

Various M&A Tax Strategies Related to the 2025 OBBBA

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Learning Objective & Agenda

- **Learning Objective:** To provide CPAs and tax practitioners with a legal perspective on how OBBBA provisions impact M&A deal structuring and what to watch for when preparing personal and partnership income tax returns.
- **Agenda:**
 - Transaction Structures
 - OBBBA Overview and Key Business Tax Changes
 - Bonus Depreciation (Section 168) and M&A Impact
 - Section 179 Expensing Updates
 - Business Interest Deduction: Section 163(j) Changes
 - R&D Expensing (Section 174) Restoration
 - QBI Deduction (Section 199A) Made Permanent
 - QSBS (Section 1202) Expanded Benefits
 - SALT, PTET & Partnership Considerations
 - Deal Structuring Strategies Under OBBBA
 - Key Takeaways and Q&A

Entity Types & Diagram Legend



Oval = Individual/ Shareholder / Owner / Acquirer



Rectangle = Corporation



Triangle = Partnership



Red Arrow = Transaction Flow (cash, stock, assets)



Black Line = Ownership / Control



Dashed Line = Before / After Divider



Rectangle with a Circle = Disregarded Entity / QSub

Entity Types for Tax Purposes:

C Corporation: Subject to entity-level tax

S Corporation: Pass-through (no entity-level tax)

Partnership/LLC: Pass-through (no entity-level tax)

Disregarded Entity: Not recognized for tax

Note: Entity classification determines tax treatment of the transaction and available structures.

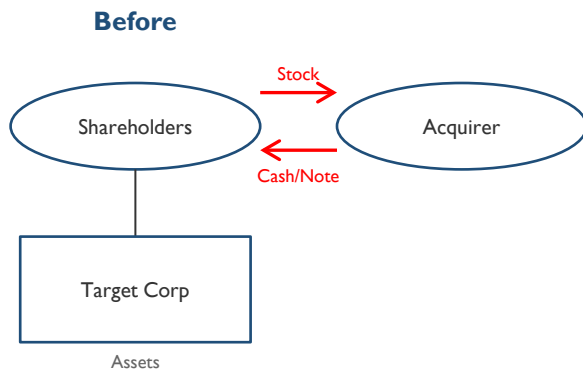
Asset Deal vs. Stock Deal

- **Stock Deal:** Buyer purchases ownership interests (stock/membership interests) from the sellers
- **Asset Deal:** Buyer purchases individual assets (and assumes specified liabilities) from the entity
- **Buyer Preference:** Generally prefers asset deal — stepped-up basis = tax deductions
- **Seller Preference:** Generally prefers stock deal — single level of tax, capital gains rates
- **The Conflict:** What is best for the buyer isn't always the best for the seller, and vice versa
- **The Solution:** Various structures can bridge the gap — the next slides walk through each one

S Corporation vs. C Corporation

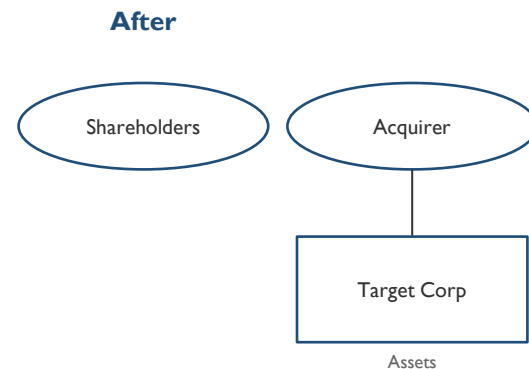
- **C Corporation**
 - Subject to entity-level income tax (21% federal rate)
 - Shareholders taxed again on dividends/liquidation (double tax)
 - Asset sale triggers **TWO** levels of tax
- **S Corporation**
 - Pass-through entity — no entity-level tax
 - Income/loss flows through to shareholders
 - Asset sale triggers only **ONE** level of tax
- **Key Takeaway:** Entity classification drives the available deal structures and total tax cost

Taxable Stock Sale



Tax Results:

- Single level of tax to shareholders
- May qualify for capital gains rates
- Target retains historic asset basis (no step-up)
- Acquirer inherits Target's tax attributes



Key Considerations:

- Acquirer assumes all liabilities
- No contract/IP assignment issues
- §338(h)(10) election possible for S Corp or consolidated Targets
- IRS Forms: Sched. D, Form 8949 (shareholders)

Taxable Asset Sale — C Corporation



Tax Results:

- TWO levels of tax (double tax)
- 1st: Corporate tax on asset sale gain
- 2nd: Shareholder tax on liquidation
- Acquirer gets stepped-up asset basis

Key Considerations:

- Acquirer can cherry-pick assets/liabilities
- Requires contract/IP assignment
- Depreciation/amortization deductions for Acquirer
- IRS Forms: Form 8594 (both parties)

Taxable Asset Sale — S Corporation



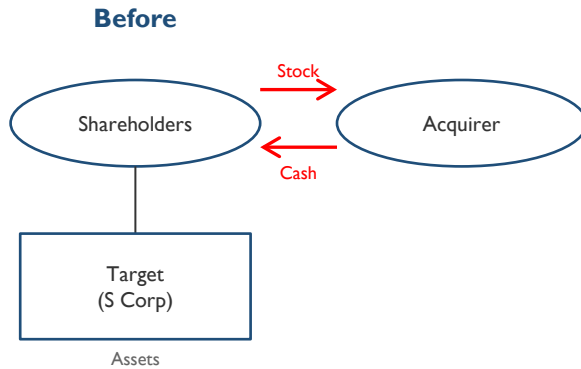
Tax Results:

- SINGLE level of tax (pass-through)
- Gain flows through to shareholders' returns
- Acquirer gets stepped-up asset basis
- Depreciation/amortization deductions

Key Considerations:

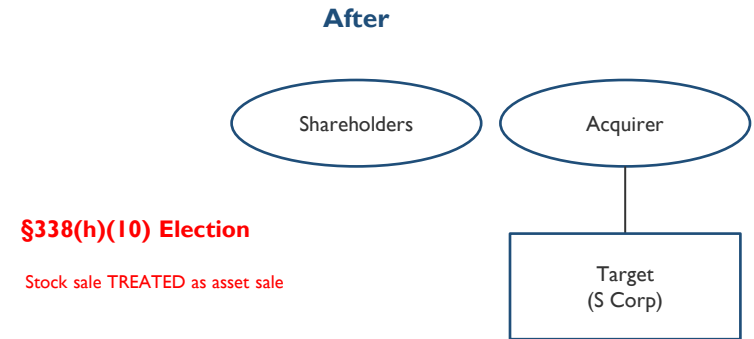
- S Corp preferred over C Corp for asset sales
- Built-in gains tax may apply (BIG tax)
- Requires contract/IP assignment
- IRS Forms: Form 8594, Sched. K-1

§338(h)(10) / §336(e) Election



Tax Results:

- Legal form: Stock sale
- Tax treatment: Deemed asset sale
- S Corp: Single level of tax to shareholders
- Acquirer gets stepped-up basis in assets



Key Considerations:

- No contract/IP assignment needed
- Acquirer gets depreciation/amortization
- IRS Forms: Form 8023, Form 8594

Stock Deal Treated Like an Asset Deal

- **The Big Idea:** Certain elections let you have the legal form of a stock sale with the tax treatment of an asset sale
- **§338(h)(10):** Joint election by buyer and seller; S Corp or consolidated subsidiary target
- **§336(e):** Unilateral seller election; broader availability but similar result
- **Why It Matters:**
 - **Seller gets stock sale mechanics from a legal perspective (no contract assignments)**
 - **Buyer gets stepped-up asset basis (depreciation/amortization deductions)**
 - **S Corp target: Single level of tax to shareholders**
- **IRS Forms:** Form 8023 (§338 election), Form 8883 (asset allocation), Form 8594

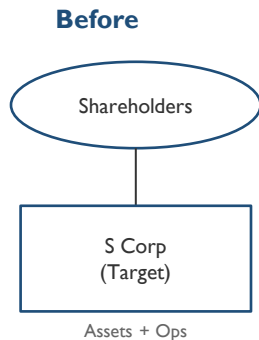
The S Corp Target: Problem and Solution

- **The Problem:**
 - **Buyer wants asset deal (stepped-up tax basis, deductions)**
 - **But S Corp cannot merge tax-free into buyer's structure easily**
 - **Actual asset sale requires contract/IP assignments (operational headaches)**
 - **Buyer may have concerns with historic S Corp election (which would invalidate 338(h)(10))**
- **The Solution — Two Main Approaches:**
 - **1. §338(h)(10) election:** Stock sale treated as asset sale for tax
 - **2. F Reorganization:** Drop S Corp into a new entity, Convert S Corp to LLC, then sell LLC interests
- **Either way:** Single level of tax to sellers + stepped-up basis for buyer
- **Your Role:** Model both approaches to show client the bottom-line impact

What Is an F Reorganization?

- **§368(a)(1)(F):** A mere change in identity, form, or place of organization
- **In the M&A Context:**
 - **Pre-closing restructuring of S Corp target into holding company + LLC**
 - **Buyer purchases LLC interests (treated as an asset purchase for tax purposes)**
 - **4-step process completed immediately before closing**
- **Tax Treatment:**
 - **The restructuring itself is tax-free to all parties**
 - **Subsequent LLC sale treated as asset sale**
 - **Single level of tax to shareholders + stepped-up basis for buyer**
- **Rev. Rul. 2008-18:** IRS confirmed this structure works as intended

F Reorganization: Steps 1–3



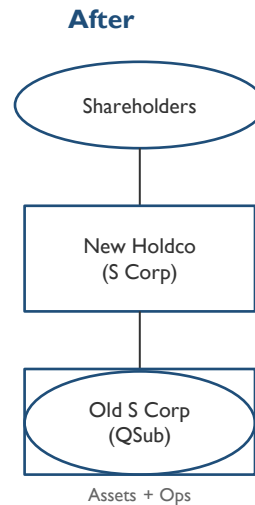
Steps 1–3 (completed before closing):

- Step 1: Shareholders form new S Corp holding company (Holdco)
- Step 2: Shareholders contribute old S Corp stock to Holdco (tax-free under §351)
- Step 3: Holdco makes QSub election for old S Corp — old S Corp becomes disregarded entity

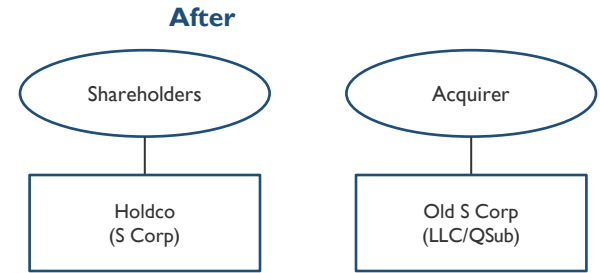
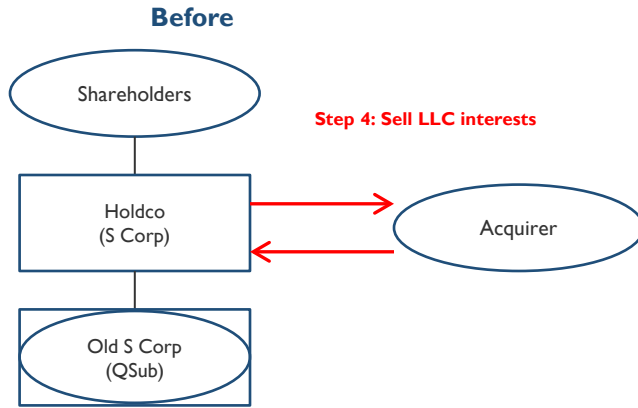
Step 1: Form Holdco

Step 2: Transfer stock

Step 3: QSub election



F Reorganization: Step 4 — The Sale



Step 4 (at closing):

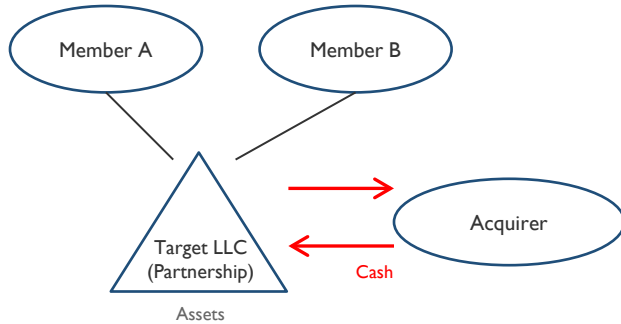
- Acquirer purchases 100% of LLC interests from Holdco (treated as asset purchase for tax)
- Single level of tax flows through Holdco to shareholders via Schedule K-1
- Acquirer gets full stepped-up basis in all assets — depreciation/amortization deductions

F Reorganization: Tax Results

- **For the Sellers (Shareholders):**
 - **Single level of tax on sale proceeds (pass-through via Holdco)**
 - **Pre-closing F Reorg steps are tax-free (§368(a)(1)(F))**
- **For the Buyer (Acquirer):**
 - **Stepped-up basis in all assets (same as an actual asset purchase)**
 - **Depreciation and amortization deductions going forward**
 - **No need for contract or IP assignments**
 - **Buyer should not incur any historic Target S Corp liabilities**
- **IRS Forms:** Form 8594 (asset allocation), Schedule K-1 (shareholder income)
- **Compared to §338(h)(10):** Similar tax result, but F Reorg avoids deemed sale of goodwill concerns

LLC / Partnership Interest Sale

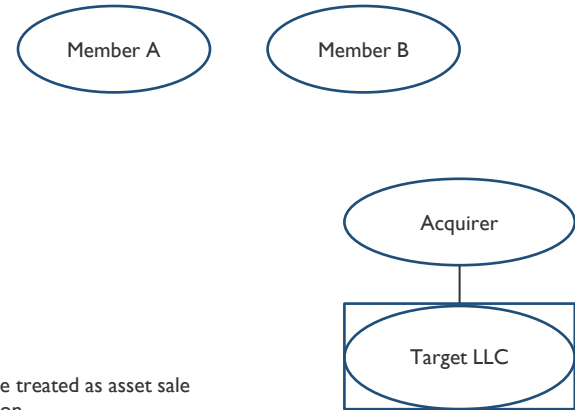
Before



Tax Results:

- Sale of LLC interests = asset sale for tax
- Single level of tax to members
- Acquirer gets stepped-up asset basis
- Character depends on §751 (hot assets)

After



Key Considerations:

- Default: LLC interest sale treated as asset sale
- No need for §338 election
- Watch for §751(a) ordinary income (hot assets)
- IRS Forms: Sched. K-1, Form 8308

Pro Tip: Call Your Accountant Early

- **Before signing the LOI, the seller's accountant should build a model:**
 - **Given this purchase price, what is the bottom-line number?**
 - **Model each structure: stock sale, asset sale, §338(h)(10), F Reorg**
 - **Factor in federal + state rates for the seller's situation**
 - **Consider §751 ordinary income (hot assets) for partnerships/LLCs**
- **Why This Matters:**
 - **Sellers focus on headline price — shocked by tax bill**
 - **Knowing the after-tax number informs negotiation strategy**
 - **May justify asking for gross-up or adjusting the price**
- **Bottom Line:** Run the numbers early — fewer surprises at closing

Taxes & the Gross-Up Concept

- **What Is a Gross-Up?**
 - **Additional payment to cover incremental tax cost of buyer's preferred structure**
 - **Makes seller whole — same after-tax proceeds regardless of structure**
- **When Does It Come Up?**
 - **Buyer wants asset treatment but seller faces higher tax**
 - **The gross-up itself is taxable — must gross up the gross-up**
- **Formula:** $\text{Gross-Up} = \text{Tax Differential} \div (1 - \text{Seller's Tax Rate})$
- **Example:** $\$680\text{K incremental tax} \div (1 - 0.20) = \$850\text{K gross-up}$
- **Check:** $\$850\text{K} \times 20\% = \$170\text{K tax}; \$850\text{K} - \$170\text{K} = \$680\text{K} \checkmark$

Hypothetical: Putting It All Together

- **Facts:** S Corp target; Purchase Price \$20M; Basis \$2M; Gain \$18M
- **Stock Sale (no election):**
 - $\$18\text{M gain} \times 20\% = \$3,600,000$ tax
 - **After-tax proceeds: \$16,400,000**
- **Asset Treatment (§338(h)(10) or F Reorg):**
 - **Equipment:** $\$4\text{M} \times 37\% = \$1,480,000$
 - **Goodwill:** $\$14\text{M} \times 20\% = \$2,800,000$
 - **Total tax: \$4,280,000 | After-tax: \$15,720,000**
- **Incremental Tax:** $\$4,280,000 - \$3,600,000 = \$680,000$
- **Gross-Up:** $\$680,000 \div (1 - 0.20) = \$850,000$
- **Verification:** $\$850\text{K} - (\$850\text{K} \times 20\%) = \$680\text{K} \checkmark$ — Seller nets \$16,400,000 either way

OBBBA Overview

- Signed into law July 4, 2025 (Public Law 119-21)
- Extends and makes permanent key provisions of the 2017 Tax Cuts and Jobs Act (TCJA)
- Major business tax changes affecting M&A deal structuring
- Corporate tax rate remains at 21%
- Key impacts for your clients: changes to depreciation, interest deductions, R&D expensing, and pass-through deductions that will affect returns you prepare

Bonus Depreciation (Section 168)

- OBBBA permanently restores 100% bonus depreciation for qualified property acquired and placed in service after January 19, 2025
- Reverses the TCJA phasedown (was 40% in 2025, heading to 20% in 2026)
- New Section 168(n): 100% depreciation for "qualified production property" (manufacturing, production, refining facilities) placed in service before January 1, 2031
- Used property eligible if additional requirements met (no prior use (5-year lookback), not acquired from a related party) — watch for Form 4562 reporting changes

Bonus Depreciation: M&A Impact

- Buyers of asset-heavy businesses benefit from full first-year write-off of stepped-up basis
- Increases after-tax cash flow and reduces immediate tax liability
- Sellers may face depreciation recapture as ordinary income
- Makes asset deals more attractive vs. stock deals for buyers

Section 179 Expensing

- Expense limit increased to \$2.5 million (from \$1.25 million in 2025)
- Phase-out threshold raised to \$4 million (from \$3.13 million in 2025)
- Effective for tax years beginning after December 31, 2024
- Supplements bonus depreciation for qualifying equipment and software
- Combined with bonus depreciation, creates powerful front-loaded deductions — reported on Form 4562, Part I; verify client elections carefully

Business Interest Deduction: Sec. 163(j)

- OBBBA restores EBITDA-based calculation for adjusted taxable income (ATI)
 - Depreciation, amortization, and depletion added back to ATI (effective for tax years beginning after December 31, 2024)
 - 30% of ATI cap now applies to a larger base
- For tax years beginning after December 31, 2025: interest capitalization ordering rules revised; CFC income exclusions from ATI
- IRS issued updated FAQ guidance (Fact Sheet 2025-09, Dec. 2025) — file Form 8990 for business interest limitation

Section 163(j): M&A Impact

- Larger interest deduction benefits leveraged buyouts (especially PE acquirers)
- Combined with 100% bonus depreciation, higher D&A increases ATI and thus the deductible interest amount
- Greater financing flexibility for debt-funded acquisitions
- Capital-intensive industries (manufacturing, real estate) particularly benefit
- Flag for clients: model the interaction between bonus depreciation and 163(j) before closing — legal counsel should review purchase agreement tax provisions

R&D Expensing (Section 174)

- Domestic R&E costs can again be immediately expensed (no longer required to capitalize over 5 years)
- Taxpayers may elect to capitalize and amortize over at least 60 months instead
- Foreign R&E costs still amortized over 15 years
- Effective for TY beginning after 12/31/2024 — Form 6765 for R&D credit

R&D Expensing: M&A Impact

- Improved cash flow for R&D-heavy businesses (tech, life sciences, engineering)
- Makes R&D-intensive companies more attractive acquisition targets
- When preparing returns for acquiring entities, verify historic R&E treatment — flag inconsistencies for legal counsel
- Consideration: stacking immediate R&D deductions with other front-loaded deductions could push taxable income too low

QBI Deduction (Section 199A)

- 20% deduction for qualified business income made permanent
- Increased phase-in range: \$75,000 (\$150,000 for joint filers)
- New minimum QBI deduction of \$400 if active qualified business income $\geq$ \$1,000
- Applies to sole proprietorships, S corps, partnerships, LLCs — flows through Schedule K-1; review Box 17 (S corps) and Box 20 (partnerships) carefully

QBI Deduction: M&A Impact

- Permanence provides long-term certainty for exit strategy planning
- Helps reduce overall tax burden for sellers in asset sales
- Particularly valuable in equipment-heavy industries where depreciation recapture creates ordinary income
- Makes asset sales more attractive to both sides
- Smoother negotiations when seller's tax burden is lighter

QSBS (Section 1202) Changes

- Gain exclusion cap increased from \$10 million to \$15 million (indexed for inflation starting 2027)
- New tiered holding period: 50% exclusion after 3 years, 75% after 4 years, 100% after 5 years
- Gross asset threshold increased from \$50 million to \$75 million (indexed for inflation)
- Applies only to stock issued after July 4, 2025
- Existing shareholders remain under old rules — report exclusion on Form 8949/Schedule D; document holding period carefully

QSBS: M&A Impact

- Makes equity sales of eligible C corp stock more tax-efficient
- Especially appealing for startup founders and long-term shareholders
- Tiered exclusion enables partial benefits for earlier liquidity
- Higher asset threshold broadens universe of qualifying businesses
- Figures prominently in choice-of-entity decisions
- Partial exclusion gains can roll over under Sec. 1045 within 60 days — advise clients to engage counsel before any sale to preserve QSBS eligibility

SALT, PTET & Partnership Considerations

- SALT cap increased to \$40,000 (from \$10,000) for 2025-2029
- Phase-down for MAGI over \$500,000; reverts to \$10,000 in 2030
- PTET workaround preserved — full federal deduction at entity level
- Section 707(a)(2): OBBBA confirms disguised sale rules are "self-executing" regardless of regulations
- Estate & gift tax exclusion permanently at \$15M (indexed) — update estate plans; changes on Form 709 for the lifetime exemption; check state conformity

Deal Structuring Strategies Under OBBBA

- Asset sales: favored by buyers (stepped-up basis + 100% bonus depreciation + higher 163(j) limit)
- PTET elections help align seller interests with buyer preference for asset deals
- C corp startups: QSBS expansion tilts toward stock sales for qualifying companies
- PE buyers: EBITDA-based 163(j) + bonus depreciation increases LBO attractiveness
- Charitable contributions: new 1%/0.5% floors limit pre-sale donations — coordinate with legal counsel on deal timeline and Schedule A implications

Key Takeaways



SELLER CONSIDERATIONS

Bonus depreciation, Sec. 179, EBITDA-based interest limits, and R&E expensing boost buyer cash flow



BUYER ADVANTAGES

Permanent QBI, expanded QSBS, and PTET preservation improve after-tax proceeds for sellers



STRATEGIC PLANNING

Coordinate early with legal counsel on deal structuring and flag OBBBA issues in return preparation

Questions & Answers

Philip B. Taub, Esq.

Thank you for attending!

FINAL SLIDE

