

## CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 004

June 27, 1958

### HOLDING PERIOD: SALE OF GOODWILL

#### Syllabus:

The acquiring date of goodwill in determining the commencement of the holding period for computing capital gain is that date on which the business to which it attaches was commenced or acquired.

Advice is requested as to what date is to be used as the acquiring date of goodwill in determining the commencement date of the holding period for use in computing capital gain.

It has been argued that goodwill should be held as being acquired ratably over the period of ownership. This method places emphasis only upon the passage of time, as though goodwill is progressively built up merely by the continued existence of a particular business. While continued existence plays a part, there are a number of other factors which enter into the creation and development of goodwill. These factors may or may not depend on an established business over a period of time. Among the many other factors entering into goodwill are the acquaintanceship or particular ability of the proprietor, the type of services rendered, customer habits, location, quality of goods, prices, trade names, etc. It may thus be seen that a determination of when goodwill is acquired or developed would require a detailed analysis of the facts in each particular case.

If such an analysis could be made with any degree of certainty the result would most probably be different in each case and in many cases it would not reveal an equal spread over the years of existence. It is quite conceivable that the major portion of goodwill of a particular business may be developed within the first year of existence, while another business might ride along for several years with only a mediocre existence and then, for any number of reasons, suddenly boom. Also, it has been said that the value of goodwill fluctuates in direct relationship with the annual variations in the profits of the business. With these considerations in mind it is manifest that a general rule based on this method would not be justified.

Though not entirely analogous the situation is somewhat akin to the question of holding periods of interests in partnerships, which are treated as having been acquired at the time the partner entered into the partnership regardless of subsequent appreciations in value and regardless of the acquired dates of partnership assets.

In the absence of any judicial expression to the contrary, goodwill should be treated for the purpose of the capital assets holding period as having been acquired concurrently with the business to which it attaches, irrespective of whether that business be acquired as a going concern or be commenced as a new business.

**DRAFT**