



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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CAM-100923-99

MEMORANDUM FOR: INDUSTRY DIRECTOR, NATURAL RESOURCES (LM:NR)

FROM: SENIOR TECHNICIAN REVIEWER, BRANCH 6 (CC:PSI:6)  
PASSTHROUGHS AND SPECIAL INDUSTRIES

SUBJECT: DENIAL OF CONSENT FOR CHANGE IN  
ACCOUNTING METHOD

In accordance with § 8.07(2)(a) of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 43, this Chief Counsel Advice advises you that consent for a change in accounting method has been denied to a taxpayer within your jurisdiction. Pursuant to § 6110 (k)(3), this Chief Counsel Advice is not to be cited as precedent.

LEGEND:

Taxpayer =

Date =

Taxpayer filed the Form 3115 to request permission to change its method of computing depreciation for street lighting equipment under Rev. Proc. 97-27, 1997-1 C. B. 680. Because this change was under a revenue procedure, Taxpayer may have already made this change.

Taxpayer previously treated equipment used wholly for public street and highway lighting or traffic, fire alarm, police and other signals (collectively, "street lighting") as included in asset class 49.14, Electric Utility Transmission and Distribution Plant, under Rev. Proc. 87-56, 1987-2 C. B. 674. Taxpayer believes this classification was improper. Specifically, Taxpayer believes that this property does not belong in asset class 49.14 or any other class.

Distribution is the final step in the sale of electricity. Until recently, users of electricity generally did not pay for distribution separately from the charge for the generation, although in setting rates public utility commissions considered both aspects. The street lights consume electricity. The amount of electricity used for a particular light over any period can be estimated with a high degree of accuracy based on the estimated hours of use. No separate metering is necessary and running separate lines is frequently unnecessary. In the simplest case, the lighting fixture is placed where needed on existing distribution poles. The utility has electricity where street lighting is needed; thus, the utility provides the electricity and the equipment for producing the light as a part of its business of distributing the electricity.

Three revenue rulings consistent with our analysis that street lighting is part of distribution are mentioned below. Rev. Rul. 78-67, 1978-1 C. B. 64, discusses expenditures for light watchmen (a lighting fixture containing a photoelectric cell installed on a pole usually on a customer's premises similar in appearance to a street light) and concludes that expenditures for the light watchmen are additions to a utility's distribution system and are subject to the repair allowance provision that applied to ADR property. Rev. Rul. 83-146, 1983-2 C. B. 17, discusses propane storage tanks and related customer installations leased by a retailer of propane and finds the propane storage tanks and related customer installations are related to the taxpayer's business of furnishing gas to customers. Finally, in Rev. Rul. 77-476, 1977-2 C. B. 5, an oil pipeline used by a public utility to move oil to an inland generation plant from the utility's dock is determined to be part of the activity of generation of electricity rather than pipeline transportation. This ruling shows that the asset classification system looks at activities broadly and is not intended to divide a taxpayer's business into a myriad of activities.

Under § 1.167(a)-11(b)(4)(iii)(b) property is classified according to its primary use even though the activity in which such property is primarily used is insubstantial in relation to all the activities of a taxpayer. However, for an activity to be classified as a separate activity, the activity must be substantial (although it may be insubstantial in relation to all of other activities of the taxpayer), significant, and separate; not, as here, merely part of the activity in question. Providing street lighting is simply part of distribution of electricity to the ultimate consumer. This activity is included in asset class 49.14. For purposes of determining Taxpayer's depreciation deduction, these assets continue to be used as part of its business of distributing electricity. Likewise, recognizing that these assets may be sold by Taxpayer, purchased by a municipality, and subject to new ratemaking that acknowledges that Taxpayer would no longer own the assets, does not indicate that these assets were never part of distribution.

The method changes would have been effective with the taxable year beginning Date and would have resulted in a negative § 481(a) adjustment/decrease in taxable income.

CAM-100923-99

If you have any questions on this matter, do not hesitate to call me at (202) 622-3110.

PETER C. FRIEDMAN  
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Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

CC: