



TaxNewsFlash

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First Circuit: Immediate recognition of income upon constructive transfer of intangible property in reorganization; Tax Court affirmed

The U.S. Court of Appeals for the First Circuit affirmed a decision of the U.S. Tax Court holding that the taxpayer was required to immediately recognize ordinary income under section 367(d)(2)(A)(ii)(II) as a result of a constructive transfer of intangible property to a foreign corporation, and pay the tax due in a lump sum.

The case is: *TBL Licensing LLC v. Commissioner*, No. 22-1783 (1st Cir. September 8, 2023). Read the First Circuit's [decision](#) [PDF 214 KB] (50 pages)

Summary

The taxpayer in 2011 transferred intangible property worth approximately \$1.5 billion to an affiliated foreign corporation. The transfer occurred in the context of a corporate reorganization involving an exchange as described in section 361. The taxpayer took the position that the tax attributable to the transfer could be paid on an annual basis over the useful life of the intangible property by one of its US affiliates under the general rule of section 367(d)(2)(A)(ii)(I). The IRS disagreed, assessing a deficiency based on the position that the taxpayer was required to pay tax on the entire gain in the year of the transfer under the disposition rule of section 367(d)(2)(A)(ii)(II). The taxpayer challenged the deficiency, and the Tax Court sustained it. Read [TaxNewsFlash](#)

On appeal, the First Circuit affirmed the Tax Court's decision, agreeing with the IRS and the Tax Court that the taxpayer's transfer of its intangible property was followed by a disposition of that property within the meaning of section 367(d)(2)(A)(ii)(II), requiring the taxpayer to pay the tax due in a lump sum.

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