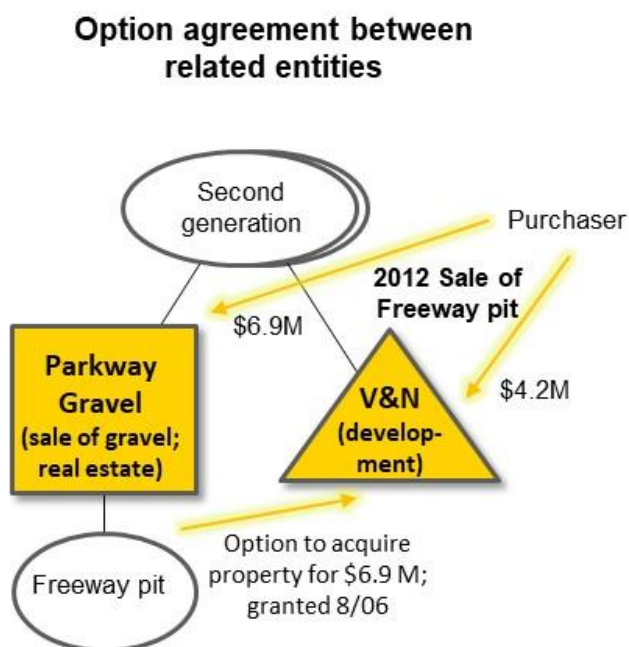


Technical Developments and Musings

Tax Court rejects assignment of income, and other IRS arguments, in related party option agreement. The Tax Court, in a memorandum decision, rejected wholesale multiple IRS arguments attacking the validity of a purchase option among related entities. *Parkway Gravel, Inc. v. Comm'r*, TC Memo 2024-59, involved a closely-held corporation and a partnership, both of which were owned by two individuals representing the second generation of owners of a group of companies historically engaged in road construction, gravel mining and real estate development, among other pursuits. The option to acquire the “Freeway Pit” property was granted in 2006 by the corporation (Parkway Gravel) to a related partnership (V&N), whose terms provided that V&N could acquire, over a specified time, the parcel of real property held by Parkway Gravel for \$6.9 million. The option purchase price was based upon a valuation that also reflected the property’s zoning classification at that time. After years of efforts by V&N (led by one of the owners who specialized in that type of work), zoning and land use changes were obtained. The property was sold in 2012 for \$11.1 million, with \$4.2 million paid to the option holder and \$6.9 million paid to Parkway Gravel to exercise the option. The court rejected multiple IRS arguments, including assignment of income assertions, concluding that amounts paid to V&N were pursuant to rights it held under the option agreement and had not been assigned by the corporation. Moreover, V&N was not a conduit for the sale of the property, as V&N participated in the sale in a significant manner. Finally, the transaction was not a sham; each business entity carried on activities consistent with its historical role.



New spin-off PLR process and forthcoming regulations. A new revenue procedure—[2024-24](#)—reflects a change in IRS ruling considerations for §355 spin-offs. Together with accompanying [Notice 2024-38](#), the new guidance suggests that Treasury and IRS are reconsidering a number of issues that are commonly relevant to spin-offs, including (i) retentions and delayed dispositions of Controlled stock or securities in satisfaction of Distributing debt; (ii) potential mechanics for executing exchanges of Distributing’s debt; (iii) the amount and nature of Distributing’s liabilities that may be assumed by Controlled; and the amount and nature of Distributing’s debt that may be satisfied with §361 consideration. For further info, see [Tax Alert 2024-0949](#).

Commissioner’s discretion rule applied to nonstock asset. [PLR 202417006](#) represents a relatively common consolidated return IRS ruling, in which the office of associate chief counsel (corporate) concluded that prior intercompany gain will be redetermined to be excluded from income. But this ruling addressees an uncommon fact pattern, involving a nonstock asset (i.e., it does not address redetermined gain from a prior transaction involving stock, such as a sale by one member to another of stock in a CFC).