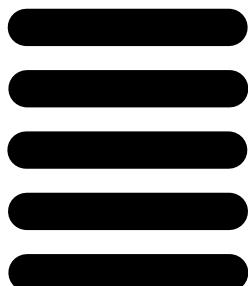




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Intangible Swaps Okay'ed

By Robert W. Wood • Wood & Porter • San Francisco

No, an "intangible swap" isn't the latest tax shelter, or even the latest derivative transaction that a few years hence might just merit a massive government bailout. An intangible swap is simply the latest in the iteration of Code Sec. 1031 exchanges. We all know that virtually no one nationally is doing Code Sec. 1031 exchanges today, given the cratered real-estate market.

Fortunately, the (many) aficionados of the venerable Code Sec. 1031 exchange can get their swap-fix *via* CCA 200911006 (Feb. 12, 2009). This Chief Counsel Advice (surprisingly) says that intangibles such as trademarks, trade names, mastheads, *etc.* that can be valued separately apart from goodwill *do* qualify as like-kind property. Why is this a surprise?

Well, the government previously had taken (rather firmly) the opposite view.

The Old Nix

In 2006 (TAM 200602034, Sept. 29, 2005), the IRS said that registered trademarks and trade names of a business entity could not be like-kind to the trademarks and trade names of *another* business entity. Why? The IRS said that these intangibles were closely related to (if not a part of) goodwill or going concern value of a business. The IRS was hedging its bets. The IRS had taken a similar position elsewhere (*see* LAFA 20074401F, Nov. 2, 2007). The IRS seemed pretty adamant about this notion, so intangibles (such as trademarks, trade names, *etc.*) could simply not be exchanged under Code Sec. 1031.

New Day

In CCA 200911006, the IRS announces that such intangibles—that can be separately described and valued apart from goodwill—*do* qualify as like-kind property under Code Sec. 1031. Except in rare and unusual

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circumstances, the IRS continues, intangibles (such as trademarks, trade names, mastheads and

customer-based intangibles) can be separately described and valued apart from goodwill.