporation on the sale of assets is passed through and taxed to its shareholders.

There is an exception to this rule for asset sales by S corporations that were previously taxed as C corporations.

Specifically, the portion of an S corporation's gain that arose prior to its conversion to an S corporation (the "built-in gain", or "BIG"), and that is recognized by the S corporation during a specified period of time following the conversion (the "recognition period"), is subject to a corporate-level tax.

Recognition Period

Given the economic impact of the BIG tax, S corporations have generally been reluctant to sell assets during the recognition period.

Before 2009, this period was defined as the first ten taxable years that the S election was in effect. Congress has reduced the recognition period several times since, and for a sale occurring in 2013, no BIG tax will be imposed if



the sale occurs after the fifth taxable year the S election is in effect.

What This Means for S-Corp Asset Sales in 2013

In light of the foregoing, 2013 may be a good time for an S corporation that converted from C corporation status prior to 2009 to consider selling assets.

As an illustration, assume ACME Inc. elected to be taxed as an S corporation beginning on January 1, 2008. At

that time, it had BIG of \$3 million. It sells its assets in 2013 and recognizes a gain of \$3 million. Because ACME has been an S corporation for five years, any gain on the sale of Acme's assets will escape corporate-level taxation -- even if that gain is taxed after 2013 under the

installment method.

Notably, the five-year recognition period expires at the end of 2013, and the ten-year period will be reinstated. Therefore, if ACME delays the sale of its assets to any time from 2014 through 2017, it will be subject to federal corporate tax on its BIG.

Conclusion

The foregoing is not to suggest that a qualifying S corporation with assets subject to the BIG tax should hurry to sell those assets simply to capture the tax benefit afforded by the shortened recognition period. However, an S corporation that is otherwise contemplating a sale should consider the fact that the shortened tax benefit period expires at the end of 2013.

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DINING OASIS

Austin's Ale House to expand outdoor space



Austin's Ale House, a popular bar and restaurant in Kew Gardens, announced the expansion of its outdoor dining space, to be completed by the end of this summer.

In conjunction with Community Board 9 and the MTA, the patio, which holds up to 50 guests, will feature an expanded dining area and pergola-covered seating space.

The owners, Mark Boccia, John Ryan and Tony Truzzolino, are Queens entrepreneurs who have pledged to beautify the neighborhood and maintain the existing green landscaping, including trees and perennial rose thickets.

"Upon full completion, it will be an

outdoor oasis like no other and we are very proud and excited to provide this space for all to enjoy," Boccia said.

Austin's offers trendy pub-styled comfort food and has been serving patrons with a wide selection of spirits and domestic and imported beers since 1991.

The bar currently has 20 draught and 40 bottled beers. There is a mix of domestic beers such as Blue Point, Bronx Pale Ale, Brooklyn Lagers, Red Rocket, Dogfish Head and Southampton, as well as imports like Smithwicks, Duvel Golden Ale, Chimay, Magners and Kopparberg.



Photo Courtesy of Austin's Ale House

Austin's Ale House announced the expansion of its outdoor dining space.