IRS Permits Intangible's Depreciation

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With all the fuss over *Newark Morning Ledger* (see "Does *Newark Morning Ledger* Spell Relief?," p. 1, this issue), it may seem surprising that there have actually been favorable letter rulings on the intangibles question, such as *Ltr. Rul.* 9303016. There, the Service allowed a corporation that had acquired a business in a taxable merger to depreciate an intangible asset consisting of the right to use certain improvements in the business.

S, a wholly owned subsidiary of P, owned facilities under a concession contract with Supplier. The contract granted S a possessory interest in all improvements in a particular area. This possessory interest (which did not expire on termination of the contract) consisted of all incidents of ownership except legal title (which remained in Supplier).

S merged into Buyer in a taxable forward merger treated as a taxable asset sale. Simultaneously, S, P, and Supplier executed an amendment to the concession contract under which S would relinquish its right to be compensated for its possessory interest. In return, Supplier committed to execute a new contract on the expiration of the first contract, granting Buyer the right to use the improvements without additional consideration throughout the term of the new contract.

Buyer was to receive compensation on a ratable basis for the remaining value of the right to use the improvements if Supplier cancelled the new contract prior to its expiration. Thus, Supplier became the sole owner of the improvements in the area, so future concessionaires would be required to negotiate a new lease with Supplier to use any improvements in that area.

The Service ruled that Buyer could depreciate the portion of the purchase price properly allocable to the right to use the improvements. Viewing the various transactions as an integrated plan to transfer the business and modify the concession contract, the Service concluded that the right to use the improvements in the particular area was an intangible asset similar to a leasehold interest. Since this right had an ascertainable value separate from goodwill, and had a limited useful life the length of which could be determined with reasonable accuracy, the deductions were justified. ■