



Robert W. Wood

THE TAX LAWYER

TAXES 9/08/2014

Race Sales? LA Clippers, Now Atlanta Hawks, & IRS Wins Big

In June, L.A. Clippers owner [Donald Sterling](#) was fighting selling his team in the face of [NBA action](#) over his remarks about race. Mr. Sterling lost, but won in a way. A \$2 billion sale to Microsoft's [Steve Ballmer](#) isn't bad. I suggested at the time that Mr. Sterling might even qualify for [a tax-free sale](#), but most commentators said I was overly optimistic and that the NBA action didn't qualify. That means Mr. Sterling has to pay taxes, and they won't be small.

Now, Atlanta Hawks owner Bruce Levenson announced that he too will sell. With less drama, it's also because of racially insensitive remarks. Only four months ago, NBA Commissioner Adam Silver, banned Donald Sterling from the league and fined him \$2.5 million. The Clippers were sold to Steve Ballmer in August.

The Hawks cannot count on the same dramatic bump in value the Clippers had. Forbes valued the Clippers in January at \$575 million, a far cry from the \$2 billion sale price. The Hawks rank 27th of 30 NBA teams with a value of \$425 million in January. But whatever the bump in the Hawks' value and whatever the sale price, there will be taxes to consider.



Opening tip, Los Angeles Lakers vs. Atlanta Hawks, NBA game at Staples Center (Photo credit: Wikipedia)

For any proprietorship, partnership, limited liability company (LLC) or corporation, a fundamental question is whether to sell stock or assets. If the business is operated as an LLC, you can sell membership interests, or the LLC itself can sell its assets. If the business is a partnership (general or limited) the sale can be made by the partnership (a sale of assets).

Alternatively, the partners could sell their partnership interests. You might think all these avenues lead to the same place, but they can come out quite differently. If you sell corporate stock, you change who owns it, but the company is still in place and still owns its assets.

The same is true if you sell a partnership or LLC interest. Even if all the owners sell their interests, the entity still owns the assets. To see the tax differences between these variations, follow the money.

If a partnership, LLC or corporation sells assets, the purchase price is paid to the entity. The entity may not distribute the sales proceeds to the shareholders, members or partners.

Example: Suppose a business entity sells its assets for \$5 million. To determine taxes you need to know the business' basis in the assets. If its basis is \$2 million, there's a \$3 million gain. If its basis is \$6 million, there's a \$1 million loss.

Depending on the type of business entity, the gain may be taxed to the entity or the partners or members. For example, if a C corporation sells its assets for \$5 million with a \$2 million basis, that \$3 million gain will be taxed to the corporation at up to 35%. That will leave only about \$3,905,000 for shareholders.

If an LLC or partnership sold the assets for \$5 million at a \$3 million gain, there is no tax at the entity level. The full \$5 million can pass through to the owners who pay their share of the \$3 million gain. If you think C corporation treatment is better because the *entity* pays the tax, think again.

After all, when shareholders of a C corporation receive distributions, they too must pay tax at their individual rates. Of the \$3,905,000 distributed to them, how much tax they pay depends on their basis in their shares and other variables. But they pay two levels of tax. The partners of a partnership or members of an LLC are better off because they only pay one level of tax, not two.

Donald Sterling and Bruce Levenson surely are getting plenty of good tax advice. With these numbers, they'll need it.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.