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Executive Summary:

Monetized Installment Sale (M453) Transactions

When an owner prepares to sell a low-basis capital asset, the owner should consider selling the asset—real property of any kind, mineral rights, water rights, stock in a privately held business, partnership interest, personal residence, art or antique collection, or whatever—to S.Crow Collateral Corp., a highly qualified dealer in capital assets.

S.Crow Collateral Corp. offers to purchase appreciated assets in what are called “Monetized Installment Sale” or “M453” transactions. (These transactions were formerly called “collateralized installment sale” or “C453” transactions.) When an owner sells to S.Crow Collateral Corp. in an M453 transaction, the owner is offered, but is not required to accept, a limited-recourse “monetization loan” from a third-party lender introduced to the owner by S.Crow Collateral Corp.

If the seller accepts the offered monetization loan, it will be funded “up front”, as the expression is: that is, at the loan closing, which occurs promptly after the closing on the sale of the asset.

Achievements

Subject to due diligence and qualifying facts, the transactions may achieve these results:

1. An all-capital-gain installment sale of the asset, with the capital-gains tax deferred for as long as 30 years, with no net tax cost to the seller for that entire period;
2. Immediately (that is, within days) available non-taxable monetization loan proceeds for the seller nearly equal to the selling price, with the entire repayment of the monetization loan funded by S.Crow Collateral Corp.’s installment payments to the seller, at no net cost to the seller for interest or principal payments;
3. Complete freedom for the seller to invest the monetization loan proceeds as the seller chooses, without any involvement by S.Crow Collateral Corp. or the lender in that investment, and without any payment whatever from that investment to S.Crow Collateral Corp. or the lender;

4. No risk that the seller will have to use any funds to repay the loan other than the money which S.Crow Collateral Corp. pays to the seller pursuant to the monetized installment sale contract;
5. Complete administrative ease throughout the 30-year term, with payments on the M453 installment sale and payments on the monetization loan handled automatically by a long-term escrow company affiliated with the lender and accounted and reported annually to the parties and the Internal Revenue Service by the long-term escrow company;
6. De-leveraging without adverse tax consequences, as there would be with a 1031 exchange, and therefore increased net return on investment as compared with a 1031 exchange; and
7. Minimized credit risk, default risk and performance risk.

In nearly every situation, a Monetized Installment Sale or M453 transaction is the most tax-efficient, versatile, unentangled and profitable way to sell capital assets—whether the asset is held for business or investment purposes or entirely for personal use. An M453 transaction far outperforms any alternative, including tax-deferred exchanges under Section 1031 of the *Internal Revenue Code* and including transactions in which promoters urge sellers to pay the promoters fees both to create a trust to which the seller can sell on an installment contract and to manage the investment (and take a significant cut of that) of the resale proceeds.

Immediate Resale; Closings

S.Crow Collateral Corp. will immediately re-sell the asset to the ultimate buyer, who otherwise could have purchased the asset directly from the owner who sells to S.Crow Collateral Corp. The closing on the M453 transaction and the closing on the resale will occur simultaneously, typically where the closing would have occurred if there had been no M453 transaction. The closing on the monetization loan will promptly follow, typically at the office of the loan-closing agent selected by the lender.

Tax and Non-tax Considerations

The foundation for the tax side of M453 transactions is Section 453 of the *Internal Revenue Code*. That section, the installment-sale-reporting section of the Code, declares the general principle that when a taxpayer sells a capital asset and does not receive full payment of the selling price in the year of sale, the transaction is an installment sale for which the seller owes the tax *pro rata* as and when the principal is received.

In the case of an owner's sale to S.Crow Collateral Corp., the capital-gains tax may be entirely deferred for as long as 30 years, because S.Crow Collateral Corp.'s installment contracts are typically for that period of time and typically call for no payment of principal until the end of that time.

The *Internal Revenue Code* has provided for installment reporting throughout its history since its adoption in 1913. It was further liberalized in 1998, so that now one must *opt out* of installment reporting if one doesn't want it, rather than *elect in* to get installment reporting.

When installment reporting was adopted in the first *Internal Revenue Code* in 1913, there was no widely available system of institutional finance for the buying and selling of farms, homes and businesses, and Congress realized that installment sales were necessary to the functioning of the marketplace and the economy. Institutional financing is widely available now, but as we've recently seen, institutional financing carries its own risks to banks and the financial system. So, non-institutional finance in the form of installment sales, in which the seller "carries the paper", remains important to the economy and the soundness of the financial system.

Congress implicitly recognized that fact when in 1980 it codified, in Section 453A, provisions allowing for monetization loans taken out at the same time as installment sales occur.

Congress further recognized that if all sales were treated for tax purposes as if they were cash sales, the effect on the economy would be adverse—substantially adverse. Consider a frequent example: John and Mary own real estate on which, many years ago, they built a modest building in which they have operated a retail business ever since. They want to sell the business and the real estate and retire, but the tax cost of doing so, if they were to sell for cash, would mean that their after-tax resources for retirement would be insufficient. Of course, they regularly pay some income taxes because of the business, but that amount is modest. Because of the tax cost of selling, they feel trapped, and they continue their labors.

Then John and Mary are approached by Sam the Developer, who knows that if he can purchase the property and business from John and Mary, Sam the Developer will close their business, tear down their building and replace it with a much bigger and grander, high-rise retail and residential structure. If they would sell to him, revenues from property taxes and income taxes related to the new structure and the business and personal tenants therein would increase ten, twenty or thirty times, or more. The value of the property would rise commensurately, so that when it would later be sold again the capital-gains tax would be many multiples of what it would be if John and Mary were to sell now. And, the number of taxable transactions would rise, too.

The answer? John and Mary sell on a tax-deferred installment contract such as in an M453 transaction, they defer their tax, they have sufficient funds for retirement, and the tax revenues for city, county, state and federal governments *rise*—all because of the availability of tax deferral for John and Mary because of their installment sale.

That outcome illustrates why it was never true, as many believed, that installment reporting was intended to be available only when a cash sale was not available. Installment reporting was intended to be available when a cash sale was not *desirable*, just as much as when a cash sale was not *available*. Congress wanted sellers to be able to *choose freely* the terms and conditions of sale, so that transactions would *occur freely* and the economy and tax revenues would *grow commensurately*.

Congress knew, also, that long-term installment contracts differ from institutional finance in a very important respect: long-term installment contracts encourage inter-generational planning, management and stability. Any seller to S.Crow Collateral Corp. in a 30-year M453 transaction *necessarily* begins to think about the effect of the transaction on the seller's successors: heirs, chil-

dren, whoever. The installment sale becomes an important part of the seller's legacy, both monetarily and as planning and oversight for what should happen in the next generation. The installment sale encourages *stability* rather than a short-term focus, and that is all to the good.

In addition, an M453 transaction may substantially reduce future estate and inheritance taxes for the seller's estate and heirs, because the typical installment contract may be discounted for estate-tax purposes, just as installment contracts are discounted when they are sold.

Transparency

Every transaction with S.Crow Collateral Corp. in which the seller is involved will be fully disclosed to the seller and the seller's advisers in advance and will be entirely transparent to them, before the seller commits to the transaction.

Overview: The Structure and Process of a Typical M453 Transaction

As a dealer in capital assets, S.Crow Collateral Corp. purchases the asset—it can be virtually *any* capital asset, whether it's a business, investment or personal one—from the owner-seller, on an unsecured installment contract which calls for payments of interest only by S.Crow Collateral Corp. to the seller for 30 years, followed by payment of the entire purchase price at the end of the term.

Most often, the seller has already found an ultimate buyer for the asset before S.Crow Collateral Corp. becomes involved. Most often, the ultimate buyer is prepared to pay cash, or a considerable portion of the price in cash, and the seller prefers to defer the tax on the cash proceeds. With that in mind, the seller brings S.Crow Collateral Corp. into the deal, to be an intermediate purchaser from the seller. The purchase price in the installment contract in an M453 transaction is typically equal to the resale price, but with provision for a discount at the end of the 30 years if S.Crow Collateral Corp. fully performs.

At the same time as the purchase, S.Crow Collateral Corp. re-sells the asset to the final buyer to whom the seller had planned to sell directly. S.Crow Collateral Corp. receives and retains the sale proceeds which the final buyer pays. (That's why S.Crow Collateral Corp. doesn't charge a fee to the seller; S.Crow Collateral Corp. retains all of the resale proceeds, so it wouldn't make sense to charge a fee on top of that.)

Although there are two sale transactions—the installment sale to S.Crow Collateral Corp. and the resale to the final buyer—there is only one transfer of title or ownership; the deed or other instrument of transfer will pass directly (in a “directed” transfer) from S.Crow Collateral Corp.'s seller to S.Crow Collateral Corp.'s buyer, without going through S.Crow Collateral Corp. Therefore, the final buyer will receive the same instrument of transfer from the same party with the same representations and warranties, on the same day and for the same price as would have been the case if S.Crow Collateral Corp. had not been involved.

Both the installment sale to S.Crow Collateral Corp. and its resale to the final buyer are closed simultaneously, pursuant to mutually agreed closing instructions provided to the closing agent.

Recapture Tax

If recapture tax is a considerable factor in a given situation, the M453 transaction may be revised in one or more respects, so that all or part of the recapture tax may be deferred, much as the capital-gains tax is deferred.

Overview: The Monetization Loan

At the same time and if the seller so desires, a third-party lender which is unrelated to S.Crow Collateral Corp. is willing to lend to S.Crow Collateral Corp.'s seller (or, in the case of an entity which is the seller, the owner or owners of the entity) an amount of cash that is equal to a specified high percentage of the cash paid by the final buyer. S.Crow Collateral Corp.'s monthly interest payments on the installment contract will typically equal the seller's loan-interest payments, although the interest rate on the monetization loan will be higher, because the installment purchase price will be higher than the loan amount. The final due dates on the installment contract and the monetization loan will typically be the same, and the principal amount paid on the installment contract at the end will equal or exceed the amount that the seller then owes on the loan.

The seller/borrower may then use those monetization loan proceeds—which should be non-taxable as are any other loan proceeds—for any business or investment purpose which the seller/borrower prefers, including to pay debt on the asset being sold or to pay other business debt. The seller/borrower is not restricted in the use of the proceeds of the investment.

The lender does not receive a lien on the installment contract, on the asset that was sold, on the installment payments made by S.Crow Collateral Corp., or on the investments made by the seller/borrower.

Why can the monetization loan be unsecured? The lender does not require that the seller/borrower provide any security, because the lender is looking to S.Crow Collateral Corp. as the source of funds for the seller/borrower to repay the loan. The lender does not require that S.Crow Collateral Corp. provide security, because S.Crow Collateral Corp. agrees to invest the resale proceeds in accord with the lender's investment criteria.

Why is the loan term 30 years? The lender wants the loan term (and therefore the term of the installment contract) to be 30 years, so that S.Crow Collateral Corp. can invest the resale proceeds for 30 years. The lender believes that history shows that when money can be invested for 30 years the likelihood is high that there will be more than sufficient funds available at the end for S.Crow Collateral Corp. to pay the seller in full on the installment contract, so that the lender will be paid in full on the monetization loan.

Because of the M453 installment-sale transaction and the monetization loan, you, too, will have the opportunity to pursue long-term investments and long-term returns—and that is where your net cash flow will be after the M453 transaction closes will occur (because all of your cash flow from the M453 transaction will go to repay the monetization loan.

So, it is the pursuit of 30-year investments—not tax benefits—that drives this whole thing. Tax benefits are the frosting, not the cake.

S.Crow Collateral Corp. is not a party to the loan; the monetization loan is a transaction solely between the seller/borrower and the lender.

Direct-Deposit, Direct-Pay Long-term Escrows, for Automatic Debiting and Crediting

If the M453 transaction occurs, three long-term escrows will be established, pursuant to written instructions to which the seller agrees, at the long-term escrow company affiliated with the lender: the “Installment Escrow”, the “Funding Escrow”, and the “Loan Escrow”.

Each month, the long-term escrow company will automatically take an installment-interest payment from S.Crow Collateral Corp.’s funds, place that money in the Installment Escrow, and credit S.Crow Collateral Corp. with having made an installment-interest payment. S.Crow Collateral Corp.’s connection with that money thereupon ends, and the money then automatically transfers to the Funding Escrow, where the money belongs solely to the seller. The money then automatically transfers to the Loan Escrow, and the seller/borrower is credited with having made a loan-interest payment. When the principal is paid at maturity, the same process will occur.

This is an automatic debit-and-crediting process, just as would occur if a borrower were to arrange for incoming payments to be automatically deposited in the borrower’s bank and for outgoing payments to be automatically withdrawn from the borrower’s account in that bank.

Every January, the long-term escrow company will provide accountings of moneys received and paid, will perform the required tax reporting of the interest payments, and will bill the seller for the annual escrow fee (a modest sum).

Tax at the End

At the end of the term of the installment contract, the capital-gains tax will then be due, at whatever the rate is at that time for capital gains. We don’t know what that rate will be. (The rate has gone up and down many times in recent decades.) Whatever the rate turns out to be, you or your estate may have far more money to pay whatever that tax amount is than you would have to pay the tax now, because of your investment of the tax money during the 30 years. Moreover, if inflation occurs between now and then, you’ll be able to pay the tax in dollars that will be worth less than they are today—and that is an effective tax *reduction*, not just deferral.

The Full Narrative

What is presented here is only a fraction of the whole story about the transactions that will occur to effectuate the installment sale of an asset to S.Crow Collateral Corp. in an M453 transaction and the lender’s issuance of the monetization loan. The full narrative will develop in the course, first, of presentations and discussions, and then in the course of the development of, and negotiation concerning, the transaction documents.

Seek Your Own Legal, Tax and Investment Advice

It is S.Crow Collateral Corp.'s position that an M453 transaction can in many circumstances defer entirely (and thereby materially reduce) the capital-gains tax on the sale of an appreciated asset. It is important to understand, though, that S.Crow Collateral Corp. is across the table from the seller as the seller's counter-party and is not an adviser to the seller. Although we are happy to tell the seller and the seller's advisers why we believe what we believe about M453, S.Crow Collateral Corp. functions strictly as a dealer in the purchase and resale of capital assets and does not offer or provide legal, tax or investment advice to any seller.

For that reason and because every seller should exercise due diligence about the matter before engaging in an M453 transaction, it is important that the seller seek his or her own legal, tax and investment advice so that the seller and the seller's advisers can determine that proceeding with an M453 transaction would be in the seller's best interest in the circumstances.

No transaction—including an M453 transaction—is without risk of some kind. With the benefit of the legal, tax and investment advice which the seller obtains, each seller who considers entering into an M453 transaction should employ a sound analytical process to seek to identify, evaluate, quantify and compare the risks and the benefits of entering into an M453 transaction, of utilizing any available competing strategy, of selling for cash, and of doing nothing.

Disclaimer

As a principal only, S.Crow Collateral Corp. does not act in the capacity of a broker, sales representative, investment adviser, or tax or legal adviser; does not sell or recommend any security; and does not accept any transaction fee or payment for transaction services. Circumstances may affect tax and legal outcomes. Each transaction is different and unique to each participant. Neither S.Crow Collateral Corp. nor any of its officers or employees may or does provide tax, legal or investment advice. Nothing herein is intended to be, or may be taken to be, tax, legal or investment advice. Interested parties should consult their legal, tax and investment advisers before participating in any transaction.