# Section 112(b)(6): Benefit or Burden?

Raymond Whiteaker

# COMMENTS

## SECTION 112(b)(6): BENEFIT OR BURDEN?

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The general provision in the Internal Revenue Code pertaining to the liquidation of corporations is section 115(c). Under this section gain or loss on a liquidation is recognized to the extent that the assets received in liquidation exceed or fail to exceed the basis of the shareholder's stock. An exception to this general rule, however, is provided by section 112(b)(6) whereby a parent may liquidate a subsidiary without recognizing any gain or loss on the liquidation if the statutory requirements are met.

### *Historical Background and Purpose of Section 112(b)(6)*

The nonrecognition provision first appeared in the Revenue Act of 1935 as section 110(a).[1] This original provision was unsatisfactory[2] and was succeeded by section 112(b)(6) of the Revenue Act of 1936[3] which has survived succeeding revenue acts unchanged.[4]

The purpose of the nonrecognition provision was to encourage the simplification of corporate structures by allowing corporations to liquidate their subsidiaries without paying excessive penalties in the process.[5] The intent was not to exempt gains entirely, but merely to postpone recognition thereof until such time as they might be voluntarily realized. The underlying purpose was, thus, to assist and refrain from penalizing a parent that wished to liquidate a subsidiary by allowing it to do so without being subject to any immediate tax as a result thereof. Probably in the majority of situations section 112(b)(6) will benefit the parent corporation as Congress intended. However, in a number of instances it has proved to be quite a burden and rather costly taxwise to those corporate parents that have proceeded to

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1. 49 STAT. 1014, 1020 (1935).
2. See Colgan and Molloy, *Tax-Free Liquidations Of Corporate Subsidiaries Under Section 112(b)(6) Of the Internal Revenue Code,* 4 TAX L. REV. 305, 306 (1949).
3. 49 STAT. 1648, 1679 (1936).
4. For a treatment of the background and enactment of section 112(b)(6) see Friedman, *All Cash Distributions Under Section 112(b)(6),* 8 TAX L. REV. 369, 370 (1953).
5. Helvering v. Credit Alliance Co., 316 U.S. 107, 112, 62 Sup. Ct. 989, 86 L. Ed. 1307 (1942); Commissioner v. Kay Mfg. Corp., 122 F.2d 443, 445 (2d Cir. 1941); International Investment Corp., 11 T.C. 678, 683 (1948); SEIDMAN, LEGISLATIVE HISTORY OF FEDERAL INCOME TAX LAWS 240-43 (1938); Colgan and Molloy, *supra* note 2, at 305.

liquidate without being aware of its restrictive provisions. It is the purpose of this article to illustrate the normal application of section 112(b) (6) as a benefit to the parent as contrasted with the situations where the parent desires to reject the "benefit" of nonrecognition.

### *The Statute*

In order for a parent to bring itself within the provisions of section 112(b) (6) it must comply with the technical requirements of the statute. The first requirement is that on adoption of the plan of liquidation, and at all times until the receipt of the property, the parent must be the owner of stock in the liquidating subsidiary to the extent of at least 80 per cent of the total combined voting power of all classes of stock entitled to vote, and of at least 80 per cent of the total number of shares of all other classes of stock except nonvoting stock which is limited and preferred as to dividends. Nor may the corporation own, at any time between the date of the adoption of the plan of liquidation and the receipt of the property, a greater percentage of any one class of stock than the percentage owned at the time of receipt of the property.[6] Finally, there must be either a complete liquidation in which the transfer of all the property occurs within the taxable year[7] or one of a series of distributions under which the transfer of all the property under the liquidation is to be completed within three years from the close of the taxable year in which the first distribution was made.[8]

The section has no effect on the tax liability of minority shareholders.[9]

The companion basis provision is section 113(a) (15), which also had its origin in the Revenue Act of 1936.[10] It provides that the assets received in liquidation shall have the same basis in the hands of the parent as they had in the hands of the liquidating subsidiary.[11] In certain cases, however, this section may produce an incongruous result in that it permanently eliminates any gain or loss inhering in the subsidiary's stock.[12]

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6. INT. REV. CODE § 112(b) (6) (A); U.S. Treas. Reg. 118, § 39.112(b) (6)-1 (1953).
7. INT. REV. CODE § 112(b) (6) (C); U.S. Treas. Reg. 118, § 39.112(b) (6)-2 (1953).
8. INT. REV. CODE § 112(b) (6) (D); U.S. Treas. Reg. 118, § 39.112(b) (6)-3 (1953).
9. U.S. Treas. Reg. 118, § 39.112(b) (6)-4 (1953).
10. 49 STAT. 1648, 1684 (1936).
11. Prior to the enactment of section 113(a) (15) the rule was that the basis of the assets in the parent's hands was the cost of the stock to it. This rule involved administrative difficulties as the basis of the stock of the parent had to be allocated among the assets received from the subsidiary and was, thus, abandoned.
12. For example, assume that *X* owns stock in *Y* at a cost basis of $8,000. *Y* is completely liquidated and dissolved within the year and turns over the assets which on its books have a basis of $13,000. *X* surrenders stock and

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A typical case illustrating the benefit of section 112 (b) (6) to a corporate parent on the liquidation of its subsidiary is *Metal Office Furniture Co.*[13] In that case *P* owned all the stock of *S* except that owned by *K*. The latter sold all of its stock to *P* by an oral agreement in October of 1936. Although delivery of the certificates was not made until December 29, 1936, both parties stood ready, willing and able to perform at all times. *S* was liquidated on December 31, 1936. *P* reported no gain on the liquidation contending that it was pursuant to section 112(b) (6) and gain was free from recognition. The Commissioner took the position that gain on the liquidation was taxable since *P* was not the owner of more than 80 per cent of the voting stock of *S* at the time the plan was adopted as required by statute.[14] The decision was in favor of the taxpayer on the theory that the purchase of the minority interest in the stock was a closed transaction in October of 1936. *P* thus owned 100 per cent of the voting stock of *S* prior to the adoption of the plan of liquidation and continued to own such stock until the receipt of the property in liquidation. Accordingly the liquidation was nontaxable under section 112(b) (6).[15]

In the above case the Commissioner determined that *P* had realized a gain of $163,919 on the liquidation of *S*. The plan might never have been proposed if *P* had known that it would be subject to an immediate tax on this amount. Thus, *P* appears to have properly availed itself of the Congressional intent of encouraging the simplification of corporate structures through the elimination of subsidiaries.

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In many cases, however, the situation is such that the parent corporation does not wish to come within the bounds of section 112(b)(6). Generally this problem arises when there has been a loss on the liquidation which the parent wishes to recognize,[16] or when the assets have a low basis in the hands of the subsidiary and the parent would prefer to pay a tax on the gain to obtain a "stepped up" basis for the assets.[17]

realizes no gain. The basis of the assets to *X* is the basis in *Y*'s hands, or $13,000. *X* has thus acquired a stepped-up basis of $5,000 on which it will never be taxed. Under the previous rule referred to in note 11 *supra*, this result would not have been possible.

13. P-H 1942 BTA-TC MEM. DEC. ¶ 42,337 (1942).

14. INT. REV. CODE § 112(b) (6) (A).

15. See also Helvering v. Credit Alliance Co., 316 U.S. 107, 62 Sup. Ct. 989, 86 L. Ed. 1307 (1942); Oregon Land and Livestock Co., P-H 1943 TC MEM. DEC. ¶ 43,504 (1943).

16. Suppose that corporation *A* forms corporation *B* with a capital of $100,000, and that *B* sustains operating losses of $50,000. Under a 112(b) (6) liquidation *A* would not be able to recognize this loss.

17. Thus if *A* purchased the stock of *B* for $100,000 and *B* had assets with a basis of $60,000 and a fair market value of $120,000, *A* would acquire the assets in a section 112(b) (6) liquidation at the lower figure of $60,000: *A*

Escaping the nonrecognition consequences of section 112(b) (6) may be a formidable task in the absence of competent advice and advance planning. The difficulties that have been experienced can best be illustrated by a discussion of a few of the cases.

In *International Investment Corp.*[18] *P*'s wholly owned subsidiary sold all of its assets during the taxable year, dissolved and distributed the cash resulting from the sale together with other cash to *P* in cancellation of its stock held by *P*. *P*'s adjusted basis for the stock was $278,680, whereas the total amount of cash received on the liquidation was $118,364. *P* desired to recognize the loss and claimed that section 112(b) (6) did not apply since "the word 'property' as used in the phrase 'property distributed in complete liquidation of another corporation' appearing in section 112(b) (6) does not include money; and only money was distributed to petitioner [*P*] upon the dissolution and liquidation of its subsidiary."[19] The court decided that in view of the legislative history of section 112(b) (6), cash distributions to the stockholders constituted property.[20] The parent was, thus, unsuccessful in its attempt to circumvent section 112(b) (6) by an all cash distribution and was not permitted to recognize the loss on the transaction.[21]

In *Service Co. v. Commissioner*,[22] *P*, an Arkansas corporation, owned all the stock of *S*. *P* decided to liquidate *S* and pursuant to a resolution or plan by *P*, as sole shareholder, all the assets were distributed and received by *P*. On its return for the year *P* claimed a long term capital loss from the liquidation of *S*. The loss was disallowed. *P* contested, claiming that it did not come within section 112(b) (6) as there was no "plan of liquidation" as required by statute, nor did it comply with the provisions of the treasury regulations requiring it to keep records and submit certain information.[23] The United States Court of Appeals for the Eighth Circuit held that there was no need for a formal plan of liquidation, it being enough that there was an intention to liquidate coupled with a distribution to the shareholders. As to the second point the court stated that strict compliance with the regulations was not a condition precedent to the application of the statute and that a tax-

would ordinarily prefer to pay a tax on the $20,000 gain and acquire the assets at the higher basis of $120,000.

18. 11 T.C. 678 (1948), *aff'd per curiam*, 175 F.2d 772 (3d Cir. 1949).

19. *Id.* at 681.

20. For a discussion of the problem of whether a cash distribution is "property" within the meaning of section 112(b) (6), see Colgan and Molloy, *Tax-Free Liquidations Of Corporate Subsidiaries Under Section 112(b)(6) Of The Internal Revenue Code*, 4 TAX L. REV. 305, 316 (1949). But see Friedman, *All Cash Distributions Under Section 112(b)(6)*, 8 TAX L. REV. 369 (1953).

21. *Contra:* Stimson Mill Co., 46 B.T.A. 141 (1942).

22. 165 F.2d 75 (8th Cir. 1948).

23. U.S. Treas. Reg. 118, § 39.112(b) (6)-5 (1953).

payer could not take advantage of its own default or reap a benefit therefrom.[24]

The above cases should serve as a sufficient warning to a parent that it cannot be too cautious in planning the liquidation of its subsidiary. In deliberately attempting to disqualify itself only those plans that have received judicial approval should be attempted. The only reliable methods of avoiding the scope of section 112(b) (6) are either by reducing the parent's holding below the 80 per cent level,[25] or by extending the liquidation beyond the statutory three-year period[26] or both.

The former method was successfully utilized in *Commissioner v. Day & Zimmerman, Inc.*[27] There *P* owned more than 80 per cent of the stock of two subsidiaries, both of which were having financial difficulties. *P* decided to liquidate both subsidiaries, but on being apprised of the tax consequences it sold amounts of stock in order to reduce its holdings to less than the 80 per cent required by section 112(b) (6) (A). Losses of $55,681 and $372,056 sustained on liquidation were allowed over the objections of the Commissioner. Although the minority interest in the stock had been sold to the treasurer of the parent, the evidence disclosed that the transaction was at arm's length and bona fide.[28]

Thus, by intentionally reducing its stock ownership below the 80 per cent requirement either prior to or subsequent to the adoption of the plan of liquidation, a parent may avoid the application of section 112(b) (6) (A).[29] A similar result was reached in *Rhode Island Hos-*

24. A similar case is Burnside Veneer Co. v. Commissioner, 8 T.C. 442 (1947), *aff'd*, 167 F.2d 214 (6th Cir. 1948). In that case a parent held 655 out of 810 outstanding shares of stock of *S* corporation at a cost of $65,000. As the result of a fire all the assets of *S* corporation were destroyed and the directors decided to liquidate. Parent sustained a loss of $24,140 on the liquidation which it sought to deduct as a long term capital loss. The Commissioner disallowed the loss claiming non-recognition under section 112(b) (6). Parent, however, contended that there was "no plan of liquidation" and that it did not meet the requirements of the regulations pertaining to liquidations covering more than one year. The court held that a plan of liquidation is not a status which can be assumed or discarded at will, but is a condition brought about by affirmative action. It further decided that a parent that sustains a loss in connection with the liquidation of a subsidiary cannot fail to comply with the regulations and set up such failure in order to claim the loss as a deduction. In such instances the requirements of the regulations can be waived.

25. INT. REV. CODE § 112(b) (6) (A). Commissioner v. Day & Zimmerman, Inc., 151 F.2d 517 (3d Cir. 1945); Rhode Island Hospital Trust Co., 7 T.C. 211 (1946).

26. INT. REV. CODE § 112(b) (6) (D).

27. 151 F.2d 517 (3d Cir. 1945).

28. It is essential that such a sale be bona fide. If the sale were arranged merely to avoid section 112(b) (6), the entire transaction may be disregarded for tax purposes.

29. Colgan and Molloy, *Tax-Free Liquidations Of Corporate Subsidiaries Under Sections 112(b)(6) Of the Internal Revenue Code*, 4 TAX L. REV. 305, 334 (1949).

*pital Trust Co.*[30] These cases definitely establish the fact that section 112(b) (6) is an elective provision which can be utilized or discarded by the parent as its interests may require, provided that the liquidation is properly planned.[31]

The development of another line of cases, however, requires that an additional *caveat* be directed to those corporations whose only motive in the purchase of another's stock is to obtain the assets of the latter.[32] Although it would appear through the application of sections 112(b) (6) and 113(a) (15) that the parent could acquire the stock and obtain the assets on liquidation at the same basis that the assets were held by the liquidating corporation, such is not the case. Where there is a purchase of stock followed by an immediate liquidation of the acquired corporation and the price paid for the stock is less than the basis of the assets, the Commissioner has successfully contended that section 112(b) (6) does not govern.[33] The reliance of the courts has been upon the "substance against form"[34] and the "single transaction"[35] theories. Actually the consideration of the purchase of the stock of a corporation and the subsequent liquidation thereof as a single transaction is but a

30. 7 T.C. 211 (1946) *Acq.* In that case *P*, a banking corporation, formed a subsidiary, *S*, for the purpose of acquiring, operating and disposing of properties covered by *P*'s mortgages. Due to a declining market *S* suffered substantial operating losses. Shortly before liquidation *P* disposed of about 25% of its *S* stock to an outside individual. It then liquidated and took its loss on the liquidation. The Commissioner disallowed the loss, contending that the sale of the stock was not bona fide, that *P* owned more than 80 per cent of the *S* stock and that section 112(b) (6) prevented recognition of the loss. The court held that under the facts section 112(b) (6) was not applicable.

31. Colgan and Molloy, *Tax-Free Liquidations Of Corporate Subsidiaries Under Section 112(b)(6) Of The Internal Revenue Code*, 4 TAX L. REV. 305, 333 (1949).

32. Although the buyer may be interested in a purchase of assets, the owner may only be interested in selling them through a sale of the stock. The owner's purpose is to avoid the double tax imposed in the *Court Holding* situation. The question presented, however, is whether the buyer's purchase of assets may also be considered as a sale of assets by the seller. If the intent of the parties is given any consideration, the refusal of a seller to sell anything but stock should preclude the decision that he has sold assets. The question has been litigated in Dallas Downtown Development Co., 12 T.C. 114 (1949), and Steubenville Bridge Co., 11 T.C. 789 (1948), both decisions being in favor of the taxpayer.

The problem is discussed in Magill, *Sale of Corporate Stock or Assets*, 47 COL. L. REV. 707 (1947); Mintz, *Seven Suggestions for Avoiding Double Taxation When Stock Sale May Be Transfer of Assets*, 88 J. ACCOUNTANCY 63 (1949); Note, *Sale of Stock or Purchase of Assets*, 4 TAX L. REV. 378 (1949).

33. Kimbell-Diamond Milling Co. v. Commissioner, 14 T.C. 74 (1950), *aff'd per curiam*, 187 F.2d 718 (5th Cir. 1951), *cert. denied*, 342 U.S. 827 (1951).

34. See Landman, *Multiplying Business Corporations And Acquiring Tax Loses*, 8 TAX L. REV. 81, 92 (1952), and cases cited therein.

35. *E.g.*, Commissioner v. Court Holding Co., 324 U.S. 331, 334, 65 Sup. Ct. 707, 89 L. Ed. 981 (1945); Commissioner v. Ashland Oil & Refining Co., 99 F.2d 588 (6th Cir. 1938); Bassick v. Commissioner, 85 F.2d 8, 10 (2d Cir. 1936); Thurber v. Commissioner, 84 F.2d 815, 818 (1st Cir. 1936); Prairie Oil & Gas Co. v. Motter, 66 F.2d 309, 311 (10th Cir. 1933); Gulf Shipbuilding Corp., P-H 1945 TC MEM. DEC. ¶ 45,248 (1945).

reversion to the earlier doctrine of *Prairie Oil & Gas Co. v. Motter*[36] and *Commissioner v. Ashland Oil & Refining Co.*[37] Since both of these cases were decided prior to the enactment of section 112(b)(6) it would appear that a different result might follow. However, in *Kimbell-Diamond Milling Co. v. Commissioner*[38] the rule established by these cases was upheld. In that case *P*'s milling plant was destroyed by fire and it collected insurance proceeds as reimbursement for the loss. Using the insurance proceeds and other money, *P* acquired 100 per cent of the stock of another mill company. The sole purpose in purchasing the stock was to acquire the assets of the other company. The stock was thus surrendered within five days after acquisition of the assets. *P* claimed that the basis of the assets in its hands was the same as in the hands of its transferor as the transaction came within sections 112(b)(6) and 113(a)(15). The Tax Court held that the purchase of the stock and the immediate liquidation of the corporation must be considered as one transaction, the purchase of the assets.[39] Therefore, section 112(b)(6) is not applicable and the basis of the assets in *P*'s hands is the cost of the stock. In reaching the decision the court referred to the *Ashland Oil & Refining Co.*[40] case and the single transaction doctrine making it apparent that there is no notion that section 112(b)(6) superseded this earlier doctrine. Although there appears to be a strong argument to the contrary,[41] the latter view is

36. 66 F.2d 309 (10th Cir. 1933). The question in this case involved the basis of assets purchased from a corporation which was liquidated and dissolved the day after the purchase. The assets had a basis of $300,000 to the liquidating corporation, but the stock was being purchased for $3,350,000. The Commissioner claimed that under the provisions of the applicable revenue act the transaction constituted a tax-free reorganization and the purchaser acquired the low basis of the liquidating corporation. The court held that the two steps constituted a single transaction and that the purchaser was entitled to a basis equal to the amount paid for the stock.

37. 99 F.2d 588 (6th Cir. 1938), *cert. denied,* 306 U.S. 661 (1939). In this case the taxpayer corporation desired to obtain the assets of another corporation. It purchased the stock and liquidated shortly thereafter. The court held that the transaction should be regarded as a whole and that the purchase of stock was merely a step in the acquisition of the assets. The basis of the assets was deemed to be the amount paid for the stock.

38. 14 T.C. 74 (1950), *aff'd per curiam,* 187 F.2d 718 (5th Cir. 1951), *cert. denied,* 342 U.S. 827 (1951).

39. A recent case reaching this result involved an individual who wanted to obtain a citrus grove. In the middle of the year he bought up the stock of the corporation that owned the grove, and in December he liquidated the corporation and took over the grove. The Tax Court held that the taxpayer bought the stock for the sole purpose of getting the assets; therefore, the purchase of the stock and the liquidation were really parts of one transaction, namely a purchase of the property. H. B. Snively, 19 T.C. 850, 5 CCH 1953 FED. TAX REP. ¶ 7258 (1953). Although this case did not involve section 112(b)(6), which applies only to corporations, it indicates the attitude of the court where there is a purchase solely to obtain assets. *Cf.* Ruth M. Cullen, 14 T.C. 368 (1950).

40. See note 37 *supra*.

41. Mannix, *Liquidation of Newly Acquired Subsidiaries,* 26 TAXES 1112, 1114 (1948). See also Magill, *Sale of Corporate Stock Assets,* 47 COL. L. REV. 707 (1947), where the author states that tax liability should be based upon the

not without reason.[42]

In the *Kimbell-Diamond* case the fair market value of the assets was greater than the cost of the stock. It was thus the objective of the Commissioner to establish the lower of these figures as the basis of the assets. If the situation had been the reverse, however, with the cost of the stock exceeding the value of the assets, it does not appear that the Commissioner could successfully reverse his position and contend that there were two separate transactions, a purchase of stock and a liquidation under section 112(b) (6), requiring the purchaser of the stock to retain the low basis for the assets. Nevertheless, the Commissioner has taken just that position in a case recently decided by the Tax Court.[43] The controversy is a result of the *Dallas Downtown Development Company*[44] case in which the Texas Bank & Trust Company sought to acquire an office building from the Dallas Downtown Development Company. Negotiations for the purchase of the building itself having been unsuccessful, a corporation, acting on behalf of the Texas Bank & Trust Company, was formed to purchase the stock of the Dallas Downtown Development Company. The purchase price of the stock was $700,000 which was in excess of the basis of the building in the hands of the former owners.[45] The Dallas Downtown Development Company was immediately dissolved and the Texas Bank Building was transferred to a new corporation, the Dallas Investment Company, which was organized for the purpose of placing a loan on the building. After the loan was made the Texas Bank Building was immediately transferred to the Texas Bank & Trust Company. The Commissioner asserted a deficiency against the Dallas Downtown Development Company as seller and the Texas Bank & Trust Company as transferee of the assets on the theory that the company sold its building and was, thus, taxable on the gain therefrom. The Tax Court found that the purchase of the stock of the Dallas Downtown Development Company was made by the agents of the bank for the account and benefit of the latter, and further that the only purpose and intent of the bank and its agents in carrying out the transaction was to acquire the bank building through liquidation of the Dallas Downtown Development Company.[46] Therefore, since the bank had purchased the stock and not the assets, the *Court Holding Company* problem was not involved and no tax was due on the sale.

actual facts of a transaction, and not upon the form the transaction might have taken.

42. Note, 4 TAX L. REV. 378 (1949).

43. Texas Bank & Trust Co., 5 CCH 1953 FED. TAX REP. ¶ 7494(M) (1953).

44. 12 T.C. 114 (1949).

45. The same situation existed in Prairie Oil & Gas Co. v. Motter, 66 F.2d 309 (10th Cir. 1933), *i.e.*, a purchase of stock the cost of which exceeded the basis of the assets. The court there held in favor of the taxpayer giving him a basis for the assets equal to the cost of the stock. See note 36 *supra*.

46. 12 T.C. 114, 123 (1949).

This second action was brought by the Texas Bank & Trust Company in order to determine the proper basis of the building in its hands. It had previously taken as its basis for the building the cost of the stock of the Dallas Downtown Development Company in reliance on the *Kimbell-Diamond* case.[47] The Commissioner, however, denied its rights to do so on the grounds that "the Tax Court sustained its position in the prior proceeding and held that the transaction did not involve a purchase and sale of assets but was nothing more than the purchase and sale of stock just as this petitioner contended."[48] From this premise the Commissioner concludes that since the petitioner asserted in the prior proceeding that the acquisition of the stock and the dissolution and liquidation of the Dallas Downtown Development Company were carried out in harmony with section 112 (b) (6), and since he has now conceded to these contentions, it follows that the result of such dissolution and liquidation is necessarily the basis provided for by sections 112 (b) (6) and 113 (a) (15).

At first blush it appears that the Commissioner has a very logical and well-reasoned argument. However, an analysis of the relevant cases[49] immediately reveals its weakness. It is conceded in this case that actually there was a purchase of stock prior to obtaining the assets, but there was also a purchase of stock in *Kimbell-Diamond Milling Co. v. Commissioner*,[50] *Ashland Oil & Refining Co. v. Commissioner*[51] and *Prairie Oil and Gas Co. v. Motter*.[52] The court found in all of these cases, however, that even though there was a purchase of stock the intent was essentially to purchase assets in which case the transaction must be viewed as a whole. Nor is there any substance to the contention that an inconsistent position is taken by claiming that the seller is selling stock and the purchaser is purchasing assets. The purchaser is admittedly purchasing stock, but when the sole purpose is to obtain assets the law ignores the form and treats the transaction as though it were a purchase of assets.[53]

In a memorandum opinion by Judge Turner the Tax Court followed

47. 14 T.C. 74 (1950), *aff'd per curiam,* 187 F.2d 718 (5th Cir. 1951), *cert. denied,* 342 U.S. 827 (1951).

48. Brief for Respondent, p. 11, Texas Bank & Trust Co., 5 CCH 1953 FED. TAX REP. ¶ 7494(M) 1953).

49. *E.g.,* Kimbell-Diamond Milling Co. v. Commissioner, *supra* note 47; Commissioner v. Ashland Oil & Refining Co., 99 F.2d 588 (6th Cir. 1938); Prairie Oil & Gas Co. v. Motter, 66 F.2d 309 (10th Cir. 1933); H. B. Snively, 19 T.C. 850, 5 CCH 1953 FED. TAX REP. ¶ 7258 (1953); Ruth M. Cullen, 14 T.C. 368 (1950).

50. See note 47 *supra.*

51. See note 37 *supra.*

52. See note 36 *supra.*

53. "If a taxpayer sought to avoid a tax on the profits of such a sale as this by asking the Commissioner to ignore the actualities, he would shortly and properly be reminded that taxation is an intensely practical matter and that the substance of the thing done, and not the form it took, must govern." Prairie Oil & Gas Co. v. Motter, 66 F.2d 309, 311 (10th Cir. 1933).

the above mentioned authorities in deciding the *Texas Bank and Trust Company* case. The Court held that the related steps must be treated as one transaction and that petitioners' basis for the real estate was the amount paid for the stock. This conclusion appears to be sound in view of the existing authorities and the fact that it had been previously adjudicated that the sole purpose of the Texas Bank and Trust Company in purchasing the stock of the Dallas Downtown Development Company was to acquire its assets,[54] the Texas Bank Building. Although the decision was a memorandum opinion it is important from the taxpayer's standpoint in that the Commissioner was precluded from taking a position inconsistent with that taken by him on similar facts in the *Kimbell-Diamond* case.

*Conclusion*

Section 112(b)(6) was intended to benefit parent corporations by permitting them to liquidate their subsidiaries without being penalized. Although there are decisions indicating that this result is not always accomplished, as where recognition of a loss or the purchase of a higher basis is desired, the failure can usually be attributed to a lack of proper planning and competent advice. Section 112(b)(6) is an elective provision and by strict compliance with the legislative and judicial requirements it may be either used or discarded at the taxpayer's will. There is one area, however, where reliance cannot be placed on sections 112(b)(6) and 113(a)(15). That is the situation in which a corporation desiring the assets of another purchases the stock of the latter and immediately liquidates. The present rule is to view the transaction as a single act, a purchase of the assets, with the cost of the stock as the basis of the assets. This, apparently, is the rule that will be followed regardless of whether the cost of the stock is more or less than the basis of the assets in the hands of the subsidiary.

54. Dallas Downtown Development Co., 12 T.C. 114 (1949).