

The background features a collection of colorful, overlapping loops and numbers. The loops are in shades of yellow, purple, blue, red, green, and orange. The numbers are also colorful and arranged in a curved pattern at the bottom of the slide.

Thank you for joining us!
The webinar will start momentarily...

Real Estate Tax Topics

August 2017

Welcome



Michael Koppel, CPA, MBA, MSA, PFS, CITP

Gray, Gray & Gray, LLP

617.775.2129

mkoppel@gggcpas.com

mike@thekoppels.com

The Rules

1. Moderator Will Not Be Political
2. You Can Politely
3. No Question is Dumb
4. You Can Ask Questions At Any Time



What to Consider?



Substantive Consolidation



Substantive Consolidation

Nutter McClennen & Fish LLP

“Allows a bankruptcy court, in certain circumstances, to augment the assets of a debtor’s bankruptcy estate with the assets of others affiliated with the debtor.”

Substantive Consolidation

“Substantial identity between the entities to be consolidated.”



Massachusetts [*Lassman v. Cameron Construction LLC*](#) (In re Cameron Construction & Roofing Co., Inc.) (Bankr. D. Mass. 2016)

Substantive Consolidation

“If substantive consolidation occurs it is likely that certain creditors may benefit while others do not. Courts will review the substantive consolidation process to determine if the benefit which accrues to the majority of the creditors is greater than the damage done to any particular creditor.”

www.bankruptcyhome.com

Substantive Consolidation

Who Wins? / Who Loses?



Substantive Consolidation

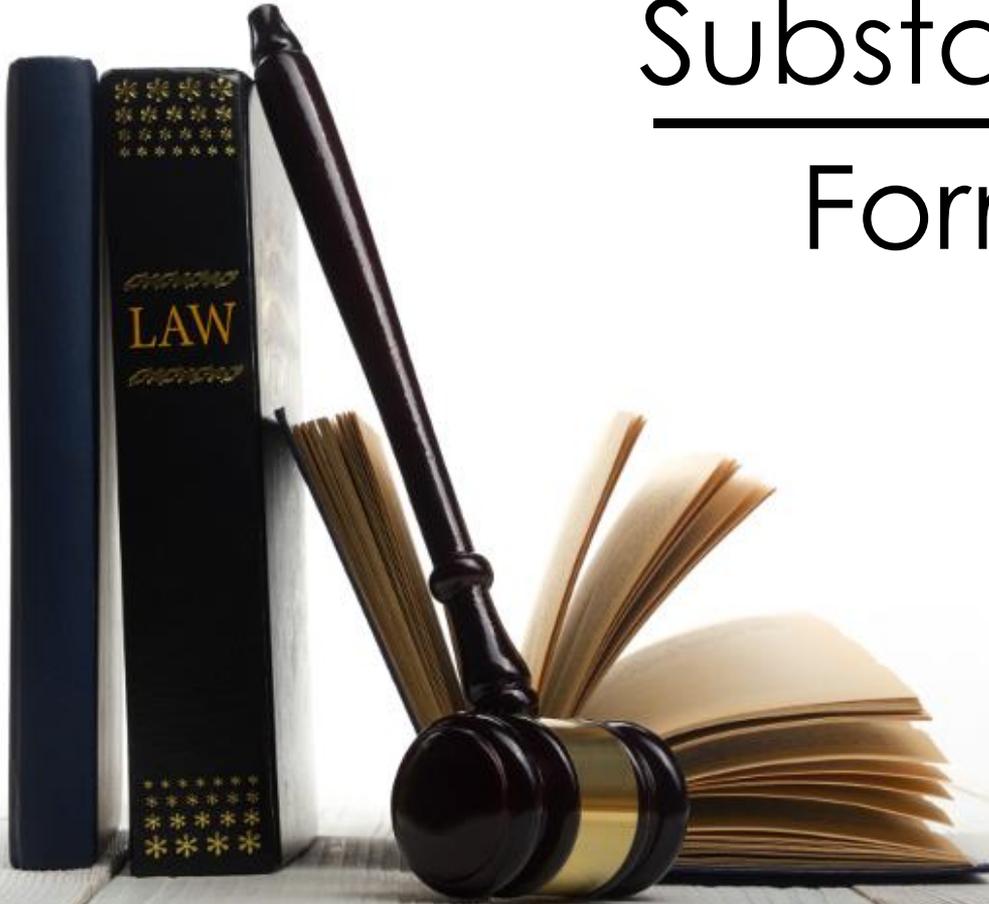
You Will

- Have a FMV Lease and Pay It
- Any Intercompany Activity at FMV
- Make Sure Stated Purpose on State Filing is Accurate
- If Any Shared Employees FMV Cost
- No Intermingling of Assets (Cash etc.)
- Any Loans at Arms Length
- Keep Separate Records and File Separate Returns



Substantive Consolidation

Substance Form



Like Kind Exchanges

§ 1031

Like Kind Exchange



Type of Property

Productive Use in a Trade or business



Allowable Real Estate Assets

Basically Anything Goes



Like Kind Exchanges

Direct Exchange



Like Kind Exchanges

Deferred Like Kind Exchange (Starker)

- Use a Qualified Intermediary
- 45 Day Identification Period (Must Be in Writing)
- Exchange Finished
 - 180 Days
 - Due Date of Return (With Extension)

Like Kind Exchanges

Reverse Link Kind Exchange Reverse Starker

Basically the same deadlines but more complex.

Like Kind Exchanges

Partnership Interest Exchange

Magneson v. Commissioner

“drop and swap,”



Timing

Commissioner of Internal Revenue v. Court Holding Co.



Like Kind Exchanges



Like Kind Exchanges

Related Party Restriction



Like Kind Exchanges

- Cash Received
- Net Debt



Like Kind Exchanges

DELAWARE STATUTORY TRUST



Like Kind Exchanges

Target For Tax Reform



Expense or Capitalize

Di Minimis Election



Applicable Financial Statement

- Sent to SEC
- Required By Other Government Agency
- Certified Financial Statements
 - Loans
 - Stakeholder
 - Other Nontax re-seasons



Expense or Capitalize

Amount

- With AFS \$5,000
- Without AFS \$2,500

 YOUR LOGO

COMPANY NAME | 123, Street Name, City Name, 123456, Country
P: +01 234 567 890 | www.companyname.com | lorem@ipsaum.com

INVOICE

INVOICE # 123456
DATE: 01/02/2016

INVOICE TO JOHN DOE
ADDRESS 123, Street Name, City Name, 123456, Country
EMAIL: lorem@ipsaum@lorem.com
PHONE +01 234 854 654
ID 0123456789

#	ITEM DESCRIPTION	PRICE	QUANTITY	TOTAL
1	WEB DESIGN <i>In quis vero nibh. Praesent vitae dignissim turpis. Sed curus, ipsum ac placerat pulvinar, lorem mi vestibulum velit, et laoreet ipsum est eu mauris.</i>	\$35.00	2	\$70.00
2	LOGO DESIGN <i>Maecenas et amet metus lacus, id rutrum leo. Sed et mauris in diam sagittis tempus et nec magna.</i>	\$100.00	1	\$100.00
3	BUSINESS CARD DESIGN <i>Donec viverra arcu nec odio consectetur at elementum velit. Hendrerit. Donec porttitor malesuada risus, sed tristique tellus fringilla non. Nam ornare mollis suscipit.</i>	\$15.00	3	\$45.00
4	FLYER DESIGN <i>Duis tempus mollis ante ac hendrerit. Nulla veli turpis, dictum eu commodo id, tincidunt eu dui. Osa adipiscing felis laoreet. In adipiscing lorem id una laoreet condimentum.</i>	\$40.00	1	\$40.00
5	CALENDAR DESIGN <i>Aliquam eget ipsum nisi, in laoreet nibh. Vivamus mattis mattis leo, at bibendum tortor vulputate varius. Ut sodales quam nulla, vitae pharetra sapien.</i>	\$150.00	2	\$300.00
TERMS & CONDITIONS <small>1. Maecenas et amet metus lacus, id rutrum leo. Suspendisse porttitor viverra arcu nec odio consectetur at elementum velit. 2. Sed et mauris in diam sagittis tempus et nec magna. Sed et sapien et tortor velvoluta pellentesque et in lacus. 3. Maecenas quam sapien mattis eget fringilla eu, accumsan ut ante. Quisque diam arcu, semper et interdodales eu, mollis nec ligula.</small>				SUBTOTAL \$555.00 TAXES 0.00% DISCOUNT 0.00% TOTAL \$499.50

PAYMENT METHOD
METHOD1 | METHOD2 | METHOD3

Thank you for your business!

ACCOUNT DETAILS
ACCOUNT NUMBER 123456789
SWIFT 123456
PAYMENTS@LOREMIPSUM.COM

.....
Company signature

.....
Client signature

Expense or Capitalize

Per Item or Invoice



Expense or Capitalize

Sample Capitalization Threshold Policy

A fixed asset is any tangible asset purchased for use in the day-to-day operations of [Company] from which an economic benefit will be derived over a period greater than one year. Fixed assets include items of property and equipment such as buildings, leasehold improvements, office furniture, fixtures, computers and other related technology equipment. At the time a fixed asset is acquired, its cost is capitalized unless it has a value of [\$__,__] or less in which case the asset is expensed in the period acquired. Amounts paid for property with an estimated useful life of 12 months or less with a value of [\$__,__] or less are expensed in the period acquired as well. Management will periodically review these levels and make any modifications necessary.

This policy was approved by: _____ Name
_____ Title _____ Date

Copied from Dixon Hughes Goodman LLP

Expense or Capitalize

Betterment

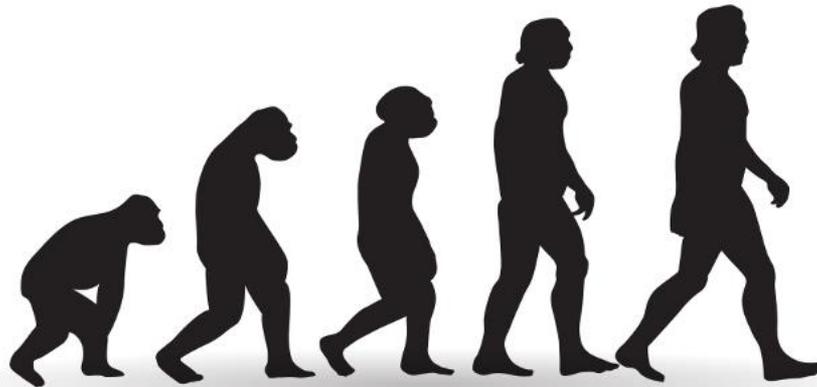
- Ameliorates a condition or defect that existed before the acquisition of property or arise during the production of the property
- Material addition to the Property
- Increases productivity, efficiency, strength etc. of the property



Expense or Capitalize

Adapts

An adaptation to a new or different use if the use is inconsistent with original intended use.



Small Taxpayer with Buildings

- \$10 Million or Less in Gross Receipts
- Building Unit of Property \$1 Million or Less
- Lesser of
 - \$10,000
 - 2% of Unadjusted Basis of Property



Unit of Property

All Components That Are
“Functionally Interdependent”



Required Unit of Property

- HVAC
- Plumbing Systems
- Electrical Systems
- Escalators
- Elevators
- Fire Protection & Alarm Systems
- Security Systems'
- Gas Distribution Systems
- Whatever Future Guidance Says



Expense or Capitalize

~~ROOF~~

Real Estate Professional

Real Estate Professional



Real Estate Professional

~~PASSIVE
ACTIVITY~~

Real Estate Professional

To Be A R/E Professional

- More than one-half of the total personal services the taxpayer performs in trades or businesses are performed in real property trades or businesses in which the taxpayer materially participates.
- The taxpayer performs more than 750 hours of services during the tax year in real property trades or businesses in which the taxpayer materially participates.

Material Participation

1. The individual participates in the activity for **more than 500 hours during such year**;
2. The individual's participation in the activity for the taxable year constitutes **substantially all of the participation** in such activity of all individuals (including individuals who are not owners of interests in the activity) for such year;
3. The individual participates in the activity for **more than 100 hours** during the taxable year, and such individual's participation in the activity for the taxable year **is not less than the participation in the activity of any other individual** (including individuals who are not owners of interests in the activity) for such year;
4. The activity is **a significant participation activity** (within the meaning of [temp. regs. sec. 1.469-5T(C)]) for the taxable year, and the individual's aggregate participation in all significant participation activities during such year exceeds 500 hours;
5. The individual materially participated in the activity (determined without regard to this paragraph (A)(5)) for any five taxable years (whether or not consecutive) during the ten taxable years that immediately precede the taxable year;
6. The activity is a personal service activity (within the meaning of [temp. regs. sec. 1.469-5T(D)]), and the individual materially participated in the activity for any three taxable years (whether or not consecutive) preceding the taxable year; or
7. Based on all of the facts and circumstances (taking into account the rules in [temp. regs. Sec. 1.469-5T(B)]), the individual participates in the activity on a regular, continuous, and substantial basis during such year

Real Estate Professional

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	
2017	planner																												2017									
January	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31							
February				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29						
March				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31				
April	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30								
May			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					
June					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30				
July	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31							
August			1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31					
September						1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31		
October	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31							
November				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30					
December					1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31			

Dealer or Investor?

1. Analyze the nature of the acquisition. Was the land initially purchased for investment or development?
2. Assess the frequency and continuity of the taxpayer's property sales.
3. Were the taxpayer's actions to increase the land's value more like those of a developer or an investor?
4. Did the taxpayer spend a significant amount of time finding buyers and negotiating property sales?
5. Were there any red flags indicating that (1) the sale may not have been at arm's length or (2) the price may not have been at market value?

Dealer or Investor?

Article



Other

Recapture and Other Tax Traps



Real Estate Investment Trust

Do You Really Want To Do This?

- Stock Exchange Traded REIT
- Private REIT



Questions





Michael Koppel, CPA, MBA, MSA, PFS, CITP

Gray, Gray & Gray, LLP

617.775.2129

mkoppel@gggcpas.com

mike@thekoppels.com

Contact Us

LET'S MEET

Gray, Gray & Gray, LLP
150 Royall Street | Canton, MA 02021

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Mark E. Kashgegian, CPA is a Certified Public Accountant in Massachusetts and serves as Partner at Gray, Gray & Gray, LLP.