

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[REDACTED]

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:05-PLR-113629-99

Date:

Re: Taxpayer-- [REDACTED]
[REDACTED]

Taxpayer's Spouse- [REDACTED]
[REDACTED]

May 12, 2000

Dear [REDACTED]. [REDACTED]:

This responds to your request dated July 17, 1999, on behalf of the above referenced Taxpayer, for a ruling concerning the deductibility of a settlement payment made by Taxpayer. Specifically, you have asked that we determine whether the Taxpayer is entitled to a deduction under § 162 of the Internal Revenue Code, or any other provision of the Code, for an amount paid in 1998 to settle potential claims against the Taxpayer arising from Taxpayer's embezzlement activities.

According to the [REDACTED] you provided us, Taxpayer is a former employee of [REDACTED]. Between [REDACTED] and [REDACTED], Taxpayer took [REDACTED] from his employer for his own use and profit [REDACTED] having a fair market value of \$ [REDACTED]. Taxpayer was arrested and charged for felony crimes arising out of his theft, embezzlement, and defalcation of [REDACTED] from [REDACTED]. Taxpayer agreed to pay \$ [REDACTED] for restitution of [REDACTED] losses in order to prevent [REDACTED] from (1) contesting Taxpayer's plea agreement in connection with his felony charges, and (2) filing any claims for civil damages.

The proceeds of an embezzlement constitute gross income to the embezzler in the year of embezzlement. James v. Commissioner, 336 U.S. 213 (1961); Rev. Rul. 61-185, 1961-2 C.B. 9. An individual taxpayer who repays embezzled funds is ordinarily entitled to a deduction in the year in which the repayment is made under § 165(c)(2) of the Code, rather than § 162. See James, 336 U.S. at 220; Stephens v. Commissioner, 905 F.2d 667, 670-71 (2d Cir. 1990); Mannette v. Commissioner, 69 T.C. 990, 992-94 (1978); Rev. Rul. 65-254, 1965-2 C.B. 50.

Thus, in order to determine whether an individual taxpayer is entitled to a deduction under § 165(c)(2) of the Code for repayment of embezzled funds, it must first be established that the taxpayer included such funds in gross income in the year(s) of

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embezzlement. You have stated that Taxpayer believes he did include such funds in gross income in the year(s) of embezzlement, but is unable to provide us with a copy of his [REDACTED] and [REDACTED] federal income tax returns.

Revenue Procedure 2000-1, 2000-1 I.R.B. 4, contains very specific requirements that taxpayers must meet in order to obtain a private letter ruling from the National Office of the Internal Revenue Service (Service). Section 8.01 of Rev. Proc. 2000-1 requires that the taxpayer's submission include a complete statement of facts, copies of all pertinent documents, and certain other information. Pertinent documents, in this case, would include Taxpayer's [REDACTED] and [REDACTED] federal income tax returns. Because Taxpayer is unable to provide us with a copy of these tax returns, the Service is unable to establish whether Taxpayer included the embezzled [REDACTED] as income in those years, and is thus unable to issue a ruling addressing the deductibility of Taxpayer's settlement payment.

A request to refund Taxpayer's user fee has been forwarded to the appropriate office. If you have any further questions, please contact [REDACTED] at [REDACTED]
[REDACTED]

Sincerely,

Assistant Chief Counsel
(Income Tax & Accounting)

Douglas A. Fahey
Acting Chief, Branch 5

[REDACTED]