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In this article, Kliegman takes a tongue-in-cheek look at the Republican Party, examining it through a tax lens.

As I write this, it now appears that Paul Ryan, the Republican Party's leading elected official, has signaled his acceptance of Donald Trump as the party's candidate for the presidency in the fall. Even as hopeful expectations of unity are expressed, I don't think I'm being exceptionally pessimistic when I note that there is a schism in the GOP and that we do not know how things will turn out.

Which leads me to ask: What would a breakup of the Republican Party look like? To be more precise, after presumably too many years dwelling in the world of the Internal Revenue Code's subchapter C, I am wondering whether a restructuring of the GOP could qualify as a tax-free reorganization.

Yes, of course, we are talking about tax-exempt political organizations. Just the same, a reorganization lens brings the politics into a useful perspective.

I posit the following hypothetical transaction:

1. A group of individuals we will call the Republican Establishment (RE) — Mitt Romney, *National Review*, William Kristol, the Bush family, and others — decides to support a "third party" candidate.

2. Trump persuades Reince Priebus, chair of the Republican National Committee, to put on the agenda at the Republican convention a motion to change the name of the party to the Trump Party. The motion passes. The old party may now be called the Trump Party (Oldco).

3. The RE forms a new political party (Newco). The new party purchases from the newly renamed Trump Party all rights to the names Republican Party and Grand Old Party. (The parties have agreed that custody of the elephant will be determined through a specially appointed arbitration panel, and a guardian ad litem appointed to represent the interests of the elephant. Rumors that the Trump Party plans to replace the elephant with a peacock as the party's mascot have not been definitively verified. Among other issues, a deal will have to be negotiated with Comcast's NBC unit before this can occur.) Newco makes a cash payment to Oldco to purchase the Republican Party name based on the result of an independent valuation. Fortuitously for the Newco principals, this turns out to be a nominal sum.

So now we have two parties, each of which might be considered the successor to the former Republican Party. If a political party had tax attributes like a regular corporation, which would hold these attributes going forward?

Say the RE and Newco are your clients. Once you've taken them through a brief tour of section 368, their attention is drawn inevitably to the F reorganization — a mere change in form of a single entity. In such a reorganization the new entity is treated as if it were an uninterrupted continuation of the old entity — as if no reorganization had even taken place. Yes, they say, that's the right one; that is exactly what's going on here.

But will it qualify? Fortunately, that question is relatively easy to answer, thanks in part to recently promulgated final regulations under section 368(a)(1)(F). In fact, there are several reasons why the Oldco-Newco transaction would not qualify as an F reorganization. One requirement is that the two entities have identical shareholders. More specifically, the Newco shareholders must be identical to those who owned Oldco immediately before the transaction. While it is an open question who may be said to "own" the GOP going into the proposed transaction, it must be conceded that if our RE group truly wholly owned it, there would be no need for the reorganization in question; as such, the identity of shareholders requirement would not be met. Another requirement that goes to the core of the "mere change" definition is that we cannot end up with two entities continuing in active existence.

Clearly we cannot consider Newco to be a simple continuation of Oldco if they will both be in the marketplace at the same time — indeed, competing with one another — following our steps constituting the potential F reorganization.

Lest we lose the patience of our client and readers, we quickly go to the one other reorganization provision that may seem like an appropriate fit — the acquisitive D reorganization. Essentially this requires that Oldco be considered to transfer substantially all of its assets (tangible and intangible) to Newco in exchange for Newco stock or securities and other property, provided that one or more owners of Oldco control Newco immediately after the transaction and that Oldco liquidate in connection with the transaction.

The ''control'' problem can be disposed of fairly expeditiously. We do not need to determine that the Newco shareholders controlled Oldco, only that one or more owners of Oldco will own 50 percent or more of Newco. We may stipulate that the RE group, including two former Republican presidents, comprises one or more owners of pre-reorganization Oldco and that in our hypothetical transaction, they will initially own at least 50 percent of Newco.

Let's get to the important issue of ''substantially all.'' Can it be said that Oldco has transferred substantially all of its assets to Newco? This raises the question what are the assets of a political party. I haven't seen a balance sheet, but it's a good bet that there's not much on it other than cash, some investment assets, a bit of fixed assets consisting of office furniture and computers, and some liabilities.

We know from established case law and rulings that the question whether substantially all of a company's assets have been transferred is every bit a qualitative test as much as quantitative. In *Smothers v. United States*, 642 F.2d 894 (5th Cir. 1981), the Fifth Circuit (a reasonably likely venue for any expected litigation) considered a situation in which little was transferred other than some fixed assets sold at book value, with the bulk of the balance sheet remaining behind. However, the court found that the substantially all requirement for a D reorganization had been satisfied mainly because the principal shareholder who had historically stewarded the transferor corporation was going to be playing the same role in the new corporation and serving the same customers as it had historically served.

This approach bodes well for the RE in its effort to meet the reorganization requirements. A strong case could be made that the going concern of Newco will closely resemble the historical activity of the old entity, under the stewardship of the same management. This, indeed, seems to be the goal of the reorganization.

But can this transaction satisfy the requirement that the transferor corporation liquidate in connection with the transaction? Seemingly not. On the contrary, Oldco is generating a great deal of energy for a company in its death throes. The one argument I would offer to our client is the following: If Trump were to lose the upcoming presidential election, it is possible that the political party now bearing his name would dissolve. Of course, we cannot know whether that will be the case. A qualifying plan of reorganization must comprise each element of the plan in an unqualified manner. Here, what we have instead is perhaps a 50-50 binary possibility that Oldco will either dissolve or elect the next president.

Thus, try as we have to bring this transaction within the acquisitive reorganization provisions and thereby have Newco succeed to the historical attributes of the Republican Party, it seems that — there being two resulting living, breathing, talking (for sure) entities — our transaction is incompatible with the acquisitive reorganization provisions.

And so we must deliver the disappointing news to our client: This transaction is a corporate fission transaction and cannot be characterized as a single entity continuation or even a corporate fusion in which the whole of the former Republican Party is absorbed into the new. In the parlance of section 355, we have a split-up transaction. Indeed, a classic scenario for a section 355 split transaction involves a ''shareholder dispute.''

As our meeting with the client is about to end, Richard Lowry, editor of *National Review*, throws out a parting question. He's heard that sometimes a spinoff is followed by one of the resulting companies merging with another company. Yes, you say, that sounds like a *Morris Trust* transaction. His parting question is: ''Would your answer to our tax question change if, following our transaction, the Trump Party merged with the Democratic Party?''