

Rev. Rul. 68-609 n1

n1 Prepared pursuant to Rev. Proc. 67-6, C.B. 1967-1, 576.

SECTION 1001. - DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

26 CFR 1.1001-1: Computation of gain or loss.

(Also Section 167; 1.167(a)-3.)

July, 1968

[*1]

The "formula" approach may be used in determining the fair market value of intangible assets of a business only if there is no better basis available for making the determination; A.R.M. 34, A.R.M. 68, O.D. 937, and Revenue Ruling 65-192 superseded.

The purpose of this Revenue Ruling is to update and restate, under the current statute and regulations, the currently outstanding portions of A.R.M. 34, C.B. 2, 31 (1920), A.R.M. 68, C.B. 3, 43 (1920), and O.D. 937, C.B. 4, 43 (1921).

The question presented is whether the "formula" approach, the capitalization of earnings in excess of a fair rate of return on net tangible assets, may be used to determine the fair market value of the intangible assets of a business

The "formula" approach may be stated as follows:

A percentage return on the average annual value of the tangible assets used in a business is determined, using a period of years (preferably not less than five) immediately prior to the valuation date. The amount of the percentage return on tangible assets, thus determined, is deducted from the average earnings of the business for such period and the remainder, if any, is considered to be the amount of the average annual earnings [*2] from the intangible assets of the business for the period. This amount (considered as the average annual earnings from intangibles), capitalized at a percentage of, say, 15 to 20

percent, is the value of the intangible assets of the business determined under the "formula" approach. 328

The percentage of return on the average annual value of the tangible assets used should be the percentage prevailing in the industry involved at the date of valuation, or (when the industry percentage is not available) a percentage of 8 to 10 percent may be used.

The 8 percent rate of return and the 15 percent rate of capitalization are applied to tangibles and intangibles, respectively, of businesses with a small risk factor and stable and regular earnings; the 10 percent rate of return and 20 percent rate of capitalization are applied to businesses in which the hazards of business are relatively high.

The above rates are used as examples and are not appropriate in all cases. In applying the "formula" approach, the average earnings period and the capitalization rates are dependent upon the facts pertinent thereto in each case.

The past earnings to which the formula is applied should fairly [*3] reflect the probable future earnings. Ordinarily, the period should not be less than five years, and abnormal years, whether above or below the average, should be eliminated. If the business is a sole proprietorship or partnership, there should be deducted from the earnings of the business a reasonable amount for services performed by the owner or partners engaged in the business. See *Lloyd B. Sanderson Estate v. Commissioner*, 42 F.2d 160 (1930). Further, only the tangible assets entering into net worth, including accounts and bills receivable in excess of accounts and bills payable, are used for determining earnings on the tangible assets. Factors that influence the capitalization rate include (1) the nature of the business, (2) the risk involved, and (3) the stability or irregularity of earnings.

The "formula" approach should not be used if there is better evidence available from which the value of intangibles can be determined. If the assets of a going business are sold upon the basis of a rate of capitalization that can be substantiated as being realistic, though it is not within the range of figures indicated here as the ones ordinarily to be adopted, the same [*4] rate of capitalization should be used in determining the value of intangibles.

Accordingly, the "formula" approach may be used for determining the fair market value of intangible assets of a business only if there is no better basis therefor available.

See also Revenue Ruling 59-60, C.B. 1959-1, 237, as modified by Revenue Ruling 65-193, C.B. 1965-2, 370, which sets forth the proper approach to use in the valuation of closely-held corporate stocks for estate and gift tax purposes. The general approach, methods, and factors, outlined in Revenue Ruling 59-60, as modified, are equally applicable to valuations of corporate stocks for income and other tax purposes as well as for estate and gift tax purposes. They apply also to problems involving the determination of the fair market value of business interests of any type, including partnerships and proprietorships, and of intangible assets for all tax purposes.

A.R.M. 34, A.R.M. 68, and O.D. 937 are superseded, since the positions set forth therein are restated to the extent applicable under current law in this Revenue Ruling. Revenue Ruling 65-192, C.B. 1965-2, 259, which contained restatements of A.R.M. 34 and A.R.M. 68, is [*5] also superseded