

LIKE-KIND EXCHANGES OF TRADEMARKS AND TRADE NAMES: IRS REVISES POSITION

Section 1031 of the Internal Revenue Code provides that certain exchanges of like-kind property may be exchanged without producing taxable income. However, the Treasury Regulations adopted to clarify and explain Section 1031 provide that the goodwill or going-concern value of a business is not of like-kind to the goodwill or going-concern value of another business. Based on the Treasury Regulations, exchanges of goodwill or going-concern value of a business for the goodwill or going-concern value of another business will not qualify for Section 1031 non-recognition treatment. Historically, the Internal Revenue Service (“IRS”) concluded that trademarks and trade names were too closely related to the goodwill or going-concern value of a business to be eligible for Section 1031 non-recognition (TAM 200602034). Recently, in Chief Counsel Advice 200911006, the IRS rejected this position and stated that intangibles such as trademarks, trade names, mastheads, and customer-based intangibles that can be separately described and valued apart from goodwill qualify as like-kind property under Section 1031.

The recent IRS position is evidence that the IRS is easing the often strict rules associated with Section 1031 exchanges. However, all parties should recognize that the intangible property must still satisfy all other requirements of Section 1031 and be valued separate and apart from goodwill.



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