Chapter Two - Formation of a Corporation

Fundamental income tax elements:

1) Transferor: §351(a) - nonrecognition treatment applicable to the asset transferor (if certain conditions are met); otherwise: §1001 gain recognition.

2) Corporation: Tax-free treatment to corporation issuing its shares. §1032.

3) Carryover tax bases to shareholder (shares) and corporation (assets).
Section 351 Qualification Requirements

§351(a) - specific requirements:

a) one or more persons must transfer to corp.;
b) they must transfer "property";
c) transfer must be in exchange for "stock" of the issuing corporation - not "securities"; and,
d) the transferor "group" must be in "control" immediately after the exchange (but not be an "investment company").

What income tax objective for this treatment?
Ancillary Income Tax Rules for §351 Transfers

Basis §358 - to shareholders - basis of stock shall be same as the basis for transferred property. Potential for double level of income taxation, i.e., to corporation & shareholder.

§362 - transferred basis for assets shifted into the corporation. Limit on built-in losses.

Holding period: §1223(1) - transferor has a substituted holding period; §1223(2) - carryover holding period to the corporation.
Potential for duplication of economic loss.

IRC §362(e)(2) provides limit on transferee’s “net built-in loss” when aggregate adjusted bases for properties transferred exceeds total FMV.

Allocation proportionately of built-in loss to various corporate assets.

Possible election to reduce specific shareholder’s stock basis to fair market value & keep loss basis at corp. level. IRC §362(e)(3)(C).
Incorporation Transaction Problem

Is §351(a) exchange treatment available?

a) Each party is a transferor of property (including the transferor of money).

b) Each party has received X corporation stock in the exchange.

c) The transferors (as a group) are in “control” of X corporation.

d) No transferor has received "boot" in this transaction.
Problem p.64, cont.

Treatment to A: A has no gain realized. $25,000 basis for stock received.

Need to clarify that money is “property” - otherwise, only 75% (less than 80%) of the stock to transferors for §351 purposes.

Treatment to B: Realized gain of $5,000. Basis to B of stock received is $5,000.

No tacked holding period - since inventory.
Treatment to C:
Realizes $5,000 loss on the land; but the loss is not recognized on this transfer.
Substituted $25,000 basis for stock under §358(a).
Land is a capital asset – the holding period is tacked - §1223(1).
Should C have sold the land to realize & recognize the loss for C’s income tax purposes?
Problem p.64, cont.

Treatment to D:
$20,000 gain is realized on the equipment transfer, but no gain recognition is required.

Depreciation recapture under §1245? Provides that “such gain shall be recognized notwithstanding any other provision.”

But, see §1245(b)(3) - an exception in the §351 context. The depreciation recapture potential is preserved at the corporate level.
Treatment to E: Disposition of an installment obligation occurs.

§453B(a) requires the recognition of the gain upon the disposition of an installment obligation. The amount realized is $20,000; tax basis in the note is $2,000 = $18,000 gain

But: Reg. §1.453-9(c)(2) specifies that no gain recognition is required upon disposition of an installment obligation in a §351 transfer.
Problem p.64, Part (b)

Tax consequences to the corporation:

1) §1032 - no gain on stock issuance.

2) Tacked holding period(s) for the assets received - §1223(2) - but not for inventory.

3) Carryover tax basis for the various assets received (§362): inventory - $5,000; land - 20,000 (not 25,000); possible corporate election, §362(e)(2)(C)); equipment - 5,000; installment note - 2,000.
Problem p.64, Part (c)

C transfers two properties:
Parcel 1: 10x FMV 15x basis (loss)
Parcel 2: 10x FMV 8x basis (gain)
20x 23x (3x net loss)

§362(e)(2) requires a tax basis reduction by 3x.
Netting of gains and losses is permitted.
Reduce tax basis of Parcel 1 from 15x to 12x.
Option to reduce C’s stock basis to 20x.
Potential double taxation of inventory gain:
$5,000 gain to B on the stock sale.
$5,000 gain to corporation on inventory.

How prevent double gain (or double loss) if so desired? Step-up the shareholder’s basis if the corporation realizes the gain. Step-down the shareholder's basis if the loss is recognized by the corporation. Cf., partnership treatment.
“Control” Requirement Defined

§§351(a) & 368(c) - requires:

80% of voting power, and

80% of total value of all other stock.

If several transferors:

- an "integrated plan" is necessary
- need not transfer all assets simultaneously
- must, however, transfer with "expedition consistent with orderly procedure."
Immediate Stock Disposition After Transfer

What if a disposition of the stock occurs immediately after its acquisition?

Cannot be disposed of pursuant to a pre-existing binding agreement.

Intermountain Lumber case - p.66

Issue: What tax basis of corporation's assets (i.e., Intermountain) for purposes of tax depreciation - to the acquirer; i.e., was the original transfer of the assets to the corporation really a “sale”? 
Transfer of assets to 1st corporation for stock.
Then: (1) Transfer of stock of 1st corp to 2nd corp & (2) transfer of assets to 2nd corp by another transferor & (3) transfer of all assets to lower tier sub.

Prearranged binding agreement.
But: The nontaxable disposition (not a “sale”) of 1st corp. stock after the 1st §351 transaction does not violate the “control” requirement.
Transfers of “Property” and Services

Definition of "property". Stock received for "services" is not for property - §351(d).

What are “services”? Attorney; Promoter; Goods with an installation/repair arrangement.

Effect on the 80% requirement of:

1) solely a service provider - not a “transferor.”

2) both property (more than de minimis) & services - included in control group, but some stock may be gross income to the service provider/transferor.
“Stock” means an equity investment in the corporation and does not include:

1) stock rights or warrants (defined?)
2) securities (i.e., long term debt), Previously “securities” permitted (how defined?), but eliminated from §351 eligibility; or
3) non-qualified preferred stock - §351(g).
   (how defined? See §351(g)(2)(A); debt-like).
Problem 1(a)

A as transferor is entitled to §351 treatment:
50 of 60 shares. Exchanged basis of $10,000 in Newco stock. Tacked holding period under §1223(1) - assuming not inventory.

Corporation - §1032. No gain on issuance of shares & cost basis to A. Reg. §1.1032-1(d).

B's transfer - not under §351. B as the sole transferor. B owns only non-voting preferred (and is not part of the 80% group).
Problem 1(b) Integrated plan

A & B transfer as part of an integrated plan. Both A & B each have Code §351 eligibility. B can take only preferred stock. But, must be qualified preferred - cf., Code §351(g). Simultaneous exchanges are not critical if linkage exists. Reg. §1.351-1(a)(1) specifies the transferors must proceed with an expedition consistent with orderly procedure.
1) Same as (b) - i.e., integrated transaction; but March 5 transfer to daughter by A as a gift three days after B's transfer. Transfer to D as a post-transfer transaction. Presumably not a binding commitment by A to dispose of these shares.

2) January 5 transfer to D - 3 days after A's transfer. Related? D is not a transferor for §351 purposes. B’s transfer fails §351 eligibility.
Problem 1(d)  p.73, cont.

Shares sold under a preexisting agreement. If the transfer was an integral part of the incorporation only 35 of the 50 shares (70%) were received under §351.

What about a step transaction, and inclusion of E as part of the transferor group? No. A and B to recognize gain on the exchange. E would take a cost basis for E’s shares.
Problem 2(a)  
Incorporation Planning

Transferors (Java and Venturer) only own 350 of 500 (70%) shares & the control requirement (i.e., 80%) is not satisfied.

§351(d) specifies that stock for services is not considered as issued for property.

Java to recognize all realized gain. Issue not relevant to Venturer since transferring cash.

Manager has compensation income - FMV of the stock after the Manager’s receipt of shares?
Manager pays cash for stock. Therefore, Manager is a member of the “control” group.

Java can then postpone gain recognition.

If a promissory note is issued - is this "property"?
Is the issuance of stock for a promissory note permitted under local (corporate) law?

Consider the cash flow effect to Manager - $80,000 salary less: (i) income tax, (ii) $30,000 note principal payment, and (iii) note interest expense.
Manager pays $1,000 for 150 shares. Shares are worth much more and the shares are really for performance of future services. Manager is not a §351 “transferor” after examining the substance of the transaction. Therefore, Java is required to recognize all realized gain on the Java transfer. Manager: Ordinary income over the $1,000 cost.
Problem 2(d)  p.74
More than 10% Cash for Stock

Manager pays $20,000 cash (not $1,000).
Assuming $1,000 per share, the $20,000 transferred by the Manager will exceed 10% of value of the shares for services. But, $130,000 compensation.
Manager is treated as a transferor - all stock is counted for the transfer rule; the property transferred by Manager will not be considered to be of "relatively small value."
Java - no gain is to be recognized.
Manager receives only 20 shares without restrictions and another 130 shares subject to restriction - a Code §83 issue exists. Are the 130 shares counted for §351 purposes? If so, §351 qualification - if Manager’s shares. Are the 130 shares treated as Treasury stock and not counted?

§83(a) - no income until the restrictions lapse. §83(h). Function of the §83(b) election?
Problem 2(f) Possible Multi-Class Structure

Venturer receives nonvoting (?) preferred shares. DRD eligibility. If nonqualified preferred stock, should be received after the initial §351 transfers and in an unrelated transaction. Use (convertible?) debt? - to enable an interest expense deduction and repayment of debt without dividend consequences to Venturer.

Java - 51% to Java & the remaining shares to manager? Lower the issue price and increase the incentive to Manager.
Treatment of “Boot” Received in Incorporation

§351(b); §358(a), (b)(1); §362(a).

Gain realized is to be recognized, but only to the extent of any “boot” received from corp.

Tax basis limits the total amount of realized gain.

Allocation of the boot is made (on a FMV basis) among the transferred assets.

Tax character of the gain is determined by reference to the several asset(s) transferred.
Stock Basis Calculation when “Boot” is Received

§358(a) - Tax basis for distributed stock:
1) Tax basis of the asset transferred to corp.
2) Less: FMV of the boot received
3) Plus: Gain amount recognized
4) Equals: Basis to the transferee shareholder of the stock received.

Unrecognized gain remains in the stock.

Basis for the boot: Fair market value, since gain recognition occurring upon its receipt.
Rev. Rul. 68-55
Allocating boot gain

Determining the gain amounts, etc., when receiving boot (§351(b)):

1) Asset-by-asset allocation approach.
2) Allocation of the boot consideration on a relative fair market value of assets basis.
3) No loss recognition permitted; no netting.
4) Divided holding period for shares received.
5) Asset tax bases to corp. adjusted for boot.
Shareholder’s holding period for stock:

split holding period for each share of stock, dependent upon each asset, including, if partially sourced to inventory, no tacked holding period for that portion.

Transferee corporation’s basis for various assets received: transferred basis, plus any boot/gain recognition allocable to each particular item of property.
Timing Considerations for Boot Gain Recognition

Installment gain treatment upon a boot transfer (e.g., corporate debt received)?

1) When must the gain be recognized? Later.

2) What impact to the shareholder's stock basis under §358 for the stock received in the incorporation transaction? Current increase.

3) Delayed impact under §362(a) to the corporation's tax bases for these assets received? Cf., Crane case analysis re debt.
Tax Basis Allocation When Boot as Installment Debt

Allocation of tax basis – page 82

1) First to the nonrecognition property.

2) Any remaining (i.e., excess) basis allocated to the boot to limit gain realized amount.

4) If installment note received (as boot) allocation of any remaining basis is made under the installment method, i.e., proportionately. (Gain recognition timing affects corp’s basis).
Problem: Transferor A

Transferor A: Equipment: $22,000 FMV; 15,000 basis; 7,000 realized gain (all §1245).

Receives (i) common stock, (ii) preferred stock (not “nonqualified”) & (iii) $2,000 cash boot (gain). A's tax basis computation:

Adjusted basis: 15,000
Less boot: 2,000
Plus: income (§1245): 2,000 = 15,000

continued
Allocation of the $15,000 shareholder basis between two types of stock (based on their relative fair market values – 15 & 5):

\[
\begin{align*}
3/4ths & \text{ to common stock} = 11,250 \\
1/4th & \text{ to preferred stock} = 3,750 \\
& \text{ (total 15,000)}
\end{align*}
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Corporation’s tax basis for A’s asset:
15,000 plus 2,000 gain recognized = 17,000
Boot Allocation Issue

$13,000 gain on inventory - $20,000 fmv.
$3,000 accrued loss on land - $10,000 fmv.

B receives: $15,000 in stock & $15,000 cash.

Boot is to be allocated based on the relative FMVs of the two transferred assets.

Boot allocated to inventory is 20/30 times the $15,000 cash boot equals $10,000 gain.

Boot allocated to land is 10/30 times $15,000 equals $5,000 - but, no loss recognition. Cont.
Transferor B, p.83, cont.

B's basis in the stock: Code §358(a)

7,000 inventory basis
13,000 land basis
less: 15,000 boot received
plus: 10,000 gain recognized
equals: 15,000 (20,000 less 5,000 cash). Stock holding period is proportionate for each share of stock received. Cont.
Corporation's basis for assets: Code §362
1) Inventory 7,000 + 10,000 gain = 17,000
2) Land 13,000

Note: $30,000 aggregate basis not exceeding the $30,000 fair market value and, therefore, no built-in loss/§ 362(e)(2) applicability.
Two types of boot received

Land basis is $20,000 and FMV is $50,000. $30,000 realized gain on the transfer of land. Stock is received & two types of boot are received: (1) 5x cash & (2) two year 35x note. All $30,000 gain is to be recognized (not $40,000) - see §351(b)(1). All gain is LTCG. Basis is allocated first to the non-recognition property. continued
When reporting on the installment method:
Basis 1st to the nonrecognition property
(i.e., the X stock - $10,000).
Remaining $10,000 is excess basis to the boot.
Gross profit ratio 30,000 (10,000 for basis)
40,000 equals 3/4
3/4 of 5,000 cash equals 3,750 current gain.
3/4 of 35,000 = 26,250 - recognized in two years.
C’s stock basis computation:

- Land basis: 20,000
- Less: boot received: 40,000
- Plus: gain recognized: 30,000
- Equals: 10,000

Treated as electing out of §453 installment treatment for shareholder tax basis purposes.
Problem (b) §453(i)

C transfers depreciable equipment (instead of land):

Same basis: 20,000
Same FMV: 50,000
Original cost: 50,000

Entire $30,000 would be §1245 gain to be recaptured into income immediately.

Tax basis to the shareholder & corporation?
Assumption of Liabilities
§357

Remember the Crane case: debt relief constitutes an “amount realized.”

§357(a) - the assumption of liability (or the taking of property subject to a liability) will:

1. not constitute “boot” and
2. not prevent §351 treatment.

How take this into account? adjust tax basis, as required under §358(d). Reduce the tax basis by treating the debt assumption as money received.
§357(b). Tax avoidance purpose limitation. A liability assumption is treated entirely as boot if the taxpayer's principal purpose in transferring some liability was the avoidance of federal income tax or was not for a bona fide purpose.

Bona fides measured at the corporate level.

Purpose: to avoid a pre-§351 cash “bailout” (i.e. borrowing against property immediately before an incorporation transfer).
Section 357(c)  Exception if Liabilities Exceed Basis

§357(c). Liabilities in excess of tax basis of the transferred property produce a gain amount. Total of the liabilities in excess of the total of asset bases triggers applicability of this provision.

The excess is treated as gain from the sale or exchange of property.

Exception for those liabilities deductible when paid. §357(c)(3). This enables avoiding a gain problem for cash basis taxpayers (i.e. accounts payable).
The Excess Liabilities Problem

How solve this liabilities exceeding basis problem – to avoid gain recognition at incorporation time?
- Contribute cash to equalize
- Contribute high-basis debt-free property
- Contribute a promissory note in an amount at least equal to the “negative basis”
- Remain personally liable on the debt property?
Promissory Note & Tax Basis?

Taxpayer contributes real estate to his corporation. Real estate subject to debt in excess of its tax basis. The taxpayer also contributes his promissory note - face value in excess of §357(c) amount.

Held: Note has a tax basis equivalent to face amount - eliminating the §357(c) problem. Note is either to be paid by the taxpayer or collected in the corporation’s bankruptcy estate. Note is not a “sham” (p. 96). See IRS stipulation re business purpose existing.
Alternative §357(c) Planning – Retain Liability?

P. 99. Retention by the shareholder of the personal liability for the liability attached to the transferred asset. Does this enable the avoidance of the §357(c) effects? No avoidance. (Tax Court).

What effect of entering into an agreement that the shareholder (not the corporation) will satisfy the debt (e.g., guarantee agreement)? Court position: guarantees are not the same as debt (including shareholder’s promissory note).
Seggerman Farms  
Footnote 8, p.100

Taxpayers contributed assets subject to liabilities exceeding tax basis.

But, taxpayers remained liable as guarantors of these liabilities.

Court of Appeals ruled §357(c) gain is to be recognized on the transfer.

Personal guarantee of the shareholders is not the equivalent of primary liability. Correct result?

What are the terms in a guarantee agreement?
Problem 1(a) - Liabilities not Exceeding Basis

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Land (recourse) debt is 30,000 & X takes land subject to this debt.

Stock is issued for 20,000 (50 fmv less 30 debt). No gain is to be recognized.

Stock basis: 40,000 less 30,000 debt = 10,000 excess.
Problem 1(b) – Liabilities Exceeding Basis

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Debt assumed is 30,000 (30 exceeds 25 basis).
Gain to be recognized is 5,000; Stock = 20x FMV.
Stock tax basis: 25,000 less 30,000, plus 5,000 (gain to be recognized) equals 0 basis.
Problem 1(c)  

Tax Character of 5,000 Gain

What tax character of A's recognized gain?

Reg. §1.357-2(b). Allocate the §357(c) gain of $5,000 between the transferred assets based on the relative fair market values (without consideration of the debt or tax basis).

Inventory 10,000/50,000 20% = 1,000
Land 40,000/50,000 80% = 4,000

5,000
Problem 1(d)  Tax Basis Allocation

1) If allocating the entire gain to the land (since the land is the only appreciated asset):

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<th>Basis Amount</th>
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</tr>
<tr>
<td>land</td>
<td>5,000 - plus 5,000 gain = 10k</td>
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Gain recognized and total basis for land is $10,000.

2) If allocation is on the basis of asset FMV:

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<tr>
<td>land</td>
<td>9,000 (5,000 plus 4,000)</td>
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</tbody>
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Avoiding gain recognition:
1) Transfer into Corp: (a) $5,000 cash, or (b) any other asset with an adjusted basis of at least $5,000.
2) Remain personally liable on at least $5,000 of the mortgage. ??
3) Transfer a personal promissory note for $5,000 to the corporation (e.g., Peracchi).
Liabilities assumed

Building is transferred - basis $100,000; fair market value - $400,000; subject to $80,000 first mortgage; borrowed $10,000 on the building two weeks before incorporation of Y; and, issuance by Y of $310,000 in stock (400 less 80 and 10).

Code §357(b) is applicable - assuming no bona fide business purpose for the borrowing for personal reasons immediately prior to incorporation transfer. Bailout amount? cont
Problem 2(a), cont.

p.102

B’s basis in the Y stock would be determined as follows:

Transferred tax basis of the building: $100,000

Less: $90,000 liabilities assumed

Plus: $90,000 gain recognized

Equals: $100,000 basis
Only Cash Boot

Cash - bank to Y Corp, then to shareholder. B will only recognize the $10,000 cash boot. B’s basis in the Y Corp stock would be:

$100,000 transferred basis of building
Less: $80,000 liabilities assumed
Less: $10,000 cash received
Plus: $10,000 gain recognized
Equals: $20,000 basis for stock
Transferred assets might include:

- Land & Building (depreciated)
- Machinery & equipment
- Goodwill
- Accounts receivable and inventory
- Previously deducted supplies

Assumed liabilities might include long term debt, accounts payable, contingent liabilities.
Facts: $662,000 in zero basis accounts receivable transferred to a new corporation in exchange for stock.

1) IRS claims partnership's zero basis in the receivable carried over to corporation - corp. realizing income upon collection.

2) Corporation contended receivables were not “property” & transfer to corporation was an "assignment of income".
§357 effect of potential future liabilities. Parent drops assets into sub – with possible environmental liabilities (CERCLA). These liabilities are assumed by subsidiary.

1) These potential liabilities are not “liabilities” for §357(c)(1) (and §358(d)).

2) Liabilities assumed by the sub are deductible (or to be capitalized) when paid (by the cash basis taxpayer).
Possible Code §351 Abuse Situations

1) Applicability of the "assignment of income" doctrine.
2) Code §482 is used to appropriately allocate income among taxpayers (e.g., cannot accelerate deductions and deflect related income to corporation).
3) “Tax benefit rule” - deduction of the cost of property prior to its transfer to Corp. Note the Hillsboro case (p. 112).
Problem (a)                      p.113

Incorporation Transfers

Possible tax consequences:
Is gain to be recognized?
Do the assumed liabilities exceed tax basis?

  No, consider §357(c)(3).

Liability assumed of $30,000 (not 100x) is less than the $60,000 tax basis.

Tax basis for the shares received:

  $60,000 less 30,000 = $30,000
Problem (b)  p.113
Cash basis taxpayers

Collection of zero basis accounts receivable:
1) Architect is not taxed because the A/Rs are "property" under §351 and can be assigned to the corporation without income recognition. The corporation has income when the A/Rs are collected (i.e., a cash basis taxpayer).
2) The “assignment of income” doctrine does not apply if a valid business purpose exists for the transfer of the accounts receivable.
Deduction by the corporation of accounts payable which were assumed?

Yes, deduction to the transferee of the accounts payable is permitted under Code §162 when accounts payable are paid - unless evidence exists of tax avoidance or the distortion of income.
Problem (d)                      p.113
Partial Transfer

Payment of the accounts payable but transfer of the accounts receivable to the corporation.

Is the “assignment of income” doctrine applicable in this situation?

Evidence of tax avoidance or the distortion of income existent here? Probably.

What relevance of §446(b) (“clear reflection of income”)?
Problem (e)  Accrual Basis Transferor

Payment of the accounts payable by Transferor but transfer of the accounts receivable to Corporation.

But, Architect as an accrual basis taxpayer. Receivables would have been included in GI. Payables would have been deducted & an assumed liability to Corp.

Stock basis: 60 plus 60 = 120 less 100 debt = 20 basis (and no § 357(c) gain).
Problem (f)  
Accounting Method

Design probably a “qualified personal service corporation” - see §448(b)(2) & (d)(2) – and, the accrual method is not required.
Is the calendar year required? Yes, see §441(i)(2).
Black & Decker Corp v. U.S.

Motion for Summary Judgment

Is tax basis in stock of sub to be reduced by the contingent liabilities assumed by the sub?

Held: no; deduction to the subsidiary & capital loss to parent corp. when selling stock? But, see (subsequent) §358(h) basis limitation to the FMV of the stock received.
Intentional Avoidance of Code §351

Code §351 is not an elective provision.

Objectives when seeking to avoid §351:

1) Enable a loss deduction (ordinary?).
2) Step up the tax basis for depreciation.
3) Freeze capital gain potential.

Techniques for avoiding Code §351:

1) Immediately breaking 80% control.
2) Sale of an asset to the corporation (with §453 installment sale treatment).
Contributions to Capital - p.123

Code §§118(a) & 362(a)(2), (c).

1) No receipt of stock for property sent to corp.
2) No gain is to be recognized; but, an increase to shareholder of tax basis for stock by the cash and adjusted basis of property transferred.
3) This contribution is excludable from the gross income of the transferee corporation.
4) Transferred tax basis to the corporation for the assets received.
Controlling shareholder surrenders some shares to corporation, but retains control. (72% to 68%).
What (if any) deductibility (ordinary loss?) of the tax basis for the surrendered shares?
Held: voluntary surrender of some shares & constitutes a contribution to the capital of the corporation. Objective: to enhance the corp.
No immediately deductible (ordinary) loss actually sustained during taxable year. Reallocate tax basis.
Organizational Expenses - Is a Deduction Available?

Code §195, §212(3) & §248

§248 – $5,000 deduction & 180 months amortization for organizational expenses.

§248(b) - defining “organizational expenses”: legal fees for drafting the articles of incorporation, but not the costs for issuing or selling the stock.

§195 – $5,000 start-up expenditures deductible, with 180 month amortization for remainder,
Problems  
Appraisal Fees  

a) $3,000 fees paid for appraisals of A's proprietorship.  
A's personal cost and not an expense of the incorporation.  An expense of acquiring the stock and added to the tax basis for the stock.  
b) Fee paid by the corporation.  Treated as a liability of Shareholder A which is assumed by the corporation and is subject to §357 liability treatment.
i) Drafting the articles of incorporation

ii) Deeds, etc. - constitute costs of the specific assets & to be added to the tax basis of these assets.

iii) Application to issue stock - not considered an organizational expense; also, not otherwise deductible or amortizable. Reg. §1.248-1(b)(3)(i).

continued
Problem c

iv) §212(3) deduction treatment is not available since not applicable to corporations. Not a §162(a) expense, but should be includible in the organizational expenses under Code §248 and amortizable.

v) Buy-sell agreement - organizational expense under Code §248?? and, therefore, amortizable?