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# MAJOR TAX ACCOMPLISHMENTS IN CONNECTION WITH RECENT BUSINESS RESTRUCTURINGS AND REORGANIZATIONS

## TAX LITIGATION

- **Dow Corning Corporation.** Deductibility of \$70 million in professional fees and other costs incurred during first two years of bankruptcy (pending decision, bankruptcy court, Eastern District of Michigan)
- **Dow Corning Corporation.** Deductibility of \$80 million in postpetition interest on prepetition debt (partial summary judgment in favor of the debtor, *In re Dow Corning Corporation*, 270 B.R. 393 (Bankr. E.D. Mich. 2001))
- **LTV Steel Company, Inc.** Enforcement of automatic stay against the State of Minnesota for filing tax liens on LTV's mining assets; determination of the scope of state sovereign immunity under the Eleventh Amendment (decision in favor of the debtor, *In re LTV Steel Company, Inc.*, 264 B.R. 455 (Bankr. N.D. Ohio July 2, 2001))
- **The Elder-Beerman Stores Corp.** Taxability of tenant allowances (decision in favor of the debtor, *In re The Elder-Beerman Stores Corp.*, 207 B.R. 548 (Bankr. S.D. Ohio 1997))
- **Federated Department Stores, Inc.** Deductibility of \$176 million in break-up fees (decision in favor of the debtor, *In re Federated Department Stores, Inc.*, 171 B.R. 603 (S.D. Ohio 1994), *aff'g* 135 B.R. 950 (Bankr. S.D. Ohio 1992))
- **Federated Department Stores, Inc.** Deductibility of net operating losses obtained in acquisition (decision in favor of the debtor, *In re Federated Department Stores, Inc.*, 170 B.R. 331 (S.D. Ohio 1994), *aff'g* 135 B.R. 962 (Bankr. S.D. Ohio 1992))

## PRIVATE LETTER RULINGS OBTAINED FROM THE IRS

- **Dow Corning Corporation.** Determination that settlement trust at the center of the debtor's plan of reorganization would be treated as a "qualified settlement fund" for federal income tax purposes and that the debtor's transfers to the fund, which could exceed \$3 billion, would be deductible when made
- **Edison Brothers Stores, Inc. (counsel to official creditors' committee).** Timing and applicability of limitations on the debtor's deductions for lease rejection damages arising from leases held by specialty apparel retailer for its retail stores
- **Federated Department Stores, Inc.** Determination of tax-free status of transactions combining Federated and Allied; determination of the impact of offset prohibition election and worthless stock deductions on group losses

- **R.H. Macy & Co., Inc. (counsel to purchaser).** Effect under stock-for-debt proportionality rule for method of distribution applicable to certain creditor classes; tax characterization of recoveries with respect to joint and several debt

## RESOLUTION OF MAJOR CLAIMS MADE BY THE IRS AS A CREDITOR IN BANKRUPTCY

- **Federated Department Stores, Inc.** Resolution of \$616.9 million claim (involving deductibility of break-up fees, deferral of tax on gain from sale of assets post-acquisition)
- **Montgomery Ward Holding Corp.** Resolution of \$170 million claim (involving entitlement to bad debt deduction, deductibility of professional fees, propriety of inventory method)
- **Dow Corning Corporation.** Resolution of \$145 million claim (involving deductibility of professional fees, deductibility of postpetition interest on prepetition debt, exclusion from income of disputed insurance proceeds)
- **Trans World Airlines.** Resolution of \$1.4 billion claim (involving deductibility of FCC mandated safety programs, capitalization of spare parts, deductibility of interest, professional fees and recapitalization costs and propriety of employee expense reimbursement systems)
- **Drexel Burnham Lambert Inc. (counsel to official creditors' committee).** Resolution of \$6.3 billion claim (involving deductibility of compensation, taxability of numerous financial transactions)

## INNOVATIVE REORGANIZATION STRUCTURES

- **Williams Communications Group.** Use of "G" reorganization structure to preserve tax basis in assets.
- **Burlington Industries.** Implementation of trust structure to permit worthless stock deduction with respect to subsidiary stock.

- **R.H. Macy & Co., Inc. (counsel to purchaser).** Reverse merger of Federated Department Stores, Inc. with and into R.H. Macy & Co., Inc.

- **The Imperial Home Decor Group Inc.** Taxable sale structure

- **Phar-Mor, Inc. (counsel to bank group).** Use of tiered LLC structure to hold litigation claims, maximize transferability of LLC membership interests

- **Purina Mills, Inc.** Negotiated resolution of complex tax-sharing issues arising from debtor's departure from privately-held affiliated group and emergence as publicly-traded company

- **Montgomery Ward Holding Corp.** Replacement of disputed claims reserve established under a plan of reorganization with a third party undertaking to pay allowed claims

- **Drexel Burnham Lambert Inc. (counsel to official creditors' committee).** Creation of complex reorganization structure designed to permit reorganized entity to retain basis and net operating losses of debtor. Post-reorganization tax attributes confirmed as part of the plan of reorganization through a closing agreement with IRS

## CROSS-BORDER REORGANIZATIONS

- **The Loewen Group Inc.** Creation of U.S. holding company and migration of Canadian parent corporation into U.S.

- **Laidlaw Inc.** Resolution of numerous cross-border issues for Canadian holding company with U.S. operating subsidiaries

- **Olympia & York Developments Limited (counsel to official creditors' committee).** Complex interplay of Canadian and U.S. bankruptcy principles; impact on U.S. tax attributes