TAX CONSEQUENCES OF GENERAL MOTORS' BANKRUPTCY

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Introduction

General Motors Corporation (Old GM) was the largest manufacturer in the U.S. of cars, trucks, and other vehicles and the second largest in the world in 2008, with a worldwide market share of 12.4 percent. During 2008, it sold worldwide over 8 million cars, trucks, and other vehicles under several brands names including Chevrolet, Buick, GMC, Cadillac, Pontiac, and Saturn. Worldwide, Old GM employed about 235,000 employees of whom 163,000 were hourly employees and 72,000 were salaried employees. Of its total employees, 91,000 were employed in the U.S. with approximately 62,000 represented by the United Auto Workers (UAW) and other unions. Old GM's stock was publicly traded on the New York Stock Exchange (NYSE) under the symbol "GM." [1]

The 2008 global credit market crisis *"created a substantially difficult business environment,"* which had a *"dramatic effect"* on both Old GM and the automotive industry.[2] In 2008, Old GM's losses were $30.9 billion and it had burned through $19 billion in cash. In 2009, Old GM's consolidated global assets were approximately $82 billion and its liabilities were approximately $172 billion.[3]

By the end of 2008 and into 2009, Old GM had *"suffered a steep erosion in revenues, significant operating losses, and a dramatic loss of liquidity…"* which put *"its future in grave jeopardy."*[4] In

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February 2009, Old GM warned investors that it might not be able to meet its auditor's requirements to continue as a going concern.[5] In late 2008 and early 2009, Old GM received emergency loans from the U.S. Department of Treasury (UST) and the governments of Canada and the province of Ontario, Canada (Canadian Government) and attempted to develop a restructuring plan to sustain its long-term viability without filing for bankruptcy protection.

Because Old GM was not able to carry out the necessary cost reductions and restructuring actions, on June 1, 2009, it and several of its subsidiaries filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. As part of its bankruptcy reorganization, on July 10, 2009, Old GM sold substantially all of its assets and transferred certain of its liabilities to the General Motors Company (New GM). In satisfaction of their claims against Old GM, New GM issued stock, warrants, and notes to the UST, the Canadian Government, a New United Auto Workers Retiree Medical Trust (New UAW VEBA), and Old GM's Unsecured Creditors. After the sale, the UST owned 60.8 percent of New GM, the Canadian Government 11.7 percent, the New UAW VEBA 17.5 percent, and the Old GM Unsecured Creditors 10 percent.[6]

Upon emerging from bankruptcy, New GM's Chief Executive Officer (CEO), Fritz Henderson, stated, "*Today, we launch the new General Motors, and our promise is simple. We will be profitable, we will repay our loans as soon as possible, and our cars and trucks will be among the best in the world."*[7] Further, he stated, *"We recognize that we've been given a rare second chance at GM, and we are very grateful for that."*[8]

What would have been the U.S. tax and non-tax consequences of Old GM's bankruptcy reorganization for Old GM, Old GM's creditors and shareholders, and New GM?

History of General Motors

The history of Old GM can be traced back to 1897 when David Dunbar Buick founded the Buick Auto-Vim and Power Company (Buick). Between 1899 and 1901, Mr. Buick and his engineer, Walter L. Marr, developed and built the first Buick. When Buick became financially distressed, William Crapo Durant, one of the founders of the horse-drawn vehicle manufacturer, Durant-Dort Carriage Company, assumed control of Buick in 1904. In 1908, Mr. Durant formed a holding company, the General Motors Company (GMC), which acquired Buick and the Cadillac Automobile Company in 1909. In 1916, GMC was renamed the General Motors Corporation (Old GM).[9]

During 1936 and 1937, the UAW led a 44-day sit-down strike at Old GM plants, which ended with Old GM agreeing to pay raises and recognizing the UAW as its workers' exclusive bargaining representative.[10]

In 2007, after a two day walkout, Old GM and the UAW reached an agreement to shift Old GM's obligation to provide health care benefits to 340,000 of its retirees to the UAW Retiree Medical Trust, a voluntary employee beneficiary association administered by the UAW (Old UAW VEBA), which relieved Old GM of approximately $51 billion in unfunded retiree healthcare benefit obligations. To fund the Old UAW VEBA, Old GM agreed to contribute $31.9 billion and in 2008, it issued a $4.37 billion five-year convertible note to the Old UAW VEBA.[11]

Bankruptcy Timeline

Pre-Chapter 11 Bankruptcy Proceedings

In the second half of 2008, the turmoil in the credit markets, especially the lack of financing for buyers or lessees of vehicles, the severe contraction of worldwide vehicle sales, the recessions in the U.S. and Western Europe, and the slowdown of economic growth worldwide, created a

substantially difficult business environment for Old GM and the auto industry. As a result of these economic conditions and the rapid decline of vehicle sales, Old GM determined that despite its actions to restructure its U.S. business, its liquidity was potentially going to fall to levels below it needed to operate, and therefore it was *"compelled to turn to the U.S. government for financial assistance."* [12]

In November 2008, Old GM's chief executive officer, Rick Wagoner, and the CEOs of the other Big 3 auto companies, Ford Motor Company CEO Alan R. Mulally and Chrysler LLC CEO Robert Nardelli, testified before the U.S. Congress and requested a $25 billion emergency loan from the U.S. government that would allow the Big 3 to make their wage and supplier payments and avoid bankruptcy and/or liquidation. CEO Wagoner warned that the failure of any of the Big 3 would rapidly bring down the entire U.S. auto industry and *"*[t]*he societal costs would be catastrophic"* with three million jobs lost within the first year and tax losses of more than $156 billion over three years. [13]

In response to a request from U.S. Senate Majority Leader Harry Reid and the Speaker of the U.S. House of Representatives Nancy Pelosi, on December 2, 2008, Old GM submitted a restructuring plan for long-term viability to the Senate Banking Committee and the House of Representatives Services Committee (Restructuring Plan). Old GM described the Restructuring Plan as *"a blueprint for creating a new General Motors, one that is lean, profitable, self-sustaining and fully competitive."* [14] To sustain its operations and implement its restructuring plan, Old GM requested $18 billion in federal financial assistance, consisting of a $12 billion term loan and a $6 billion line of credit.

Under the Restructuring Plan, Old GM intended to:

1. Reduce the number of brands, nameplates, and dealerships;
2. Focus available resources and growth strategies on profitable operations;
3. Reduce manufacturing and structural costs through increased productivity and employment reductions;
4. Shift the U.S. product portfolio to more fuel-efficient cars and crossovers;
5. Fully comply with the Energy Independence and Security Act of 2007 (EISA); and

6. Restructure the balance sheets and supplement its liquidity through temporary federal assistance.

On December 4 and 5, 2008, the CEOs of Old GM, Ford Motor Company, and Chrysler testified before Congress and requested $34 billion in federal government aid. Although on December 10, 2008 the House of Representatives approved a bill authorizing the UST to make direct loans to the Big 3 from the Troubled Asset Relief Program (TARP), on December 11, 2008, the U.S. Senate failed to pass the bill.

On December 19, 2008, President George W. Bush issued an executive order authorizing the UST to make short-term loans from TARP of up to $17.4 billion to each of the Big 3. President Bush stated that given the current state of the auto industry and the economy, Chapter 11 was *"unlikely to work for American automakers at this time"* and that the loans would give the automakers three months to *"put in place plans to restructure into viable companies."*[15] However, President Bush stated that if restructuring of the auto companies could not be accomplished outside of bankruptcy, the loans would allow the Big 3 to prepare *"for an orderly Chapter 11 process that offer[ed] a better prospect of long-term success…"*[16] Further, he stated that under the terms of the loans, the auto companies would be required to demonstrate how they would become viable and show that they could earn a profit and achieve positive net worth. If they failed to come up with viable restructuring plans by March 31, 2009, the loans would become due.

In order to sustain its operations through March 31, 2009, on December 31, 2008, Old GM and the UST entered into a Loan and Security Agreement (UST Loan Agreement) with the UST agreeing to loan to Old GM up to $13.4 billion in short-term financing (UST Loan Facility). From December 2008 to February 2009, Old GM borrowed under the UST Loan Facility $13.4 billion from the UST, which Old GM agreed to repay by December 30, 2011 (UST Loan).
Under the UST Loan Agreement, Old GM agreed to submit to the UST a proposed restructuring plan by February 17, 2009. If by March 31, 2009, the plan had not been certified as viable, the

UST Loan would become due within 30 days (Viability Plan).[17] Under the UST Loan Agreement, Old GM was required to use its best efforts to achieve the following restructuring targets:

1. Reduce its approximately $27 billion in unsecured public debt by at least two-thirds;
2. Reduce U.S. employees' total compensation to be competitive with U.S. Nissan, Toyota, or Honda by December 31, 2009;
3. Eliminate compensation and benefits to employees who had been discharged, furloughed, or idled;
4. Apply work rules for U.S. employees that would be competitive with the work rules for U.S. Nissan, Toyota, or Honda employees by December 31, 2009; and
5. Pay at least half of the $20 billion remaining of Old GM's $33.7 billion promised contribution to the Old UAW VEBA in the form of common stock.

On February 17, 2009, Old GM submitted to the UST its Viability Plan for achieving and sustaining its long-term viability, international competitiveness, and energy efficiency. On March 30, 2009, the Presidential Task Force on the Auto Industry (Auto Task Force), which had been appointed by the Obama Administration on February 16, 2009, announced that Old GM's proposed plan was not viable and needed substantial revisions and extended the certification deadline to June 1, 2009.[18]

On the same day, President Obama announced that the Administration had offered Old GM additional *"working capital"* of up to $6 billion and would *"be working closely with* [Old] *GM to produce a better business plan."*[19] He stated that the U.S. Government had no interest in or intention of running Old GM, but that it was interested in giving Old GM *"… an opportunity to finally make those much-needed changes that will let* [it] *emerge….as a stronger and more competitive company."*[20] However, he acknowledged that Old GM might have to file for bankruptcy protection in order to make it easier to *"quickly clear away old debts"* that were wearing it down and to get back on its *"feet and onto a path to success…"*[21]
From April 2009 to May 2009, Old GM borrowed an additional $6 billion from the UST. In April 2009, Old GM entered into a loan and security agreement with the Canadian Government and borrowed approximately $2.4 billion (Canadian Loan).[22]

On April 27, 2009, Old GM announced that it had revised its Viability Plan and that it would *"speed the reinvention of* [Old] *GM's U.S. operations into a leaner, more customer-focused, and more cost-competitive automaker"* (Revised Viability Plan).[23] The revised plan accelerated the timeline actions, such as reducing the number of plants and making deeper cuts in Old GM's operations. Old GM's new CEO, Fritz Henderson, stated that the Revised Viability Plan reflected the Obama Administration's direction that Old GM *"should go further and faster on [its] restructuring."*[24] Under the Revised Viability Plan, Old GM intended to:

1. Focus on the brands of Chevrolet, Cadillac, Buick, and GMC;
2. Reduce the number of name plates from 48 in 2008 to 34 in 2010;
3. Reduce the number of U.S. hourly employees from about 61,000 in 2008 to 40,000 in 2010 and 38,000 in 2011;
4. Reduce the number of assembly, powertrain, and stamping plants from 47 in 2008 to 34 in 2010 and 31 in 2012; and
5. Reduce the number of dealerships from 6,246 in 2008 to 3,605 in 2010.

Also during this period, Old GM and the UST discussed exchanging the UST Loan for stock in Old GM. In exchange for their claims, Old GM offered its stock to its unsecured creditors (Old GM Unsecured Creditors). Further, Old GM and the UAW discussed modifying the Old UAW VEBA.

Chapter 11 Bankruptcy Proceedings

Old GM was not able to complete the cost reduction and restructuring actions of its Revised Viability Plan, which resulted in extreme liquidity constraints. As a result, on June 1, 2009, Old GM and certain of its direct and indirect subsidiaries filed for Chapter 11 bankruptcy protection. Upon filing for bankruptcy protection, Old GM's stock stopped trading on the NYSE and was removed from the Dow Jones Industrial Average. However, Old GM's stock continued to be traded in the over the counter market under the trading symbol "GMGMQ".

When Old GM filed for bankruptcy, it had borrowed approximately $50 billion from the UST and approximately $9.1 billion from the Canadian Government. It had not paid $20 billion of its promised $33.7 billion contribution to the Old UAW VEBA. Old GM owed $27 billion to the Old GM Unsecured Creditors and $6 billion to its secured creditors (Old GM Secured Creditors).

To provide Old GM with funds to operate during the bankruptcy proceedings, the UST and the Canadian Government agreed to provide debtor-in-possession (DIP) financing to Old GM (DIP Facility). Under the DIP Facility, Old GM borrowed $33.3 billion from the UST and $2.2 billion from the Canadian Government. [25]

Section 363 Sale

On June 1, 2009, Old GM and New GM entered into a sale and purchase agreement (Purchase Agreement) pursuant to which under Section 363 of the U.S. Bankruptcy Code (363 Sale), New GM would purchase substantially all of Old GM's global assets and assume certain of Old GM's liabilities, then Old GM would liquidate.[26] As part of the 363 Sale, the UST, the Canadian Government, a New UAW VEBA, and the Old GM Unsecured Creditors would receive New GM stock, warrants, and/or notes in exchange for their claims against Old GM. After the 363 Sale, the UST, the Canadian Government, the New UAW VEBA, and Old GM's Unsecured Creditors would own 100 percent of New GM. [27]

On July 5, 2009, Bankruptcy Court Judge Robert E. Gerber approved the 363 Sale stating that the sale of Old GM's assets to New GM would: *"….preserve the going concern value; avoid systemic failure; provide continuing employment; protect the many communities dependent upon the continuation of [Old] GM's business, and restore consumer confidence."*[28]

On July 10, 2009, New GM entered into a secured credit agreement with the UST (UST Credit Agreement) and assumed $7.1 billion of the amount Old GM had borrowed under the DIP Facility. New GM entered into a loan agreement with the Canadian Government and assumed a $1.5 billion term loan that Canada had made to Old GM (Canadian Loan).

On July 10, 2009, New GM acquired substantially all of Old GM's assets and assumed certain liabilities of Old GM.[29] For Old GM's assets, New GM made a credit bid equal to the total of:

1. Debt of $19.8 billion under Old GM's UST Loan Agreement plus notes of $1.2 billion issued as additional compensation for the UST Loan Agreement plus interest; and

2. Debt of $33.3 billion under Old GM's DIP Facility plus notes of $2.2 billion issued as additional compensation for the DIP Facility plus interest less debt of $8.2 billion owed under the DIP Facility.[30]

As part of the 363 Sale, New GM issued to Old GM of 50 million shares of New GM common stock and two warrants, each to acquire 45.5 million shares of New GM common stock, and notes. In exchange for their claims, Old GM distributed the 50 million shares of New GM common stock and the warrants to the Old GM Unsecured Creditors.[31]

In exchange for their claims, New GM issued stock, warrants, and/or notes to the UST, the Canadian Government, and the New UAW VEBA. Specifically, New GM issued:

1. To the UST, 304.1 million shares of New GM common stock and 83.9 million shares of New GM preferred stock;
2. To the Canadian Government, 58.4 million shares of New GM common stock and 16.1 million shares New GM preferred stock; and
3. To the New UAW VEBA, 87.5 million shares of New GM common stock, 260 million shares of New GM preferred stock, a $2.5 billion note to mature on July 15, 2017, and a warrant to acquire 15.2 million shares of New GM common stock.

Old GM's shareholders did not receive any stock, cash, and/or property from New GM and in 2011 their Old GM stock was cancelled. The Old GM Secured Creditors were paid in full. On December 15, 2011, Old GM liquidated by transferring its remaining assets and liabilities to a trust, the Motor Liquidation Company GUC Trust (GUC Trust), and then dissolved.[32]

Some of Old GM's assets that New GM acquired in the 363 Sale included the brands Chevrolet, Cadillac, Buick, and GMC, assembly, powertrain and stamping plants, inventory, equipment, machinery, land, buildings, accounts and notes receivables, and intellectual property. New GM succeeded to approximately $18 billion of Old GM's approximately $45 billion of net operating losses (NOLs). Old GM's qualified pension plans for both hourly and salaried employees were transferred to New GM. New GM assumed liabilities related to product liability claims arising directly out of accidents and incidents occurring on or after the 363 Sale and from the

operation or performance of both Old GM's and New GM's vehicles. It also assumed Old GM's warranty and recall obligations.

Some of the assets Old GM did not transfer to New GM included the Saturn brand and developed and undeveloped land and manufacturing plants that because of soil and groundwater contamination required environmental clean up. New GM did not assume liability for personal injury and wrongful death claims for damages allegedly caused by the presence of, or exposure to asbestos in vehicles and other products manufactured by Old GM. Additionally, New GM did not assume employment-related obligations arising from employment, potential employment, or termination of any individual prior to or at the 363 Sale. [33]

Post the Section 363 Sale

Following the Section 363 Sale, New GM announced that it had *"… launched a new company with a strong balance sheet, a competitive cost structure, and a strong cash position…"* which would enable it to compete more effectively with its U.S. and foreign-based competitors and have a strong presence in growing global markets.[34] Additionally, New GM was committed to:

1. Building its market share, revenue, earnings, and cash flow;
2. Improving the quality of its cars and trucks;
3. Increasing customer satisfaction and overall perception of its products; and
4. Taking a leadership role in developing advanced energy saving technologies, such as biofuels, fuel cells, and hybrid and electric vehicles.

New GM's Board of Directors had 13 members, with the UST nominating ten members and the Canadian Government and the New UAW VEBA each nominating one member.[35] In November and December 2010, New GM completed the public offering of 550 million shares of its common stock and 100 million shares of its preferred stock, which were listed on the NYSE and on the Toronto Stock Exchange.[36]

In December 2010, New GM purchased all of the UST's shares of New GM preferred stock for $2.1 billion.[37] In December 2012, New GM purchased 200 million shares of its common stock

held by the UST for $5.5 billion.[38] By December 2013, the UST had sold all of its remaining shares of New GM common stock.[39] In April 2015, the Canadian Government sold all of its New GM common and preferred stock for $2.61 billion.[40]

Conclusion

In the 363 Sale, Old GM sold substantially all of its assets to New GM and Old GM's creditors exchanged their claims against Old GM for New GM stock, which as Judge Gerber stated enabled Old GM's value to be preserved before it died and created *"a new GM that* [would] *be lean and healthy enough to survive."*[41] The exchange of Old GM's debt for New GM stock resulted in U.S. federal income tax consequences for Old GM, Old GM's creditors and shareholders, and New GM. Under U.S. tax laws, what would have been their tax consequences?

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Appendix A
U.S. Tax Concepts

Overview

For U.S. federal tax purposes, Internal Revenue Code (IRC) § 368 provides several different types of corporate tax-free (tax-deferred) reorganizations, including a Type G bankruptcy reorganization, which the U.S. Congress intended to "facilitate the rehabilitation of financially troubled businesses [and] corporate debtors in bankruptcy." [42] In a Type G reorganization, the assets of a corporation in bankruptcy (Debtor Corp) are exchanged for the stock and/or securities of another corporation (Acquirer) with Debtor Corp's creditors receiving Acquirer's stock and/or securities in satisfaction of their claims against Debtor Corp and Debtor Corp's shareholders exchanging their Debtor Corp stock or securities for Acquirer stock and securities.

If a bankruptcy reorganization does not qualify as a Type G reorganization, it may be considered a taxable bankruptcy reorganization and treated as a taxable sale of Debtor Corp's assets.

Tax-Free Type G Bankruptcy Reorganization

Statutory Requirements

For a reorganization to qualify as a Type G reorganization, both statutory and non-statutory requirements must be met. IRC § 368(a)(1)(G) provides that in a Type G reorganization:

1. Debtor Corp transfers all or part of its assets to Acquirer in exchange for Acquirer's stock or securities, such as bonds and notes, in a Title 11 or similar case, such receiverships and foreclosures; and
2. Pursuant to a plan of reorganization, the stock or securities received from Acquirer are distributed in a transaction that qualifies under IRC §§ 354, 355, or 356.

For purposes of IRC § 368(a), securities are defined as stock, warrants, and other rights to acquire stock. Generally, long-term debt instruments, such as bonds and notes, with terms of ten years or more are securities and short-term debt instruments with terms less than five years are not securities. Also, debt instruments are securities if they represent an investment and/or participation in a business, rather than a temporary advance to meet current corporate needs.[43]

If a bankruptcy reorganization meets the requirements of IRC § 354, it is an acquisitive Type G reorganization. To meet the requirements of IRC § 354:

1. Debtor Corp must transfer substantially all of its assets to Acquirer in exchange for Acquirer's stock and securities;
2. Debtor Corp's shareholders and security holders must exchange their Debtor Corp stock and securities for Acquirer's stock or securities; and
3. Debtor Corp must liquidate by distributing all stock, securities, and other properties received from Acquirer and all of the assets that Debtor Corp did not transfer to Acquirer.

The substantially all requirement is met if the assets transferred by Debtor Corp to Acquirer constitute over 70 percent of the fair market value (FMV) Debtor Corp's operating assets and more than 50 percent of the FMV of its gross assets.[44]

If a bankruptcy reorganization meets the requirements of IRC § 355, it is a divisive Type G reorganization. To meet the requirements of IRC § 355:

1. Debtor Corp must control Acquirer;
2. Debtor Corp must distribute Acquirer's stock or securities to its shareholders in exchange for their Debtor Corp stock and securities;
3. Debtor Corp must distribute enough of Acquirer's stock and securities to constitute control;
4. Both Debtor Corp and Acquirer must be engaged in an active trade or business; and
5. The distribution cannot be a device to distribute earnings and profits.

Non-Statutory Requirements

Besides meeting the statutory requirements, Type G reorganizations must also meet the following non-statutory requirements: 1) plan of reorganization; 2) business purpose; 3) continuity of business enterprise (COBE); and 4) continuity of interest (COI). A Type G reorganization must be carried out pursuant to a plan of reorganization that is adopted by each corporation that is a party to the reorganization, but it does not have to be in a particular form or in writing. Other than avoiding federal income taxes, a Type G reorganization must have a valid purpose, such as facilitating the rehabilitation of Debtor Corp, allowing Debtor Corp to continue as a business or transferring Debtor Corp's "wanted" assets and liabilities to Acquirer while retaining its "unwanted" assets and liabilities. To meet the COBE requirement, Acquirer must either continue at least one significant line of a Debtor Corp's historical business or use a significant portion of Debtor Corp's historic business assets in a business.[45]

The COI doctrine requires that the former shareholders of an acquired corporation must have a substantial equity interest in Acquirer after the reorganization.[46] However, if Debtor Corp shareholders are eliminated in its bankruptcy proceedings (e.g., their Debtor Corp stock is cancelled), there will be not be Debtor Corp shareholders to receive an equity interest. For purposes of the COI requirement, in Type G reorganizations, Debtor Corp's creditors are treated as its former shareholders. Under Treas. Reg. § 1.368-1(e)(2)(v) Ex 1, the COI requirement is met in Type G reorganizations if at least 40 percent of the FMV of the total consideration received by Debtor Corp's creditors and any remaining shareholders consists of Acquirer's stock.

<u>Tax Consequences</u>

Debtor Corporation's Tax Consequences

Recognition of Gains and Losses

In Type G reorganizations, under IRC § 361, Debtor Corp will not recognize gain or loss on exchanging its assets for Acquirer's stock, securities, money, and other property (boot).[47] It will also not recognize gain or loss on exchanging Acquirer stock, securities, money, and other property received from Acquirer for its creditors' claims and its shareholders' Debtor Corp stock. However, if Debtor Corp retains any Acquirer stock, securities, money, and property received from Acquirer, or assets it did not transfer to Acquirer, it will recognize gain, but not loss.

Under IRC § 357(c)(1), Debtor Corp may recognize gain if the liabilities assumed by Acquirer exceed the basis of its transferred assets. However, under § 357(c)(2)(B), this rule will not apply if Debtor Corp's former shareholders do not receive any consideration for their Debtor Corp stock.

Cancellation of Debt (COD) Income

In Type G reorganizations, Debtor Corp may realize COD income, if it distributes Acquirer's stock to its creditors in exchange for their claims against Debtor Corp. Under IRC § 108(e)(8), the amount of Debtor Corp's COD income

equals the FMV of Acquirer's stock. However, under IRC § 108(a)(1), Debtor Corp's gross income will not include the COD income because the creditors' claims were discharged in a Title 11 case or while insolvent.

Under IRC §§ 108(b)(1) and (2)(A)-(G), Debtor Corp will reduce the tax attributes and the basis of property not transferred to Acquirer by the amount of its COD income in the following order: 1) net operating losses (NOLs) arising in the taxable year of the discharge and NOL carryovers; 2) general business credits carryovers; 3) minimum tax credit carryovers; 4) net capital losses or capital loss carryovers; 5) basis of depreciable and nondepreciable property; 6) passive activity loss and credit carryovers; and 7) foreign tax credit carryovers. Or, under IRC § 108(b)(5), Debtor Corp can elect to first reduce the basis of depreciable property, then reduce any remaining tax attributes in the order listed in IRC § 108(b)(2).

Acquirer Corporation's Tax Consequences

Under IRC §§ 361 and 1032(a), Acquirer will not recognize gain or loss on exchanging its stock, securities, money, and other property (boot) for Debtor Corp's assets. Under IRC § 362(b), Acquirer's basis in the transferred assets will be the same as Debtor Corp's basis in those assets immediately prior to the exchange. Under IRC § 1223(2), Acquirer's holding period in the transferred assets will include Debtor Corp's holding period in those assets immediately prior to the exchange.

Under IRC § 381, Acquirer will succeed to Debtor Corp's tax attributes, such as Debtor Corp's NOLs, earnings and profits, and capital loss carryovers. If Debtor Corp realizes COD income, Acquirer must reduce the tax attributes it succeeded to and the basis of property it acquired from Debtor Corp by the amount of the COD income in the order listed in IRC § 108(b)(2). Or, Acquirer can elect to first reduce the basis of Debtor Corp's depreciable property, then reduce any remaining tax attributes and other property in the order described above.

Debtor Corporation Creditors' Tax Consequences

Debtor Corporation Creditors Who are Security Holders

Under IRC § 354, if a creditor's claim against Debtor Corp is a security, the creditor will not recognize gain or loss on exchanging the claim for Acquirer stock and securities. The creditor's claim is a security if the debt instrument being exchanged is a long-term debt instrument with a term of ten years or more, but not less than five years, and/or represents an investment in or participation in Debtor Corp.

If along with Acquirer's stock and securities, a creditor receives money and other property, under IRC §§ 356(a)(1) and (c), the creditor will recognize gain, not loss, in an amount not in excess of the amount of money and the FMV of the other property. Also, the creditor will recognize ordinary income to the extent that the stock the creditor received was in exchange for interest that accrued, but was not paid, during the period the creditor held the claim.

Under IRC § 358(a)(1), the creditor's adjusted basis in Acquirer stock and securities will equal the adjusted basis of the claim immediately before the exchange less the amount money and the FMV of other property received from Acquirer plus any gain recognized by the creditor (Adjusted basis of creditor's claim – amount of money - FMV of other property + creditor's recognized gain = Acquirer stock and securities basis). Under IRC § 1223(1), if the creditor held the claim as a capital asset, the holding period in Acquirer stock and securities will include the period the creditor held the claim.[48]

Under IRC § 358(a)(2), the basis of money and other property received by a creditor in the exchange will equal the amount of money and the FMV of the other property. The creditor's holding period in the other property will not include Acquirer's holding period in the property.

Debtor Corporation Creditors Who are Not Security Holders

If a creditor's claim against Debtor Corp is not a security, under IRC § 1001, the creditor will recognize gain or loss on exchanging the claim for Acquirer's stock and securities. The creditor's recognized gain or loss will equal the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of other property received from Acquirer and the adjusted basis of the claim (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of creditor's claim = creditor's recognized gain or loss).

The creditor's basis in Acquirer stock will equal the FMV of the stock and securities and the holding period in Acquirer stock and securities will not include the period the creditor held the claim. Under IRC § 358(a)(2), the basis of money and other property received by the creditor will equal the amount of money and the FMV of the other property. The creditor's holding period in the other property will not include Acquirer's holding period in the property.

Creditors Who Do Not Participate in Debtor Corp's Type G Reorganization

For Debtor Corp creditors, who do not participate in Debtor Corp's Type G reorganization, if their claim becomes worthless and it was a capital asset, under IRC § 165(g), they may be able to claim a worthless securities deduction, or under IRC § 166, claim a bad debt deduction, but not both.

Debtor Corporation Shareholders' Tax Consequences

Shareholders Who Participate in Debtor Corp's Type G Reorganization

If Debtor Corp shareholders participate in Debtor Corp's Type G reorganization, under IRC § 354, they will not recognize gain or loss on exchanging their stock for Acquirer's stock and securities. Under IRC §§ 356(a)(1) and (c), if the shareholders receive money and other property along with Acquirer's stock and securities, they will recognize gain, not loss, in an amount not in excess of the amount of money and the FMV of the other property.[49]

Debtor Corp shareholders' basis in their Acquirer stock and securities equals their Debtor Corp stock basis plus any recognized gain less the amount of money less the FMV of other property received from Acquirer less the amount of liabilities assumed by Acquirer as part of the reorganization (Debtor Corp stock basis + recognized gain – amount of money - FMV of other property –amount of assumed liabilities = Acquirer stock and securities basis). If Debtor Corp shareholders held their Debtor Corp stock as a capital asset, their holding period in their Acquirer stock and securities will include their holding period in their Debtor Corp stock.[50]

Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp shareholders will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in them.

Shareholders Who Do Not Participate in Debtor Corp's Type G Reorganization

For Debtor Corp shareholders who do not participate in Debtor Corp's Type G reorganization, if they sell their Debtor Corp stock and it was a capital asset, under IRC §§ 165(f) and 1222, they may realize capital gains or losses. Or, if their Debtor Corp stock becomes worthless and it was a capital asset, under IRC § 165(g), they may be able to claim a worthless stock deduction.

Also, under IRC §§ 302 and 317, if Debtor Corp acquires its stock from its shareholders in exchange for cash or other property, but not Debtor Corp's own stock, the exchange may be characterized as a stock redemption, which depending on the circumstances, may be treated as if the shareholders had sold their stock, thus realizing gain or loss, or it may be treated as if they had received a dividend from Debtor Corp.

Taxable Bankruptcy Reorganization

If a bankruptcy reorganization does not qualify as a tax-free Type G reorganization, it may qualify as a taxable bankruptcy reorganization and treated as a taxable sale of Debtor Corp's assets.

Tax Consequences

Debtor Corporation's Tax Consequences

In a taxable bankruptcy reorganization, Debtor Corp will realize gain, which may be offset by its NOLs, or loss, equal to the difference between FMV of its assets and their adjusted basis (FMV of Debtor Corp's assets – adjusted basis of Debtor Corp's assets = Debtor Corp's realized gain or loss).

If as part of a taxable bankruptcy reorganization, Debtor Corp's debts are discharged, it will realize, but not recognize, COD income because its debts were discharged in a Title 11 case or while insolvent. For tax attributes and property not transferred to Acquirer, Debtor Corp will reduce the tax attributes and the basis of the property by the amount of its COD income in the order described in IRC § 108(b)(2). Or, under IRC § 108(b)(5), Debtor Corp can elect to first reduce the basis of Debtor Corp's depreciable property, then reduce any remaining tax attributes in the above order.

Acquirer Corporation's Tax Consequences

Acquirer's basis in Debtor Corp's assets will equal their FMV. Its holding period in the assets will not include Debtor Corp's holding period in those assets. Acquirer will not succeed to Debtor Corp's tax attributes, such as its NOLs. If Debtor Corp realizes COD income, Acquirer must reduce the basis of the property it acquired from Debtor Corp by the amount of the COD income in the order listed in IRC § 108(b)(2). Or, Acquirer can elect to first reduce the basis of Debtor Corp's depreciable property and then reduce the basis of other property in the order described above.

Debtor Corporation Creditors' Tax Consequences

If as part of a taxable bankruptcy reorganization, Debtor Corp's creditors exchange their claims for Acquirer stock, securities, money, and/or other property, under IRC § 1001, it will be a taxable exchange. The creditors will recognize gain or loss equal to the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of other property received from Acquirer and the adjusted basis of their claims against Debtor Corp (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of creditors' claim = creditors' recognized gain or loss).

Their basis in Acquirer stock and securities will equal the FMV of the stock and securities and their holding period in their Acquirer stock and securities will not include the period they held their claims. Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp creditors will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in the property.

For Debtor Corp creditors, who do not participate in a taxable bankruptcy reorganization, their tax consequences will be the same as discussed above for Debtor Corp creditors, who do not participate in Debtor Corp's Type G reorganization.

Debtor Corporation Shareholders' Tax Consequences

If, as part of a taxable bankruptcy reorganization, Debtor Corp shareholders exchange their stock for Acquirer stock, securities, money, and/or other property, it will be a taxable exchange. The shareholders will recognize gain or loss equal to the difference between the FMV of Acquirer stock and securities plus the amount of money and the FMV of the other property they received from Acquirer and the adjusted basis of their Debtor Corp stock (FMV of Acquirer stock and securities + amount of money + FMV of other property – adjusted basis of Debtor Corp stock = Debtor Corp shareholders' recognized gain or loss). Their holding period in their Acquirer stock and securities will not include the period they held their Debtor Corp stock.

Under IRC § 358(a)(2), the basis of money and other property received by Debtor Corp shareholders will equal the amount of money and the FMV of the other property. Their holding period in the other property will not include Acquirer's holding period in them.

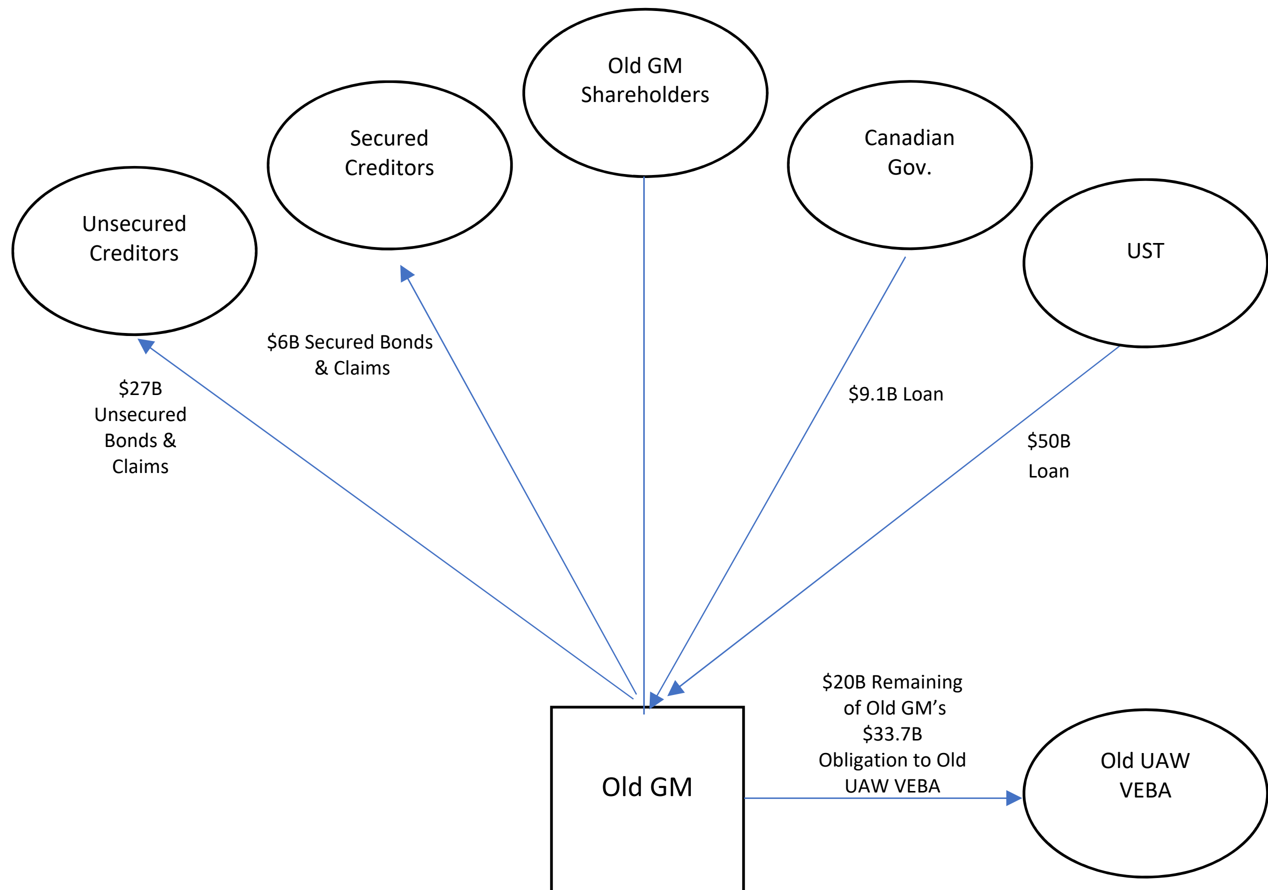
For Debtor Corp shareholders, who do not participate in Debtor Corp's taxable bankruptcy reorganization, their tax consequences will be the same as discussed above for Debtor Corp shareholders, who do not participate in Debtor Corp's Type G reorganization.

Appendix B
Bankruptcy Timeline

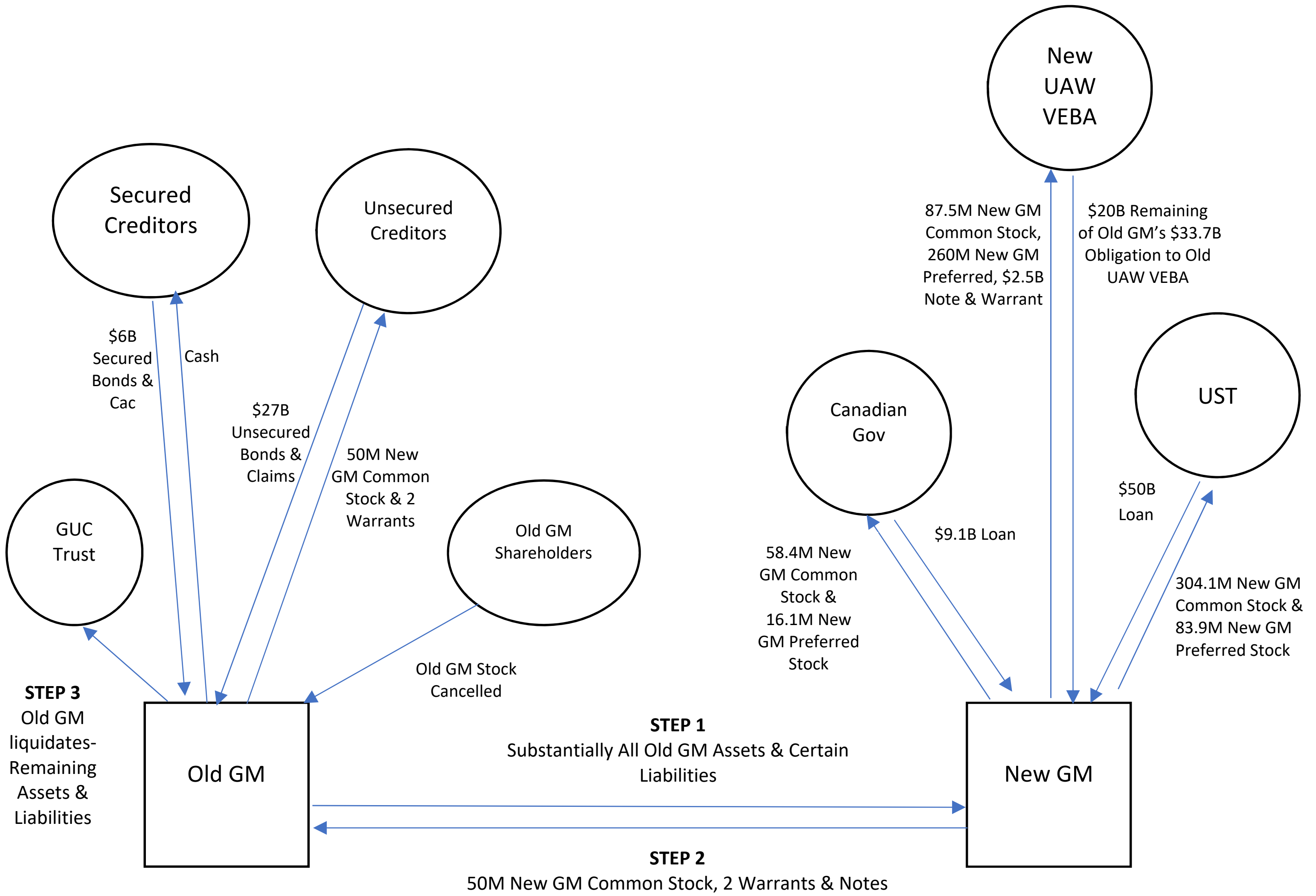
DATE	EVENT
Nov 2008	Old GM CEO Rick Wagoner and the CEOs of Ford Motor Company and Chrysler LLC (Big 3) testified in Congress and requested a $25 billion emergency loan.
12/2/2008	Old GM submitted to Congress its Restructuring Plan and requested $18 billion, consisting of $12 billion loan and $6 billion credit line.
12/4 & 12/5/ 2009	For a second times, CEOs of the Big 3 testified in Congress and requested $34 billion in financial assistance.
12/10/2008	The U.S. House of Representatives passed a bill approving direct loans to the Big 3 from the Troubled Asset Relief Program (TARP).
12/11/2008	The U.S. Senate does not pass the House of Representatives' bill.
12/18/2008	President George W. Bush issued an executive order authorizing the UST to make short-term loans from TARP of $17.4 billion to each of the Big 3 with the requirement that each viability plan had to be submitted by February 17, 2009 and approved by the U.S. government by March 31, 2009.
12/31/2008	Old GM and the UST entered into the UST Loan Agreement with the UST agreeing to loan Old GM up to $13.4 billion (UST Loan).
12/31/2008	Old GM borrowed $4 billion from the UST.
January 2009	Old GM borrowed $5.4 billion from the UST.
February 2009	Old GM borrowed $4 billion from the UST.
2/16/2008	The Obama Administration appointed the Presidential Task Force on the Auto Industry (Auto Task Force).
2/17/2009	Old GM submitted its Viability Plan.
3/30/2009	The Auto Task Force announced that Old GM's Viability Plan was not viable and extended the certification deadline to June 1, 2009.
3/30/2009	The Obama Administration announced that Old GM could borrow an additional $6 billion from the UST while Old GM worked with the Administration on a revised viability plan (Revised Viability Plan).
April 2009	Old GM entered into a loan and security agreement with the Canadian Government and borrowed $2.4 billion (Canadian Loan).
April to May 2009	Old GM borrowed $6 billion from the UST.
4/27/2009	Old GM submitted its Revised Viability Plan.
6/1/2009	Determining it would not be able to complete its Revised Viability Plan, Old GM and certain of its subsidiaries filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York.
6/1/2009	Under a debtor-in-possession (DIP) facility, Old GM borrowed $33.3 billion from the UST and $2.2 billion from the Canadian Government.
6/1/2009	Old GM announced that:

	• Pursuant to Section 363 of the U.S. Bankruptcy Code (363 Sale), Old GM would sell substantially all of its global assets to another corporation (New GM) with New GM assuming certain of Old GM's liabilities (363 Sale); • In exchange for their claims against Old GM, the UST, the Canadian Government, a New UAW VEBA, and Old GM's Unsecured Creditors would receive New GM stock, warrants, and/or notes and together would own 100 percent of New GM; • Old GM shareholders' Old GM stock would be cancelled; and • Following the 363 Sale, Old GM would liquidate.
7/5/2009	U.S. Bankruptcy Court Judge Robert E. Gerber approved the 363 Sale.
2009	To carry out the 363 Sale, the UST formed Vehicle Acquisition Holdings, LLC, which was converted to a corporation, NGMCO, Inc. and re-named the General Motors Company (New GM).
7/10/2009	New GM entered into a secured credit agreement with the UST (UST Credit Agreement) and agreed to pay $7.1 billion of the amount Old GM had borrowed under the DIP Facility.
7/10/2009	New GM entered into a loan agreement with the Canadian Government and agreed to pay the CAD $1.5 billion term loan that Canada had made to Old GM (Canadian Loan).
7/10/2009	New GM entered into an agreement with the UAW to replace the Old UAW VEBA with a New UAW VEBA.
7/10/2009	• In the 363 Sale: o New GM acquired substantially all of Old GM's assets and assumed certain of Old GM's liabilities. o New GM issued to the UST, the Canadian Government, and the New UAW VEBA stock, warrants, and/or notes in exchange for their claims against Old GM. o New GM issued to Old GM, stock, warrants, and a note, with Old GM distributing in 2011 the stock and warrants to its Unsecured Creditors in exchange for their claims. • After the 363 Sale, the UST owned 60.8% of New GM, the Canadian Government 11.7%, the New UAW VEBA 17.5%, and the Old GM Unsecured Creditors 10%.
Nov. and Dec, 2010	New GM completed the public offering of 550 million shares of its common stock and 100 million shares of its preferred stock.
Dec. 2010	New GM bought all of the UST's shares of New GM preferred stock for $2.1 billion.
2011	In exchange for their claims, Old GM distributed the New GM stock and warrants received from New GM to its Unsecured Creditors.
2011	Old GM cancelled its shareholders' Old GM stock.
2011	Old GM liquidated by transferring its remaining assets and liabilities to the Motor Liquidation Company GUC Trust, then dissolved.
Dec. 2012	New GM purchased 200 million shares of its common stock held by the UST for $5.5 billion.
Dec. 2013	The UST sold all of its remaining shares of New GM common stock.
April 2015	The Canadian Government sold its 73.4 million shares of New GM common and preferred stock for about $2.61 billion.

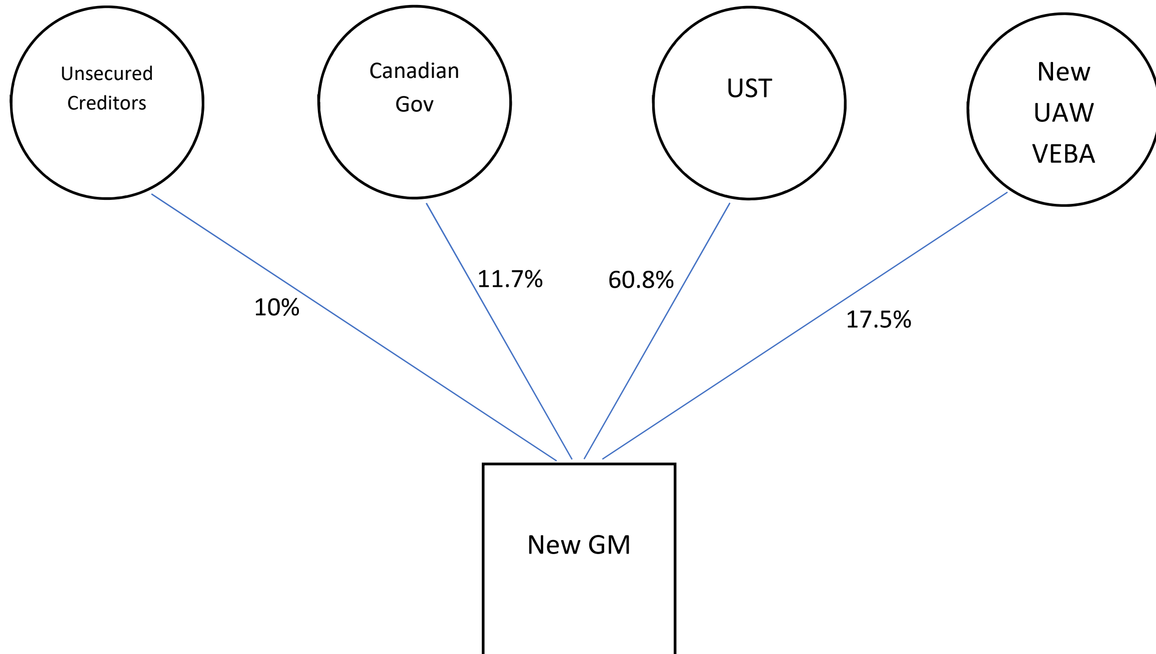
Appendix C.1
Pre-section 363 Sale: Old GM's Shareholders & Creditors



Appendix C.2
Section 363 Sale



Appendix C.3
Post-section 363 Sale: Ownership of New GM



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