

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Joyce L. Sugawara
Media and Entertainment Industry Counsel
CC:LM:CTM:LA:2

from: Branch Chief, Branch 4, CC:ITA:4
(Income Tax & Accounting)

subject: Definition of Goodwill for purposes of § 1031 Exchanges

On January 13, 2006, the Office of Associate Chief Counsel (Income Tax & Accounting) issued technical advice (TAM 200602034) concluding that the registered trademarks and trade names of a business entity could not be of like kind to the trademarks and trade names of another business entity because they were “closely related to (if not a part of) the goodwill or going concern value of a business.” Under § 1.1031(a)-2(c)(2) of the Income Tax Regulations, the goodwill or going concern value of a business is not of like kind to the goodwill or going concern value of another business.

Using the rationale set forth in TAM 200602034, the Industry Counsel for Media (Large & Mid-Size Business) issued advice on November 2, 2007 (IRS NSAR 20074401F) concluding that (like the trademarks and trade names discussed in TAM 200602034) newspapers' mastheads, advertiser accounts and subscriber accounts were closely related to (if not a part of) the goodwill and going concern value of the newspapers. Consequently, the exchanged intangibles were not of like kind under § 1.1031(a)-2(c)(2) and the gain from the exchange was not eligible for deferral under § 1031 of the Internal Revenue Code. In reaching the conclusion, IRS NSAR 20074401F reasons that *Newark Morning Ledger Co. v. U.S.*, 507 U.S. 546 (1993), which holds that an intangible asset is not goodwill for purposes of the depreciation rules if it can be separately described and valued apart from goodwill, is not relevant to the determination of whether intangibles are of like-kind under § 1031.

Upon further consideration, the Office of Associate Chief Counsel (Income Tax & Accounting) has concluded that the analysis of *Newark Morning Ledger Co.* applies in determining whether intangibles constitute goodwill or going concern value within the meaning of § 1.1031(a)-2(c)(2). Accordingly, 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 § 1031. In our opinion, except in rare and unusual situations, intangibles such as trademarks, trade names, mastheads, and customer-based intangibles can be separately described and valued apart from goodwill. Of course, to qualify as like-kind property under § 1031, the property must satisfy all other requirements of § 1031 including the nature and character rules of § 1.1031(a)-2(c)(1). Accordingly, the Service should not follow the position in TAM 200602034 and IRS NSAR 20074401F on this issue. We are available to assist should you have questions on whether intangibles are of like kind under § 1.1031(a)-2(c)(1).

Please call (202) 622-4920 if you have any questions about this memorandum.