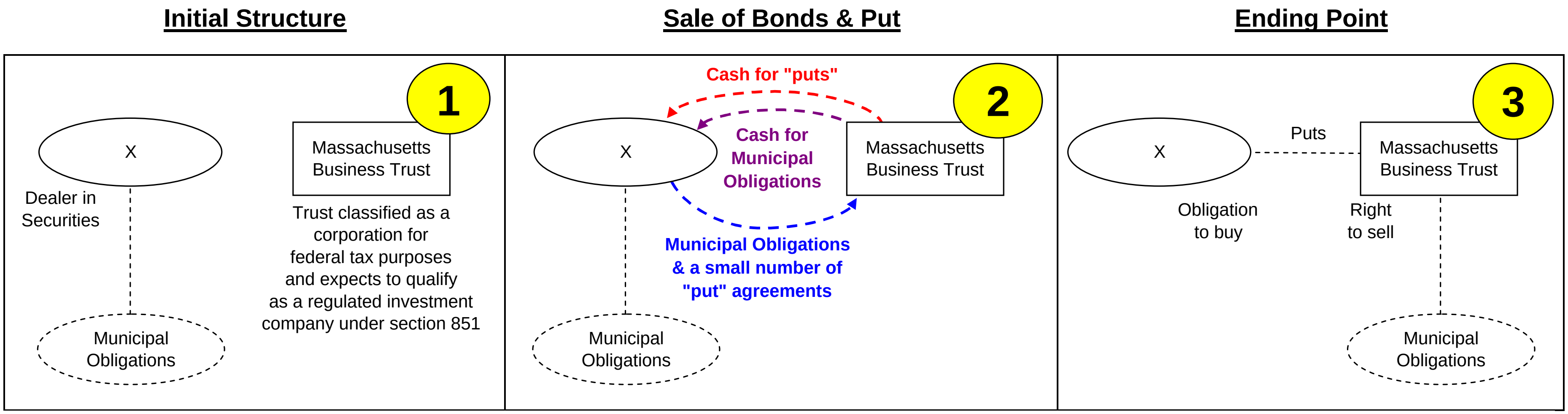
Revenue Ruling 82-144

Sale Treated as Sale Despite Acquisition of "Put"



A Massachusetts business trust ("MBT") was classified as an association taxable as a corporation for federal income tax purposes. It was formed to invest in municipal obligations the interest on which is exempt from tax under section 103(a). MBT satisfies the requirements of section 851(a) and expects to meet the additional requirements of section 851(b) and qualify each year as a "regulated investment company." Under the terms of the trust agreement the beneficiaries (shareholders) of the MBT are free to invest or withdraw their funds at any time without sales charges or redemption fees. There are no minimum periods for investment and no penalties upon withdrawal. Because of these features the MBT, when it purchased its portfolio of short-term (1 year or less) municipal obligations from X, a dealer in securities, simultaneously purchased from X a small number of "put" agreements ("puts"). The purpose for the acquisition of the "puts" was to increase the liquidity of some of the obligations purchased in order to provide cash for the demands of those shareholders deciding to withdraw their investments.

The price paid to X for the "puts" was in addition to the price of the obligations, which were purchased at their fair market value. The "puts" provide that the MBT has the option or right to require X to repurchase the obligations. The terms of the "puts" establish the price that X must pay for the obligations should the taxpayer elect to exercise its rights under the agreements. All of the "puts" are for periods substantially less than the life of the obligations to which they apply, are nonassignable, and terminate if the obligations to which they relate are disposed of by the MBT. There are no restrictions on the sale or disposition of the obligations by the MBT. In addition, there are no "call" agreements (an agreement giving X the option or right to reacquire the obligations at a fixed price for a specific period of time), either formal or informal, expressed or implied, existing between the MBT and X. X has no rights in the obligations acquired by the MBT and will not be soliciting buyers for the obligations for its account while the obligations are held by the MBT. The obligations were acquired by MBT for its own account and not as security on funds advanced to X.

Although the acquisition of the "puts", like the resale agreements in Rev. Rul. 74-27 and United Planters National Bank of Memphis, limits the risk of loss there are important differences between them. First, unlike the facts in Rev. Rul. 74-27 or Union Planters National Bank of Memphis, the taxpayer paid an arm's-length price for the "puts". The price paid for the "puts" represented the taxpayer's and X's estimation of the value of the risk that X was assuming under the "puts", independent of the taxpayer's acquisition of the obligations. Second, the primary purpose of the "puts" was to increase the liquidity of the taxpayer's portfolio of obligations rather than to shift the risk of loss. Third, unlike the facts in Rev. Rul. 74-27 and Union Planters National Bank of Memphis where the risk of loss was transferred for the entire period the securities were held, the shifting of risk under the facts described herein was for a definite period that was substantially less than the life of the obligations. Thus, the MBT was treated as the owner of the municipal obligations.