26 U.S. Code § 1253. Transfers of franchises, trademarks, and trade names

U.S. Code Notes

(a) GENERAL RULE

A <u>transfer</u> of a <u>franchise</u>, trademark, or trade name shall not be treated as a sale or exchange of a capital asset if the transferor retains any significant power, right, or continuing interest with respect to the subject matter of the <u>franchise</u>, trademark, or trade name.

(b) **DEFINITIONS** For purposes of this section—

(1) FRANCHISE

The term "franchise" includes an agreement which gives one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.

(2) **SIGNIFICANT POWER, RIGHT, OR CONTINUING INTEREST** The term "significant power, right, or continuing interest" includes, but is not limited to, the following rights with respect to the interest transferred:

(A) A right to disapprove any assignment of such interest, or any part thereof.

(B) A right to terminate at will.

(C) A right to prescribe the standards of quality of products used or sold, or of services furnished, and of the equipment and facilities used to promote such products or services.

(D) A right to require that the transferee sell or advertise only products or services of the transferor.

(E) A right to require that the transferee purchase substantially all of his supplies and equipment from the transferor.

(F) A right to payments contingent on the productivity, use, or <u>disposition</u> of the subject matter of the interest transferred, if such payments constitute a substantial element under the <u>transfer</u> agreement.

(3) TRANSFER

The term "transfer" includes the renewal of a franchise, trademark, or trade name.

(C) TREATMENT OF CONTINGENT PAYMENTS BY TRANSFEROR

Amounts received or accrued on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name which are contingent on the productivity, use, or disposition of the franchise, trademark, or trade name transferred shall be treated as amounts received or accrued from the sale or other disposition of property which is not a capital asset.

(d) TREATMENT OF PAYMENTS BY TRANSFEREE

(1) CONTINGENT SERIAL PAYMENTS

(A) In general

Any amount described in subparagraph (B) which is paid or incurred during the taxable year on account of a <u>transfer</u>, sale, or other <u>disposition</u> of a <u>franchise</u>, trademark, or trade name shall be allowed as a deduction under section 162(a) (relating to trade or business expenses).

(B) Amounts to which paragraph applies An amount is described in this subparagraph if it—

(i) is contingent on the productivity, use, or <u>disposition</u> of the <u>franchise</u>, trademark, or trade name, and

(ii) is paid as part of a series of payments—

(I) which are payable not less frequently than annually throughout the entire term of the transfer agreement, and

(II) which are substantially equal in amount (or payable under a fixed formula).

(2) OTHER PAYMENTS

Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

(3) RENEWALS, ETC.

For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed).

(Added Pub. L. 91–172, title V, § 516(c)(1), Dec. 30, 1969, 83 Stat. 647; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7622(a)–(c), Dec. 19, 1989, 103 Stat. 2377; Pub. L. 101–508, title XI, § 11701(i), Nov. 5, 1990, 104 Stat. 1388– 508; Pub. L. 103–66, title XIII, § 13261(c), Aug. 10, 1993, 107 Stat. 539; Pub. L. 104–188, title I, § 1704(t)(47), Aug. 20, 1996, 110 Stat. 1889; Pub. L. 108–357, title VIII, § 886(b)(3), Oct. 22, 2004, 118 Stat. 1641.)

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