

Radical Transparency: Our Controversy with the IRS

S.Crow Collateral Corp.'s President Stanley D. Crow is under examination by the Boise office of the Internal Revenue Service in which the assigned agent purports to seek to know these two things:

1. Whether Mr. Crow has made a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit which he knew or had reason to know was false or fraudulent as to any material matter;
2. Whether Mr. Crow failed to report to the IRS any "reportable" transaction in which he was a "material advisor".

The examination began on November 15, 2015, and through three separate agents (assigned agents keep retiring) the IRS has never stated that anything whatever was or is amiss with any transaction of Mr. Crow or of S.Crow Collateral Corp. Despite repeated efforts and requests by Mr. Crow and by S.Crow Collateral Corp., the local IRS office has refused to discuss the transactions, identify any issues with the transactions, or to take any position about them. On June 8, 2017, Mr. Crow formally requested that the IRS local office request advice about the transactions from the national office of the IRS. The local IRS office has ignored the request for more than two years now.

Yet, to this day, the local IRS office purports to continue to "examine" the two questions described above.

So, let's see whether there is any substance to what the agent purports to be doing.

"Reportable" Transaction?

The IRS has identified five types of "reportable transactions":

1. Listed transactions;
2. Confidential transactions;
3. Transactions with contractual tax protection;
4. Certain loss transactions; and
5. Transactions of interest as identified by published notice, regulation or guidance.

When (or if) the IRS actually reviews the question, it will be obvious that no transaction of Mr. Crow or S.Crow Collateral Corp. is a "reportable transaction".

The "listed transactions" and "transactions of interest" categories refer to transactions that are the "same as or substantially similar to" any of the transactions on published lists. Both lists are included in the attachment, below. Monetized installment sales are not on either list.

Treasury Regulations determine that a "confidential transaction" is one in which a taxpayer in the transaction pays an advisor a fee and the advisor requires the taxpayer not to disclose the tax

treatment or tax structure of the transaction and not to disclose the advisor's tax strategies. No such confidentiality is required in S.Crow Collateral Corp.'s transactions, it would be contrary to our interest to require that they be kept secret, and besides, S.Crow Collateral Corp. is never paid a fee for a monetized installment sale. We engage in these transactions in hope of making money from the resale proceeds and in hope of eventual profit at the end.

Treasury Regulations determine that a transaction with "contractual tax protection" is one in which the taxpayer has the right to a full or partial refund of fees if all or part of the intended tax consequences from the transaction are not sustained, or if the fee is contingent on the taxpayer's realization of tax benefits from the transaction. No S.Crow Collateral Corp. transaction contains any such provision, and we don't charge a fee anyway.

It would be ludicrous to think that a monetized installment sale transaction could fall within the "loss transactions" category. After all, if a seller seeks to defer the tax on an installment sale, it's by definition a *gain* transaction.

In view of how obvious it is that S.Crow Corp.'s transactions are not "reportable transactions", it is not clear how, after almost four years, the IRS can continue to assert that this remains a real question under examination.

False or Fraudulent Statement?

In the nearly four years of the purported examination of Mr. Crow, the IRS has never identified any false or fraudulent statement made by him with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit.

As to making any statements about tax benefits, it is noteworthy that every installment agreement includes the following language expressly providing that neither party is relying on the other for tax advice:

Tax, Legal and Investment Advice. Neither party relies on the other, or on any agent, representative or officer of the other, for any tax, legal or investment advice or counsel regarding this transaction or its meaning or effects. *Both parties acknowledge that they have carefully read and examined this Agreement, have sought and obtained such tax, legal and investment advice and counsel as they have deemed appropriate, and are satisfied that they know and understand the provisions of this Agreement and its operation and effects.*

Moreover, all of our written communications with sellers and prospective sellers clearly disclaim any such statement about a tax benefit:

As a principal only, S.Crow Collateral Corp. does not act in the capacity of a broker, sales representative, investment adviser, or tax or legal adviser, does not sell or recommend any security; and does not accept any transaction fee or payment for transaction services.

Circumstances may affect tax and legal outcomes. Each transaction is different and unique to each participant. Neither S.Crow Collateral Corp. nor any of its officers or employees may or does provide tax, legal or investment advice. Nothing in this (communication) is intended to be, or may be taken to be, tax, legal or investment advice. Interested parties should consult their legal, tax and investment advisers before participating in any transaction.

There is something even more basic, however. In order for the IRS to conclude that Mr. Crow made a false statement about tax benefits, it would have to demonstrate that installment sale treatment is not available in the transactions. If it seriously believed Mr. Crow has been making fraudulent statements, one would assume that after nearly four years it would have made some headway on the basic question whether installment sale treatment applies. As we mentioned earlier, the IRS local office has never shown any interest in discussing that question, never identified a single issue regarding whether Section 453 is available in the transactions, and so far has shown no interest in looking into the facts necessary to answer that question. For over two years it has ignored Mr. Crow's request that it submit the question to the National Office of the IRS.

The bottom line is this: almost four years into the purported examination of Mr. Crow, it does not appear the IRS is serious about its examination of him.

It's Not Clear What the IRS Wants

Since the local IRS office's actions for nearly four years indicate that it is not seriously examining Mr. Crow, that raises the question why it is doing this. One possibility is that the purported examination of him is a means to obtain sellers' names so that it can audit them or urge other IRS offices to do so.

So, if you are a prospective seller and you are considering a monetized installment sale transaction, you should think about that. The IRS may obtain your name as part of the examination of Mr. Crow, and the local agent may suggest that the IRS office where you are should audit you.

But then, if you are planning a substantial sale of *any* kind, you should be prepared for an audit whether or not you enter into a monetized installment sale transaction with S.Crow Collateral Corp. No matter in what way you do your sale, you would report it on your tax return, and it is typical and appropriate for closing agents, as well, to report closed transactions to the IRS. Whoever is your buyer, whether it's S.Crow Collateral Corp. or anyone else, would report the transaction on its tax return.

In any event, we will use every means at our disposal to get the IRS to do its job and bring this mess to an end.

Disclaimer Here, Too

As with everything else, this document is not legal or tax advice, and you may not rely on it to be such. S.Crow Collateral Corp. is an installment *buyer*, not an adviser, and not someone

who sits on the same side of the table with a seller. If you are a seller or prospective seller, you must obtain your own legal and tax advice.

ATTACHMENT

The Secretary of the Treasury has determined that the “**listed transactions**” are:

1. Certain claims of deductions for contributions to employee deferred compensation plans;
2. Certain trust arrangements for multiple employer welfare benefit funds;
3. Contingent installment sales of securities by partnerships to split income and losses;
4. Certain distributions from charitable remainder trusts;
5. Distribution of encumbered property with claimed but recovered losses;
6. Fast-pay arrangements;
7. Acquisition of two debt instruments with expected significant but balancing value changes;
8. Losses from artificially inflated basis of partnership interests;
9. Subsidiary’s purchase of parent’s stock, then transfer of the stock to employees, then liquidation or sale of the subsidiary;
10. Guamanian trusts;
11. Use of intermediary to sell 80% or more of the stock of a corporation within 12 months of a sale of the assets of the corporation (Notice 2008-111, modifying Notice 2008-20);
12. Loss on sale of stock in Section 351 transfer;
13. Certain stock redemptions not subject to U.S. tax;
14. Assumption of loan to inflate basis in assets, to claim losses;
15. Notional principal contract to claim current deductions with right to receive offsetting future payments;
16. Straddle, tiered partnership structure;
17. Lease-in/lease-out transactions;
18. Transfers of ESOPs holding S corporation stock;
19. Use of leasing companies to avoid income and employment taxes;
20. Collectively bargained welfare benefit funds outside the account limits;
21. Compensatory stock options;
22. Lease strips;
23. Contested liability trusts, to accelerate deductions;
24. Claim of loss on assignment of §1256 contract to a charity without recognition of gain;
25. Out-of-limits Roth IRA contributions;
26. Segregating profits of ESOP-owned S corporation so that rank-and-file employees don’t benefit;
27. Deduction for contributions to a qualified pension plan for certain premiums on life insurance contracts;
28. Certain foreign tax credit intermediary transactions;
29. Donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits of that stock;
30. Inter-company financing using guaranteed payments, with inappropriate deduction claims;

31. Certain sale-leaseback arrangements with tax-indifferent persons, in which the taxpayer profits and the tax-different person has little potential benefit;
32. Offsetting positions with respect to foreign currency to import a loss but not a gain;
33. Trust arrangements claiming to be a welfare benefit fund, using cash value life insurance to claim federal income and employment tax benefits;
34. Shifting the built-in loss in distressed assets to a taxpayer who had not incurred the economic loss;
35. Basket option contracts; and
36. Syndicated conservation easement transactions.

See <https://www.irs.gov/businesses/corporations/listed-transactions>

The Secretary of the Treasury has determined that the “**transactions of interest**” are:

1. Claim of a charitable contribution of rights in real estate at a significantly higher amount than the taxpayer paid to acquire the rights;
2. Termination and re-creation of a grantor trust, to claim a tax loss greater than the economic loss or to avoid recognition of gain;
3. Sale or disposition of interests in a charitable remainder trust after contribution of appreciated assets to the trust in a way that permits a non-charitable recipient to receive the value while recognizing little or no gain;
4. Certain transactions in which a U.S. taxpayer controls a foreign corporation to avoid inclusion of income for the U.S. taxpayer;
5. Use of a domestic partnership to prevent inclusion of subpart F income; and
6. Notice 2008-111 intermediary transactions, if four specified objective components are present (such as, that 80% or more of the stock of a corporation is sold within twelve months of the sale of at least 65% the assets).

See <https://www.irs.gov/businesses/corporations/transactions-of-interest>