



Federal Tax ADVISORY ■

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Selling Contracts

Greenteam v. Commissioner, [T.C. Memo 2017-122](#), is an important ruling for sellers of partnership businesses. It made it quite easy for individuals to claim capital gains treatment for the portion of the sales price allocable to valuable contracts to buy or sell goods or services, within a specified area.

The reason for the favorable capital gains treatment is that the court found such a contract fit within the definition of “franchise” and qualified for capital gains treatment automatically under Section 1253.

So “franchises” are not limited to fast food restaurants, for example, and potentially can include any contract to sell goods or services, or to buy goods or services, within a specified area. Examples can include:

- A contract to perform a service like picking up trash, for a fixed fee.
- A contract to have the counterparty perform a service like picking up trash, for a fixed fee.
- A contract to buy widgets for a set price.
- A contract to sell widgets for a set price.

Obviously, the contractually determined prices are what can make such a contract valuable for purposes of attracting some of the allocation of the business sales price.

Although the “specified area” requirement might be limiting, it might not be. Pretty much any business contract can be viewed as limited to a specified area if you think hard about it, and if not, it might be modified to specify an area.

The good thing about the *Greenteam* opinion, even if the IRS disagreed with it, is that the same capital gains result often can be reached under Section 1231.

For more information, please contact [Jack Cummings](#) at 919.862.2302.

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