

PLI's Acquiring or Selling the Privately Held Company 2008

By Dominic A. Santos • Wood & Porter • San Francisco

For 75 years, Practising Law Institute—or PLI, as we all call it—has served the practicing lawyer by providing continuing legal education programming through faculties of practitioners, judges and academics. PLI annually produces over 300 live in-person educational programs, with virtually all of them available through live Web casts and 24-hour on-demand web programming. These two internet options provide an extraordinary level of convenience without sacrificing the quality of PLI's programming.

Beginning in the wee hours of July 12 from the comfort of my San Francisco office, I participated in PLI's two-day Web cast *Acquiring or Selling the Privately Held Company 2008*, broadcasted live from New York City. The program was led by David W. Pollak of Morgan Lewis & Bockius LLP, and featured an 11-member faculty consisting of legal and financial professionals. Program participants were provided with a downloadable .pdf-formatted course handbook, which had over 50 outlines and slide presentations designed to accompany and supplement the program.

The Web cast consisted of 13 lectures highlighting issues that impact the acquisition or sale of privately held companies. Among the many facets covered were general business considerations, letter of intent, acquisition agreements and third-party legal opinions. Of particular interest to me, though, was the presentation on Federal Income Tax Issues and Considerations given by James T. Chudy of Pillsbury Winthrop Shaw Pittman LLP.

Chudy discussed the classic acquisition tax goals of the buyer (maximization of after-tax value of the consideration paid) and the seller (maximization of after-tax profit and the deferment of tax liability). He also addressed the basic forms of the transaction, including what he perceived to be the three main drivers for choosing the appropriate form:

- the identity of the seller;
- the form of the entity holding the target company; and
- the form of consideration sought by the seller and offered by the buyer.

Mr. Chudy's exposé of acquisition tax considerations even briefly delved into the complicated world of tax-free reorganizations, including the various restrictions placed on the form of consideration received given the type of reorganization. Lastly, Mr. Chudy's presentation turned to the increasingly important hybrid topic of sale of Limited Liability Companies and Partnerships. There, one encounters the dichotomy produced by a somewhat schizophrenic tax system that treats them as either entities or aggregates, depending on the applicable area of the law and the particular circumstances.

Participants raised questions ranging from the implications on acquisitions of the tax policies of presidential candidates, to demographics and preferences between the S corporation form over that of LLCs and partnerships. Fear not, Web casters, the Q&A session was not restricted to the live in-person audience. The Web cast's media player window allowed participants to post and ask the presenter questions in real time. Maybe we're all getting used to such technological facility, but it sure is nice to be able to participate in this fashion.

The two-day Web cast provided a wide array of presentations focusing on various areas of law. It provides an informative and comprehensive introduction into the acquisition and sale of a privately held company. Given that the hustle and bustle of the office may not allow you to attend an afternoon presentation across town—let alone a two-day seminar being held across the country—this is a great alternative. PLI's live Web casts provide a convenient way to obtain educational credits and stay on top of current legal issues without stepping foot outside of your office.

Plus, if your work pulls you away from the live Web cast, you can always view the lectures at a later date through PLI's on-demand content. Your Webcast purchase includes months of online access to the course handbook, supplemental materials and playback of all of the lectures.

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