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IRS nonacquiescence, transfer of non-capital asset; capital asset sale or exchange treatment

An Action on Decision (AOD) 2019-3 announces the IRS nonacquiescence to the holding in a 2017 Tax Court memorandum opinion.

In the 2017 case—*Greenteam Materials Recovery Facility, PN v. Commissioner*, T.C. Memo 2017-122—the taxpayers asserted that certain waste-collection contracts were franchises and that a special rule that taxes the sale of franchises at the favored capital gains rates applied. The Tax Court held that section 1253 applied to the transactions because the taxpayers kept no significant interest in the contracts they sold and because case law provides that this entitles the taxpayers to capital gains treatment on their profits from the sales. Read the Tax Court's [memorandum opinion](#) [PDF 100 KB]

AOD 2019-3 states the IRS nonacquiescence to the holding that the transfer of a non-capital asset is treated as the sale or exchange of a capital asset under section 1253(a) if the transferor does not retain any significant power, right, or continuing interest in the asset.

AOD 2019-3 appears in the [Internal Revenue Bulletin 2019-42](#) [PDF 2.12 MB] dated Tuesday, October 15, 2019.

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