

TRANSFERRING ASSETS INTO YOUR CORPORATION

If you are forming a new corporation or just interested in transferring assets into your existing corporation keep in mind that any transfer of property in an exchange is generally taxable in the same manner as a sale for cash. The gain or loss in the exchange will be measured by the fair market value of the property received and the basis of the property transferred. One of the exceptions to this general rule is where a person transfers property to a corporation solely in exchange for its stock if immediately after the exchange he is in "control" of the corporation. The good thing is that it does not have to be a newly formed corporation, as long as the transferor or transferors receive stock and are immediately after the exchange in "control" of the corporation.

Under Internal Revenue Code §351, no gain or loss is recognized if one or more persons transfer property to a corporation solely in exchange for the stock in the corporation and immediately after the exchange such person or persons are in control of the corporation. The basic requirement for this tax-free exchange is that the transferor or transferors must be in control immediately after the exchange. Control, for this purpose, means the transferor or transferors must have ownership of stock possessing at least 80 percent of the total stock of the corporation. The gain or loss is not recognized when in exchange for the transferred property, the transferor receives the corporation's stock or securities.

A transferor could transfer appreciated property into a corporation without recognizing a gain. For purposes of Internal Revenue Code §351, when a transferor receives securities, such securities will be treated as "boot" in all cases. Boot is other property or money the transferor receives in addition to the stock.

Permitting a nontaxable transfer to a controlled corporation will postpone the recognition of gain or loss until the stock received in the transfer is ultimately disposed of by the transferor. This is accomplished by attributing to the stock the same basis as that of the property originally transferred in exchange. More importantly, the property transferred will retain its basis in the hands of the corporation.

The first step in the transfer process is to form the corporation and the offer by the transferor of the property to the corporation. The courts have held and the Internal Revenue Service has ruled that money qualifies as property in addition to goodwill, patents, and other intangible assets constitute property for this purpose, except services. The second step would be that the corporation's shareholders and the board of directors must accept the offer, and the board of directors must authorize the issuance of the stock upon delivery of the appropriate instruments of conveyance. The final step is the execution and delivery of the instruments of conveyance and property. The importance of formal instruments of transfer, even in the case of a small corporation, cannot be overemphasized. Such instruments are not only a prerequisite to completing the transaction, but can record effectively the price and terms of the transaction.

If you have any questions or if you would like to speak to one of the attorneys at Spiegel & Utrera to assist you with any questions you may have on the legal or tax ramifications of transferring assets into your corporation, feel free to call us at 800-603-3900 (\$3.99 per minute charged to any major credit card) or 900-370-6800 (\$4.99 per minute charged to your phone, you must be 18). Always keep in mind that Spiegel & Utrera is ready to assist you in the steps necessary to maximize your business' profits.

If you have any questions, please call a Spiegel & Utrera office listed below:

MIAMI, FL	NEW YORK CITY, NY	TAMPA, FL	LAS VEGAS, NV
CALL: 305-854-6000 800-603-3900 FAX: 305-857-3700	CALL: 212-962-1000 800-576-1100 FAX: 212-964-5600	CALL: 813-871-5400 800-658-5900 FAX: 813-870-2500	CALL: 702-364-2200 888-530-4500 FAX: 702-458-2100
CHICAGO, IL	LOS ANGELES, CA	LONG ISLAND, NY	DOVER, DE
CALL: 312-443-1500 888-514-9800 FAX: 312-443-8900	CALL: 323-936-3400 888-520-7800 FAX: 323-939-5600	CALL: 516-338-9100 888-797-6200 FAX: 516-338-9200	CALL: 302-744-9800 888-641-3800 FAX: 302-674-2100
FT LAUDERDALE, FL	CLIFTON, NJ	ORLANDO, FL	
CALL: 954-630-9800 800-465-8500 FAX: 954-561-7900	CALL: 973-473-2000 888-336-8400 FAX: 973-778-2900	CALL: 407-898-5500 888-991-9700 FAX: 407-894-5700	