

Goodwill in Corporate Asset Sales: Maximizing Tax Planning Opportunities

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TOPICS COVERED

- 1. Tax benefits of personal goodwill**
- 2. Types of goodwill**
 - A. Personal**
 - B. Business**

Tax Benefits of Personal Goodwill - Examples

- **Corporate Asset Sale**
- **Installment Sale**
- **Deemed Asset Sale**
- **C-to-S Conversion**
- **Transfer Taxes and Charitable Gifts**
- **Stock Purchaser**

Tax Benefits of Personal Goodwill - Cases

- **D.K. MacDonald, 3 TC 720 (1944)**
- **Stanton H. Bryden, TC Memo 1959-184**
- **Frank J. Longo, TC Memo 1968-217**
- **Arthur G. Rudd, 79 TC 225 (1982)**
- **William Norwalk, TC Memo 1998-279**
- **Martin Ice Cream Co., 110 TC 189 (1998)**
- **H&M, Inc. v. Commr, T.C. Memo 2012-290 (October 15, 2012)**
- **Bross Trucking, Inc. v. Commr., TC Memo 2014-107 (June 5, 2014)**

Tax Benefits of Personal Goodwill – Bross Trucking

- **Company was liquidating and distributing its assets to its sole shareholder**
- **Facing shutdown due to safety investigation by regulatory agencies**
- **No employment or non-compete agreement existed between the company and its sole shareholder**
- **Sole shareholder's sons started new company with its own licenses, regulatory authorizations, supplies and customers, and hired about half of Bross' former employees**

Tax Benefits of Personal Goodwill – Bross Trucking

- **IRS determined that Bross made a taxable distribution of the intangible asset of goodwill to its shareholder, who then made a taxable gift of the appreciated intangibles to his sons**
- **Resulted in an income tax deficiency to the company of \$883,800 and a gift tax deficiency to the shareholder of \$1.02 million**
- **The issue before the Tax Court was whether the company had any goodwill to distribute or whether any goodwill that existed was owned by the shareholder**

Tax Benefits of Personal Goodwill – Bross Trucking

- The Tax Court found that if the company had any goodwill it had lost most of it by the time of the transaction
- It looked at the revenue and cash flow streams, and concluded that they resulted from the shareholder's personal efforts and relationships that developed the customer base
- It further found that due to the absence of any employment or non-compete agreement the shareholder was free to use his personal goodwill in competition with the company
- The court found the case to be analogous to *Martin Ice Cream*

Types of Goodwill

- **Market-related**
- **Customer- related**
- **Artistic**
- **Contract based**
- **Technology based**

Types of Goodwill

- **Factors relating to the business**
 - **Personal goodwill indicators**
 - **Business goodwill indicators**

- **Factors relating to the deal structure**
 - **Personal goodwill indicators**
 - **Business goodwill indicators**

- **Effect of business size**