



Pensions on PEACHTREE 2023



M&A PRIMER: WHAT YOU NEED TO KNOW!



Ilene H. Ferenczy, Esq., CPC, APA

AGENDA

- Asset Transactions
- Stock Transactions
- Company Mergers
- Sale of Subsidiaries
- Final Thoughts

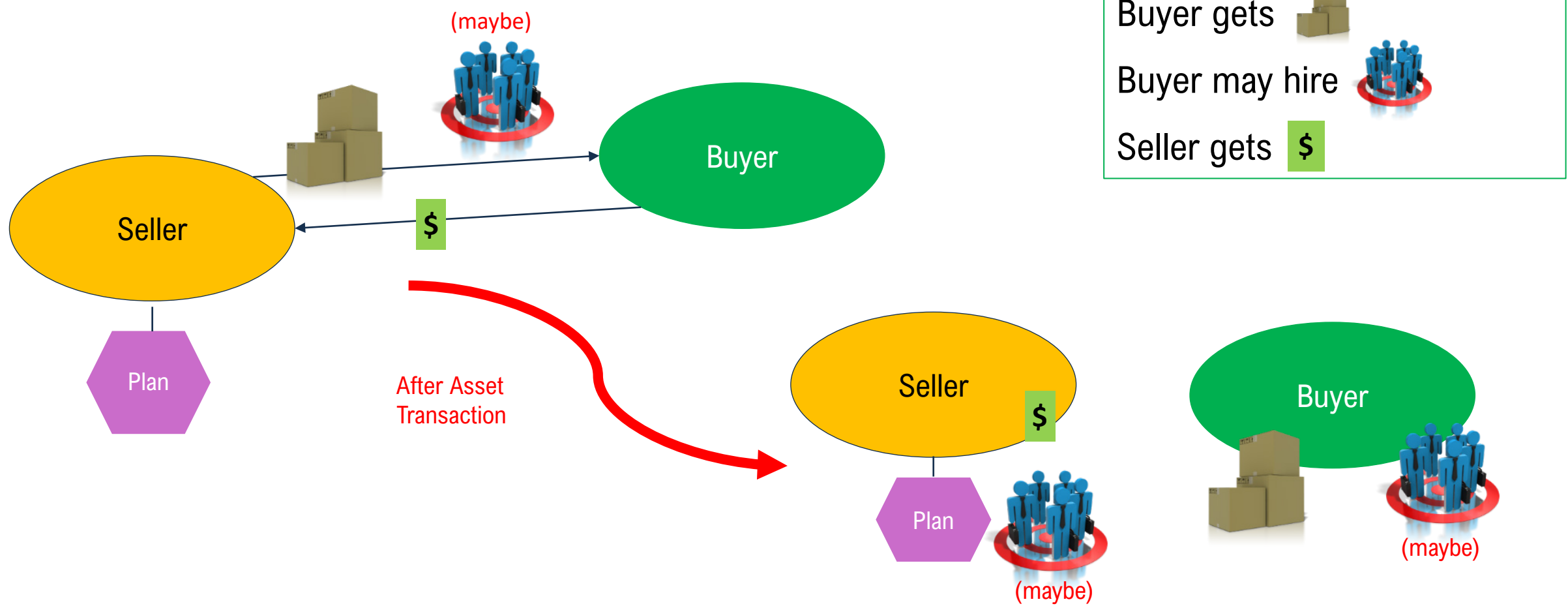
Pensions on
PEACHTREE
2023



ASSET TRANSACTION



ASSET TRANSACTION



ASSET TRANSACTION

- The Buyer buys some/all of the Seller's assets and assumes some/all of the liabilities
 - Company asset examples: furniture, computers, client list, accounts receivable, cash, work in progress, patents, real estate
 - Company liability examples: accounts payable, real estate mortgage, contract obligations, unpaid payroll
- The plan, itself, stays with the Seller



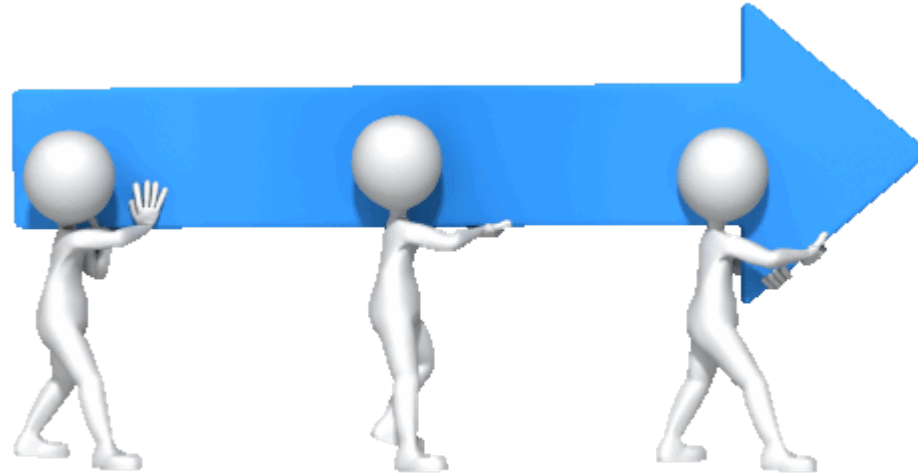
ASSET TRANSACTION – EMPLOYEES

- Sometimes, an asset sale happens because the Seller is only getting rid of part of the Company, and is retaining the balance of its assets/business, as well as some of its employees
 - Example: ABC hotel chain sells its Atlanta hotel (the real estate, the stuff inside the hotel, etc.) to XYZ chain. ABC keeps all its stock, and all its other hotels and the stuff in them
 - All the employees of the Atlanta hotel go to work for XYZ
 - The transaction has no effect on the ABC employees at other hotel locations
 - If there's a plan, the remaining ABC employees can continue to be covered in it



ASSET TRANSACTION – EMPLOYEES

- What happens to the employees who leave with the asset sale and go to work for the Buyer?
- Any employees going to the Buyer as part of the transaction will:
 - Terminate employment with the Seller and be new employees to the Buyer
 - Date of hire = date they begin work for the Buyer (transaction date?)
 - No automatic prior service credit in Buyer's plan



ASSET TRANSACTION – SELLER'S PLAN(S)

- To the extent that employees go from Seller to Buyer, they have terminated employment with the Seller
 - Eligible for distribution from Seller's plan
 - If more than 20% of Seller's employees leave, likely have a partial plan termination in the Seller's plan
 - Idea: Look at employees who terminated in the year before the sale
 - May have other terminations to get the company "lean and mean" for sale or because people know that the company is in trouble
 - Those folks should likely be 100% vested, too



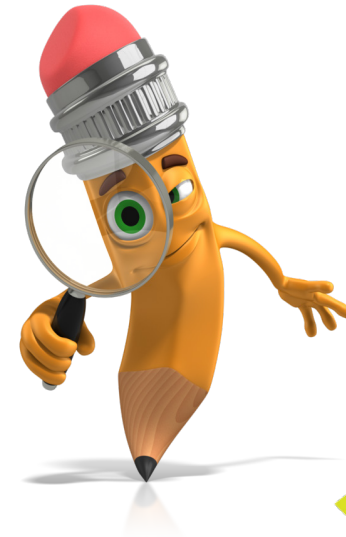
ASSET TRANSACTION – BUYER’S PLAN(S)

- Employees who go from Seller to Buyer are new employees to Buyer
 - No automatic crediting of prior service
 - If service credit is desired, Buyer’s plan must be amended to provide
 - Be careful to provide only to employees associated with the transaction
 - E.g., “Prior service with Seller shall be granted to any individuals who became employees of Buyer in connection with the Buyer’s purchase of assets from Seller on 4/17/2023.”
 - Be careful to identify if service is just for eligibility, just for vesting, or for all purposes (i.e., eligibility, vesting, and allocations)
 - Waiver of eligibility/special entry date needed to let people enter immediately?
 - If so, need amendment



ASSET TRANSACTION – ROLLOVERS TO BUYER'S PLANS

- Issue: Will the Buyer accept rollovers from the Seller's plan?
 - Rev. Rul. 2014-9 says that all a buyer needs to do to confirm that the merging-in plan is qualified is to check the Form 5500 to make sure that there is no Code "3C" (i.e., for a plan not intended to be qualified)
 - What if Buyer knows that Seller's plan has qualification issues?
 - The ruling also provides that there must not be "evidence to the contrary" re: plan qualification
 - Question what was found out about Seller's plan during due diligence to make sure there is no evidence to the contrary!



ASSET TRANSACTION – ROLLOVERS TO BUYER'S PLANS

- Issue: Will the Buyer accept a rollover of loans from the Seller's plan?
 - Timing is of concern
 - Make sure each plan's recordkeeping system is able to accommodate loan rollovers; determine process for each to ensure accuracy of transaction
 - Make sure rollovers of loans take place before they default in Seller's plan
 - Need time to communicate to employees, do paperwork, have payroll and recordkeeper make adjustments that are needed



ASSET TRANSACTION – ROLLOVERS TO BUYER'S PLANS

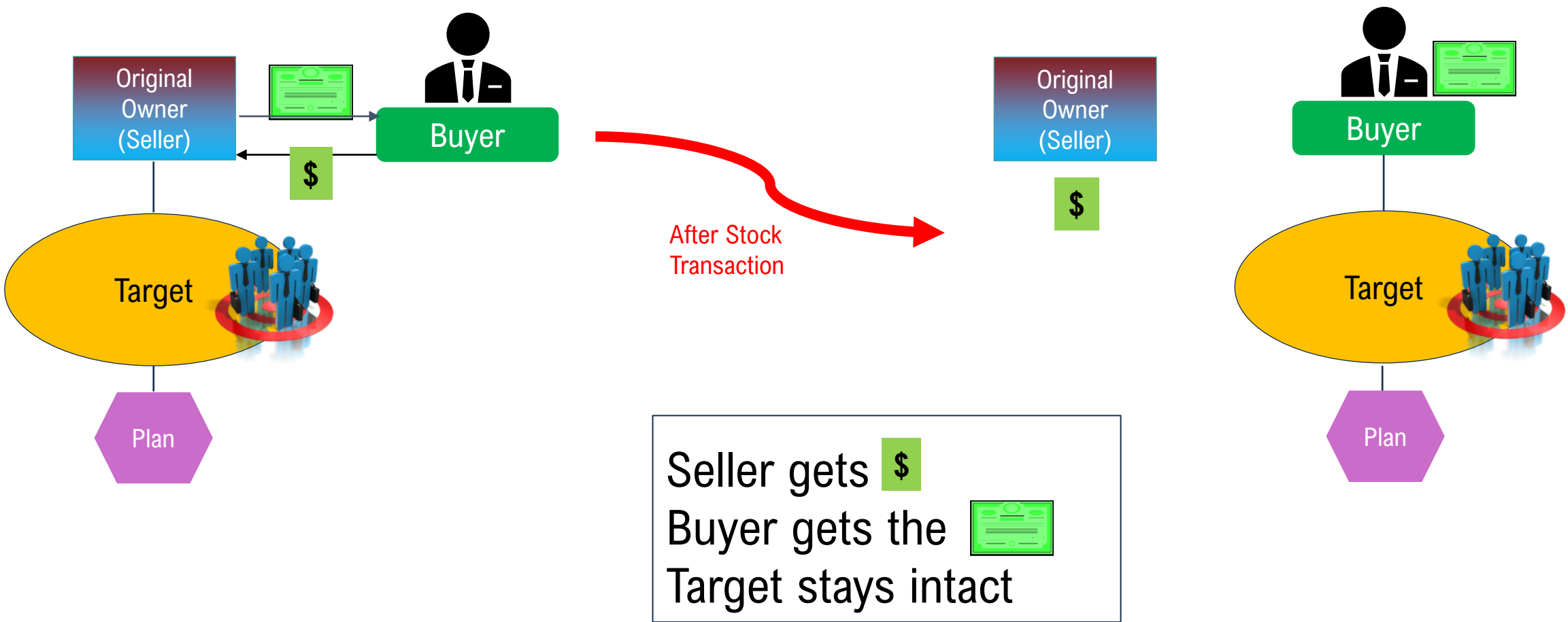
- Issue: Will the Buyer accept a rollover of loans from the Seller's plan?
 - Does Buyer's plan permit loans? How many? Are terms different? Do we need any exceptions?
 - Need to set up payroll and recordkeeper systems properly
 - May need new amortization calculations



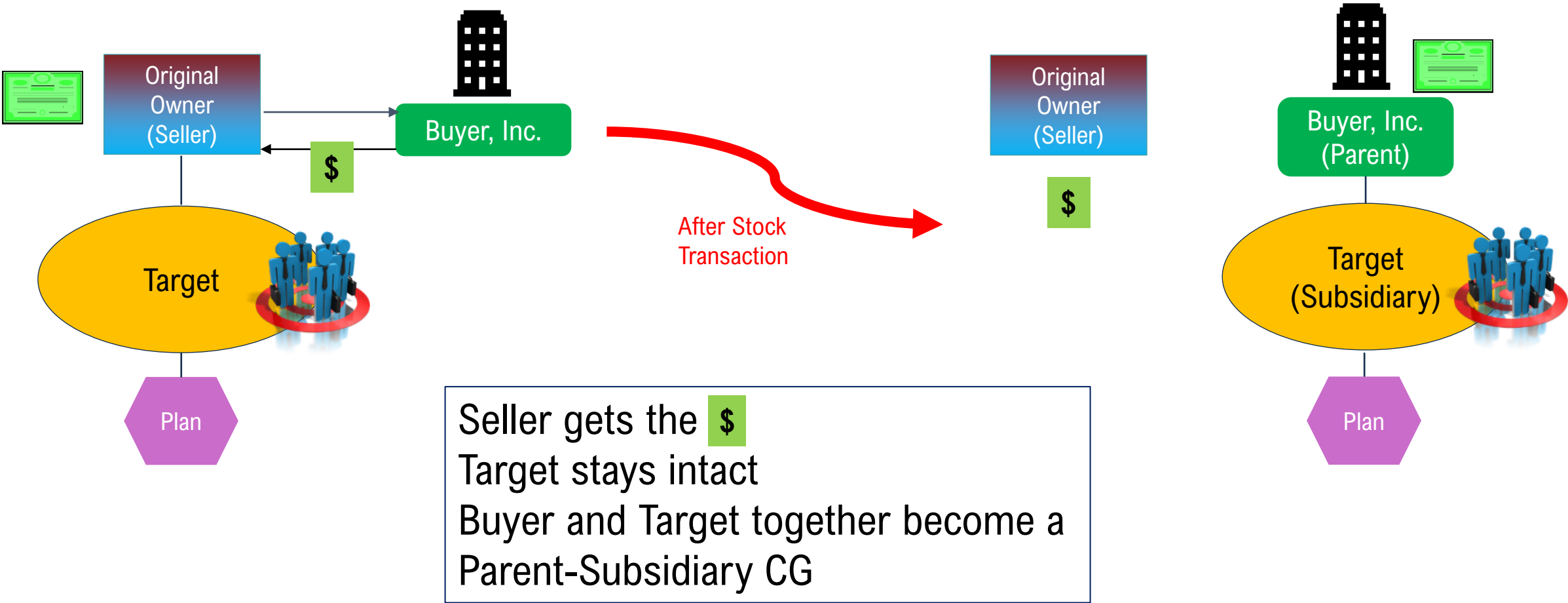
STOCK TRANSACTION



STOCK TRANSACTION: PURCHASE BY AN INDIVIDUAL



STOCK TRANSACTION: PURCHASE BY A COMPANY



STOCK TRANSACTION

- There is no change to the Target other than who its shareholders are
- After the purchase, the Target as a company remains the same ...
 - All the employees stay as employees with the Target
 - The Target is still the sponsor of its plan(s)
- If the Buyer is a company, there is a new parent-subsidiary controlled group



STOCK TRANSACTION – EMPLOYEES

- The transaction does not automatically change the Target's employees
 - All employees of the Target remain employees of the Target unless action is taken to get rid of them or transfer them somewhere else – but that action is not the result of the acquisition, itself.



STOCK TRANSACTION – EMPLOYEES

- There may be some changes made by the parties involved incidental to the sale:
 - If the Target's shareholder was an employee, s/he will usually leave (or, maybe will stay with an employment agreement for some time)
 - Some Target employees may not be needed after the transaction and will be terminated by the Buyer
 - Some Target employees may choose to leave rather than work for the new Parent
 - Some Target employees may be transferred by the Parent to go work directly for the Parent as employees . . . And maybe some Parent employees will be transferred to work at the Target

STOCK TRANSACTION – PLANS

- At the time of acquisition, it is possible that the new subsidiary will have plans that cover its employees
- So, we need to answer the following questions:
 - Do we want all employees to be covered by one set of plans?
 - If so, what is timing?
 - Do we want to try to maintain separate plans for the Buyer and the new subsidiary?
 - If so, forever? For a time?
- Sometimes, the Buyer doesn't know the answers until later... so we need to maintain status quo until a decision is made...



KEY CONSIDERATION IN STOCK TRANSACTION

- If the Buyer has retirement plans, it needs to decide whether it wants to have all employees in its plans or keep them separate

All in Buyer's Plan	Keep 'Em Separate
Want to have one company "identity" for all employees	Subsidiaries have diverse products/culture that create different benefit wants/needs
Easier administration	Less employee stress/worry associated with acquisition
More assets in one plan usually lowers cost/gives access to more features	Company believes in decentralized governance with subsidiaries

STOCK TRANSACTION – BUYER'S PLAN

- Key issues for Buyer to decide:
 - How to treat acquired employees for purposes of the Buyer's Plan?
 - Exclude them?
 - Just temporarily or permanently?
 - What about coverage under IRC §410(b)?
 - Any service credit for time before acquisition?
 - If Target sponsors a plan, what are we going to do with it?
 - Terminate it?
 - Merge it into Buyer's plan?
 - Keep it separate?
 - How will we pass coverage testing under IRC §410(b)?



STOCK TRANSACTION – BUYER’S PLAN

- If the acquired employees are going to join the Buyer’s Plan ...
- Do acquired employees automatically get service credit in Buyer’s plan?
 - Not clear from the law
 - Interpretation #1: all service counts. Target is “predecessor employer”
 - Interpretation #2: service starts when Target becomes part of the CG – no prior service credited
 - Should there be a difference between eligibility service and vesting service?
 - IRC §410 does not permit any service to be excluded for eligibility
 - IRC §411 permits exclusion of service before adoption of plan
 - In practice, Buyers often want to exclude past service

STOCK TRANSACTION – SERVICE

- If the new subsidiary actually becomes a participating employer in the Buyer's plan ...
 - Do acquired employees get service credit in Buyer's plan?
 - Labor Reg. §2530.210 says, “[A]ll yeas of service with the employer or employers *maintaining the plan* shall be taken into account ...”
 - If the means by which the employees are covered is that the Target adopts the Buyer's plan, it appears that all service with the Target must be counted
 - But, if the plan is maintained by the Buyer, the service with the Buyer arguably is service that began when the CG was formed
 - Can we exclude service before that?



STOCK TRANSACTION – SERVICE

- The result: it is common in the situation described (where the plan is “maintained” by the Buyer and the plan defines the new subsidiary employees as part of the eligible group) for service to be excluded under the Buyer’s plan
 - Good idea: make it clear in the plan, if possible
 - If not possible (e.g., if no amendment can be made at the time), document it as an “administrative policy” or “document interpretation”
 - Only possible if the document’s terms can be so interpreted

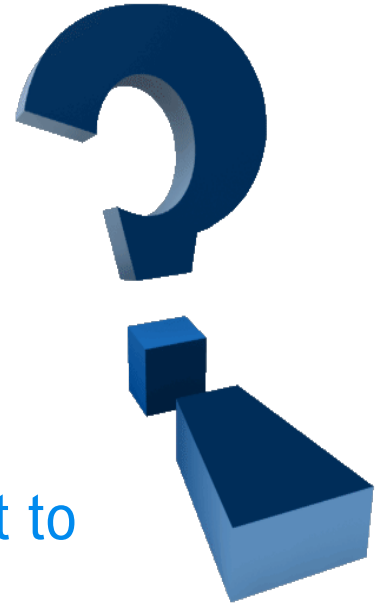


STOCK TRANSACTION – HCEs IN CONTROLLED GROUP

- If you read the regulations to the HCE rules, it is clear that the IRS is anticipating one set of HCEs that will apply to all plans
 - Take all CG employees
 - Take out the ones who can be excluded from HCE consideration
 - Count all <5% shareholders of any CG company
 - Look at any compensation earned in the prior year in any company of the CG for purposes of the compensation limit
 - Apply the top 20% rule consistently
 - Treas. Reg. 1.414(q)-1, Q&A-9(b)(2)(iii): “... [W]ith respect to all plan years beginning in the same calendar year, the employer must **apply the test uniformly** for purposes of determining its top-paid group **with respect to all its qualified plans and employee benefit plans.**” See also Notice 97-45, Section VI.

STOCK TRANSACTION – HCEs IN CONTROLLED GROUP

- How does one determine the HCEs after the transaction?
 - What compensation counts for the compensation test?
 - What stock ownership counts for the stock ownership test?
 - Does the answer depend on who is the sponsor of the plan at issue?
- Spoiler Alert! There is no clear answer
 - If do not consider the prior service for plan purposes, makes sense not to consider pre-transaction compensation for HCE test (and vice versa)
 - Under the rules, anyone who is a >5% shareholder of any of the controlled group entities during current year or prior year is an HCE
 - Remember: >5% owner rule has a 1-year lookback rule



STOCK TRANSACTION HCEs – EXAMPLE #1

- Buyer purchases the stock of Target
 - Prior to the transaction, Rebecca owns 10% of Target
 - Rebecca continues working for Target after the transaction
 - Is Rebecca an HCE?
 - HCE regs say that someone is an HCE due to stock ownership if he or she was a >5% owner of any of the related employers during the year or the preceding year
 - As Rebecca was a >5% owner of Target during this year (and last year, for that matter), she's an HCE



STOCK TRANSACTION HCES – EXAMPLE #2

- Buyer purchases the stock of Target
 - In 2021, the year before the acquisition, Roy earned \$150,000 working for Target
 - In 2022, Target's stock is acquired
 - Is Roy an HCE after the acquisition?
 - HCE regs say that “only compensation received by an employee ...” Roy was not an employee in the CG in 2021
- No clear answer in the regs
 - Either treatment is likely a “reasonable interpretation”



STOCK TRANSACTION HCEs

- If considering the HCEs as one group for all related employers (as is clearly the vision described in the regulations):
 - It becomes almost impossible to apply the rules in a cohesive way
 - It messes up who we expected to be HCEs in the year of transaction for all plans



STOCK TRANSACTION HCEs

- Reasonable interpretation of HCE rules?
 - If employees continue to participate in the plan that covered them prior to the transaction, leave both HCE determinations the way they were before the transaction (even though this leaves you with 2 separate sets of HCEs)
 - If Target employees participate in the Buyer plan in the year of acquisition, ignore pre-transaction compensation, but consider >5% owners from Target to be HCEs
 - Be careful of situations where one interpretation produces a very skewed result (to the benefit of the HCEs)

STOCK TRANSACTION – BUYER’S PLAN – COVERAGE

- Operationally, does the Buyer’s Plan’s terms cover the acquired employees?
 - What does it take for a related company to be covered by the Buyer’s Plan?
 - Option #1: Each adopting company must sign a participation agreement
 - If so, be sure to do one before covering those employees
 - Option #2: Buyer’s Plan, by its terms, automatically covers controlled group members
 - If so, and want to exclude this company, need an amendment
 - Do we want to let acquired employees in right away? If so, need to amend to provide for a special entry date

STOCK TRANSACTION – BUYER’S PLAN – COVERAGE

- The stock transaction creates a controlled group
- If Target employees are excluded from the Buyer’s Plan, either by class or because the Target did not adopt the Buyer’s Plan, we have a §410(b) coverage issue
 - i.e., Target employees are “non-benefiting employees” for the Buyer’s Plan
- Big question: can Buyer’s Plan pass the ratio percentage test or average benefits test if we exclude the Target’s employees?



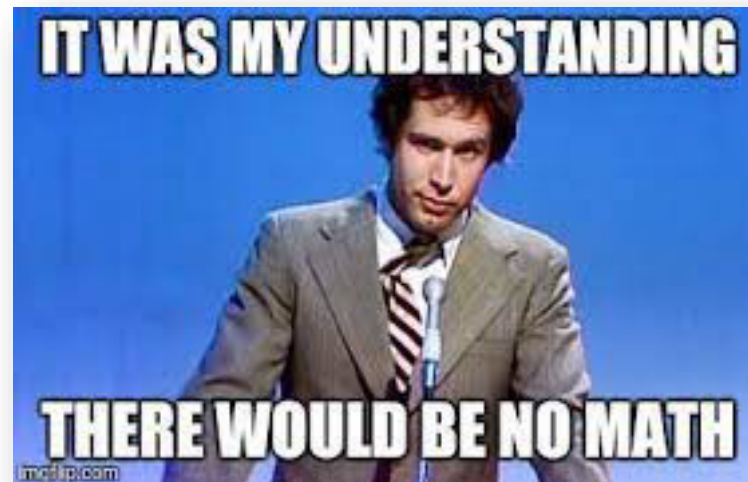
STOCK ACQUISITION – COVERAGE – EXAMPLE #3

- Buyer, Inc. buys the stock of Target, Inc. on 4/17/2023
 - Buyer, Inc. Plan has immediate eligibility, but excludes companies that do not sign participation agreement
 - Target has not signed participation agreement, so its employees are not in the Buyer, Inc. Plan
 - Employee counts:
 - Buyer: 10 HCEs, 90 NHCEs
 - Target: 2 HCEs, 7 NHCEs
 - Buyer Plan Coverage if Target is excluded: OK
 - HCE percentage ($10/12 = 83.33\%$); NHCE percentage ($90/97 = 92.78\%$)



COVERAGE – EXAMPLE #4: CHANGING THE NUMBERS

- Buyer, Inc. buys the stock of Target, Inc. on 4/17/2023
 - Same facts (Target not participating in Buyer Plan), but Employee counts:
 - Buyer: 10 HCEs, 90 NHCEs
 - Target: 0 HCEs, 50 NHCEs (prior owners terminated)
 - Buyer Plan Coverage if Target is excluded: NOT OK
 - HCE percentage ($10/10 = 100\%$); NHCE percentage ($90/140 = 63.86\%$)



STOCK ACQUISITION – COVERAGE – TEMPORARY SOLUTION

- Buyer's Plan is excused from coverage testing during a transition period
 - Transition Period: date of transaction through end of PY following year of transaction
 - E.g., calendar PY – acquisition is 4/17/2023: TP: 4/17/2023 – 12/31/2024



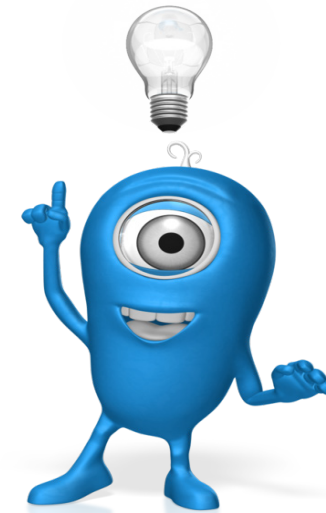
STOCK ACQUISITION – COVERAGE – TEMPORARY SOLUTION

- There are conditions!
- For this to work, the following must be true:
 - Buyer's Plan excludes the Target employees, either by class or because Target does not adopt into the Plan
 - You cannot ignore the terms of the Buyer's Plan to exclude the Target
 - Buyer's Plan met coverage rules before acquisition
 - There are no significant changes to the Buyer's Plan after the transaction (see later slide)



STOCK ACQUISITION – COVERAGE – EXAMPLE #5

- Take facts from earlier failed testing example:
 - Buyer Plan Coverage if Target is excluded: NOT OK
 - HCE percentage ($10/10 = 100\%$); NHCE percentage ($90/140 = 63.86\%$)
 - As long as we are in the transition period (i.e., through end of 2024), no need to pass test
 - Buyer's Plan can continue to operate in this fashion (i.e., excluding Target employees) through 2024
 - But coverage problem must be solved for 2025



STOCK ACQUISITION – COVERAGE – TEMPORARY SOLUTION

- What happens after the Transition Period is over?
 - Need to figure out what to do for post-Transition Period plan year(s) to pass coverage testing:
 - If coverage can be passed, no changes needed
 - If coverage cannot be passed your choices are:
 - Cover some or all of Target's employees in Buyer's Plan
 - Set up or modify the plan in Target with which Buyer's Plan can be aggregated for testing
 - Stop covering some or all of Buyer's HCEs once the Transition Period ends
 - Terminate Buyer's Plan



STOCK ACQUISITION – COVERAGE – TRANSITION RULE

- What is a “significant change” in the Buyer’s Plan?
 - Changes to rules affecting coverage, such as eligibility
 - Other:
 - Definitely change in benefit formula (there was a Rev. Rul.)
 - Restatement: anecdotally, the IRS has said, “probably not, if nothing is changed that didn’t have to be changed because of new rules”
 - Other ????: no clear guidance
 - Safest course: no amendments!
- Effect of change: transition period terminates as of amendment date for amended plan (get benefit of transition rule before that)

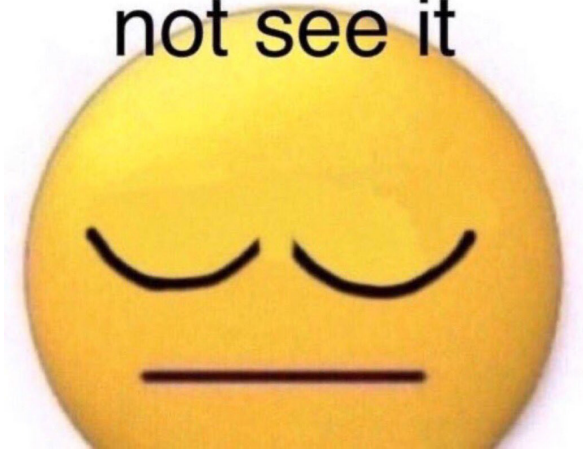


STOCK ACQUISITION – COVERAGE (WORST CASE)

EXAMPLE #6

- Buyer purchases Target 4/17/2023
- Buyer's Plan has immediate eligibility
- Buyer's Plan covers all controlled group members
- Result: as of 4/17/2023, all Target employees enter Buyer's Plan
- Remember: you cannot ignore the terms of the plan just because you have a transition period

I pretend I do
not see it



STOCK ACQUISITION – COVERAGE EXAMPLE #6 – SOLUTIONS

- What can you do after the fact to exclude the Target employees?
 - Amend the plan to exclude them in the future
 - If you do that, the transition rule ceases to apply as of the amendment date
 - Result: coverage must be passed in the Buyer's Plan, considering excluded Target employees to be non-benefiting
 - If coverage cannot be passed, need to let in enough Target or other ineligible employees to pass, or exclude HCEs in Buyer's Plan going forward
 - Live with it: cover Target employees in Buyer's Plan going forward

**WE
LIVE &
LEARN.**



STOCK ACQUISITION – COVERAGE EXAMPLE #6 – SOLUTIONS

- What can you do before the transaction to exclude the Target employees?
 - Amendments prior to the transaction do not affect the transition period (which starts with the date of the acquisition)
 - If amended the Buyer's Plan 4/16/2023 (day before the transaction) to exclude acquired employees:
 - As of the transaction, those employees are excluded
 - No need to pass coverage, because transition rule gives Buyer's Plan a "bye" from coverage testing
 - Buyer has until 1/1/2025 to adjust the plan to pass coverage (and Target's employees are excluded in the interim)



STOCK ACQUISITION – COVERAGE

- The transition period applies to Buyer's Plan AND the Target's Plan
- A termination of the transition period for one plan due to amendment does not affect the transition period for the other plan(s)



STOCK ACQUISITION – COVERAGE EXAMPLE #7

- Facts:
 - Buyer purchases stock of Target 4/17/2023
 - Buyer sponsors 401(k) Plan with 12-month wait; it excludes employees of related employers that do not adopt the plan
 - Target sponsors 401(k) Plan with 6-month wait; it includes employees of all related employers
 - It is likely that both plans would fail coverage if they had to test for it



STOCK ACQUISITION – COVERAGE EXAMPLE #7

- Buyer's Plan
 - Under its terms, it excludes Target's employees
 - No coverage problem until after end of transition period (i.e., 2025)
- Target's Plan
 - Under its terms, it will cover all of the Buyer's employees as of the first entry date after the 6-month eligibility is met, i.e., the entry date after 10/17/2023
 - During the eligibility period, coverage is not an issue because acquired employees are out for service.
 - Even if coverage were an issue, we are under the transition period
 - But we don't want Target's Plan to cover Buyer employees even in late 2023 – they have their own plan!



STOCK ACQUISITION – COVERAGE EXAMPLE #7 SOLUTIONS

- What to do about Target's Plan?
 - If we can get to it before the transaction, amend the plan to exclude related employer's employees
 - Target's Plan has the transition period to figure out what to do
 - If we discover this after the transaction has taken place:
 - Option #1: terminate the Target's Plan before the Buyer employees become eligible and put everyone in the Buyer's Plan (see upcoming slides for additional info re: this option)
 - Option #2: terminate the Target's Plan and leave the Target employees without a plan until after the transition period
 - Only the Target's Plan loses transition period; it's intact for Buyer's Plan
 - Option #3: amend the Target's Plan to pass coverage after the amendment

STOCK ACQUISITION – TERMINATION OF TARGET’S PLAN

- Buyer says, “I don’t want to deal with Target’s Plan. Terminate it and put everyone in our Plan.”
- With any plan except a 401(k) Plan or a defined benefit plan, no problem
 - Buyer terminates the Target’s Plan, pays out benefits
 - May permit employees to roll over benefits to Buyer’s Plan, if desired



STOCK ACQUISITION – TERMINATION OF TARGET'S DB PLAN

- DB Plan may not be able to terminate under PBGC rules if its assets can't pay for all earned benefits
 - Buyer/Target may pay enough contribution to eliminate insufficiency
 - Target may need to keep the DB Plan until assets are sufficient
 - Target can fund up the plan before termination, if it can afford to do so
 - If the Target is owned at least 50% by a participant, that participant can waive unfunded benefit
 - BUT, after the transaction, he's no longer an owner and waiver not permitted
 - Solution: terminate and go through PBGC process before transaction
 - If that is not possible, call us ... there are more complex solutions
 - If Buyer has a DB Plan, too, can merge plans, but the Buyer may not want to fund the insufficiency (do they have recourse against Seller?)



STOCK ACQUISITION – TERMINATION OF TARGET'S DB PLAN

- If not PBGC and have insufficient assets to pay for all benefits:
 - Plan provides allocation process for plan termination
 - It is common that, to avoid upsetting employees and perhaps risking a lawsuit, the plan is amended to allocate excess assets:
 - First to non-owner NHCEs
 - Second to non-owner HCEs
 - Third to owners
 - May have a funding deficiency that requires payment of excise taxes until all benefits are paid out



STOCK ACQUISITION – TERMINATION OF TARGET'S 401(k)

- Once the transaction has happened, Target is a member of the controlled group with Buyer
- If Buyer has a DC plan and Target is going to terminate its 401(k) Plan, we have a “successor DC” problem
 - IRC §401(k)(10) prohibits the distribution of deferrals, QNECs, QMACs from a plan on termination if there is another DC plan in the CG
 - Exception: ESOP, SEP, SIMPLE IRA, 403(b), 457(b) or 457(f) Plans
 - So, cannot terminate Target Plan and distribute the 401(k)-type accounts



STOCK ACQUISITION – TERMINATION OF TARGET'S 401(k)

- What can you do after the acquisition to terminate the Target's Plan?
 - Option #1: Freeze the plan rather than terminate
 - Option #2: Terminate the Plan, distribute non-401(k) accounts, keep plan frozen and distribute 401(k)-type funds as people leave the company.
 - Option #3: Merge the Target's Plan into the Buyer's Plan
 - No distributions permitted
 - Target's Plan disappears
 - Issues:
 - Benefit protection issues, if any
 - What if there are qualification failures in the Target's Plan?
 - Extended EPCRS timing



TERMINATION OF TARGET'S 401(K)

- Any other solutions?
 - Yes, if we get to the case before the transaction occurs
 - Rule: whether there is a successor DC plan is judged only on the date that action is taken to terminate the plan (i.e., board resolution or amendment)
 - Therefore, if the plan is terminated prior to the transaction, the Buyer and the Seller/Target are unrelated ... Buyer's plan is not a successor plan
 - Administration of the termination can take place after the transaction, and distributions can be made



EXAMPLE #8: PRE-TRANSACTION TERMINATION



- Facts:
 - Buyer wants to purchase Target on 4/17/2023
 - Buyer sponsors a 401(k) Plan
 - Target sponsors a 401(k) Plan
 - Buyer knows it will want the Target employees to enter its plan, and does not want to have to merge the plans
 - Buyer tells Target that a condition of the sale is that Target must terminate its plan before the acquisition date
 - Target adopts resolution to terminate its plan on 4/16/2023, effective immediately; purchase takes place the next day, on 4/17/2023



EXAMPLE #8: PRE-TRANSACTION TERMINATION

- Termination is considered to precede the transaction
- At the time the Target's plan was terminated, there were no other plans of the "employer" (i.e., Buyer was not yet part of the CG)
- Target and Buyer work together to administer the plan termination
 - Target employees may take distribution of their accounts and, if they want, roll them over to IRAs
 - Buyer may, if it wants, permit Target employees to roll over their accounts to its Plan

ONE MORE THING

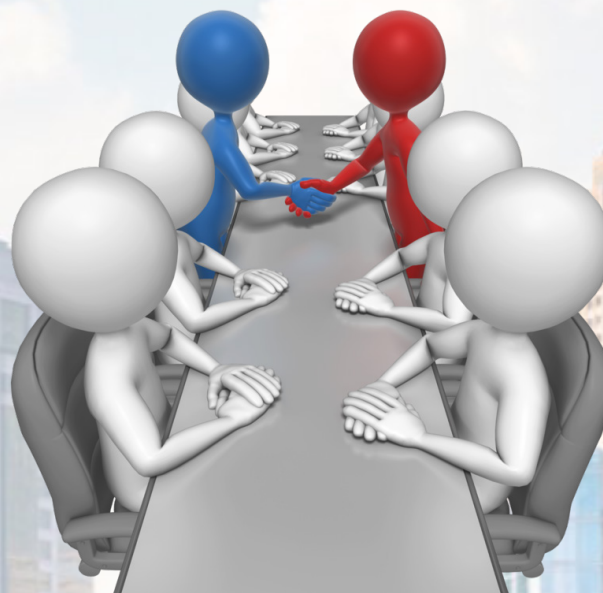
- Sellers commonly loathe terminating their plans before the transaction takes place: “What happens if it doesn’t go through?”
- Proposed solution: make it a provision of the purchase agreement that the plan is terminated concurrent with the acquisition closing
- Problem: it is arguable (by the IRS) that the termination occurred after the closing, and payouts of 401(k) money are not permitted
- Recommendation: tell the Seller to “get over it” and terminate the day before
 - If transaction does not close, termination (but not vesting) can be reversed

EXAMPLE #9 – POST-TRANSACTION TERMINATION

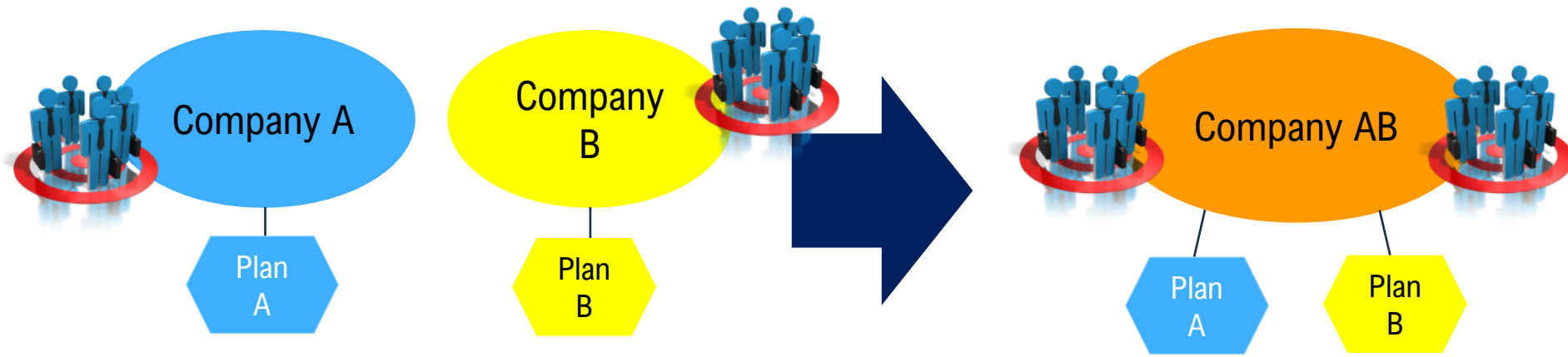
- Facts:
 - Buyer bought Target 4/17/2023
 - In early July, the VP of HR tells the plan's TPA: get rid of the Target Plan and we will cover those employees in our plan
 - The TPA bangs her head against the wall
- Resolution: TPA tells the VP of HR:
 - We can't distribute the 401(k) money if we terminate the plan
 - You need to merge the plans or maintain the Target Plan as a frozen plan
 - And she sighs ... "Next time, call me before the transaction."



COMPANY MERGERS



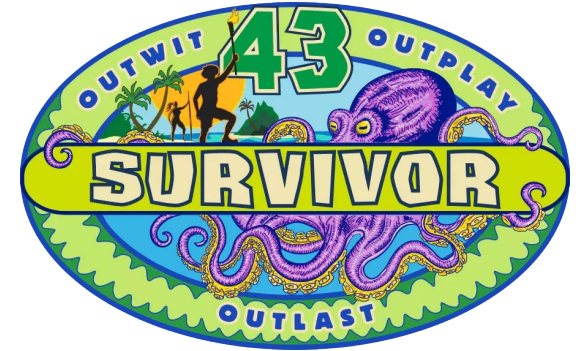
COMPANY MERGERS



Surviving entity employs everyone and sponsors all plans

COMPANY MERGER TRANSACTIONS

- Transaction can be very complex – for several tax or corporate reasons
- The general concept is:
 - Two companies combine somehow
 - One company survives
 - The survivor:
 - Owns everything the merging companies owned before the transaction
 - Owes everything the merging companies owed before the transaction
 - Sponsors all plans that the merging companies sponsored before the transaction



COMPANY MERGER TRANSACTIONS – EMPLOYEES

- Any employee of the merging entities becomes an employee of the surviving company
 - No termination of employment
- What service is counted?
 - Nobody knows (law is not clear)
 - Same issue as with stock transaction, although it makes less logical sense to exclude prior service in a merger setting
- Transition Rule applies to both plans unless amended
 - Note: change in sponsorship applies by operation of law – no amendment needed (but amendment to clarify should not affect the Transition Rule)

QUESTIONS?





Contact information



Visit our website:

<https://ferenczylaw.com>



Ilene H. Ferenczy, Esq., CPC, APA

Managing Partner



(678) 399-6602



Ilene@ferenczylaw.com



<https://ferenczylaw.com/>



2635 Century Parkway NE Suite 200, Atlanta, GA 30345



Sign up for our
Newsletters!

**We welcome the
opportunity to partner with
you!**

2023



THANK YOU TO OUR SPONSORS!

