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IRS Allows Pro Sports Teams To Make Tax-Free Trades

By **Vidya Kauri**

Law360 (April 11, 2019, 3:54 PM EDT) -- Professional sports teams can once again trade players, staff and draft picks without negative tax consequences as long as they don't receive cash in the trade, the Internal Revenue Service announced Thursday.

The announcement softens the impact of a change introduced in the Tax Cuts and Jobs Act that limited the exchange of assets without taxable gain to real estate transactions. Professional sports teams used to be able to take advantage of such "like-kind exchanges" prior to the TCJA's enactment.

Pro sports teams, including in MLB, can again make player trades that don't involve cash without negative tax consequences, the Internal Revenue Service said. (AP)

Recognizing that the value of personnel contracts and draft picks can be highly subjective and dependent on uncontrollable factors such as a player's injuries and performance, the IRS said it would permit professional sports teams to treat certain contracts and drafting rights as having zero value for the federal income tax purpose of determining gain or loss in trades.

"Historically, it has been difficult for professional sports teams to assign a monetary value to contracts or draft picks due to the fluctuating nature of the performance of players and staff members, and market conditions," the IRS said, explaining that it wishes to avoid lengthy and costly disputes with sports teams over the subjective value of trades.

Gain will be recognized if cash is received in the trade, and the new guidance will not apply when an entire team is sold or traded, the IRS said.

Teams taking advantage of the new guidance must retain books, records and other documentation showing that they meet the requirements for not assigning a monetary value to their trades, the agency said.

A spokesperson for Major League Baseball welcomed the IRS' announcement.

“MLB appreciates the willingness of the IRS to address the concerns of the sports leagues regarding the application of the like-kind exchange provision to player trades,” the league said.

The TCJA limited like-kind exchanges under Section 1031 of the Internal Revenue Code to certain real-estate transactions in an effort to bring in more revenue and offset the impact of reduced tax rates. However, it resulted in professional sports teams being potentially liable for capital gains taxes on trades.

The IRS said that the process of valuing player contracts can be very subjective, depending on numerous factors such as the changing needs of a team, league rules and regulations, location, a player’s effect on fan attendance and the number of years until a player becomes a free agent eligible to sign with any team in a league.

“Although each team may believe it is receiving something of equal or greater value to what it is giving up in a trade of personnel contracts or draft picks in light of its particular circumstances and priorities at the time, it is unusually difficult to assign an objective monetary value to the personnel contracts or draft picks,” the IRS said.

Michele J. Alexander, a tax attorney at Bracewell LLP, said the IRS’ new guidance is a way to allow teams to make trades the way they did before the TCJA was passed.

“Hopefully, this is a sign that the IRS is looking to mitigate the harsh results that stem from limiting the like-kind exchange rules, though sports teams in particular have difficult issues when it comes to valuation,” Alexander said.

--Editing by Neil Cohen.

Update: This story has been updated with comments from Alexander.

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