



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR

FROM: Assistant Chief Counsel (Field Service)  
CC:DOM:FS

SUBJECT: Commissions Paid to Independent Sales Representatives

This Field Service Advice responds to your memorandum dated July 1, 1999. Field Service Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUE:

Whether commissions paid to independent representatives for the signing of customers to the cellular telephone service provided by the taxpayer are currently deductible by the taxpayer.

CONCLUSION:

Further case development is required.

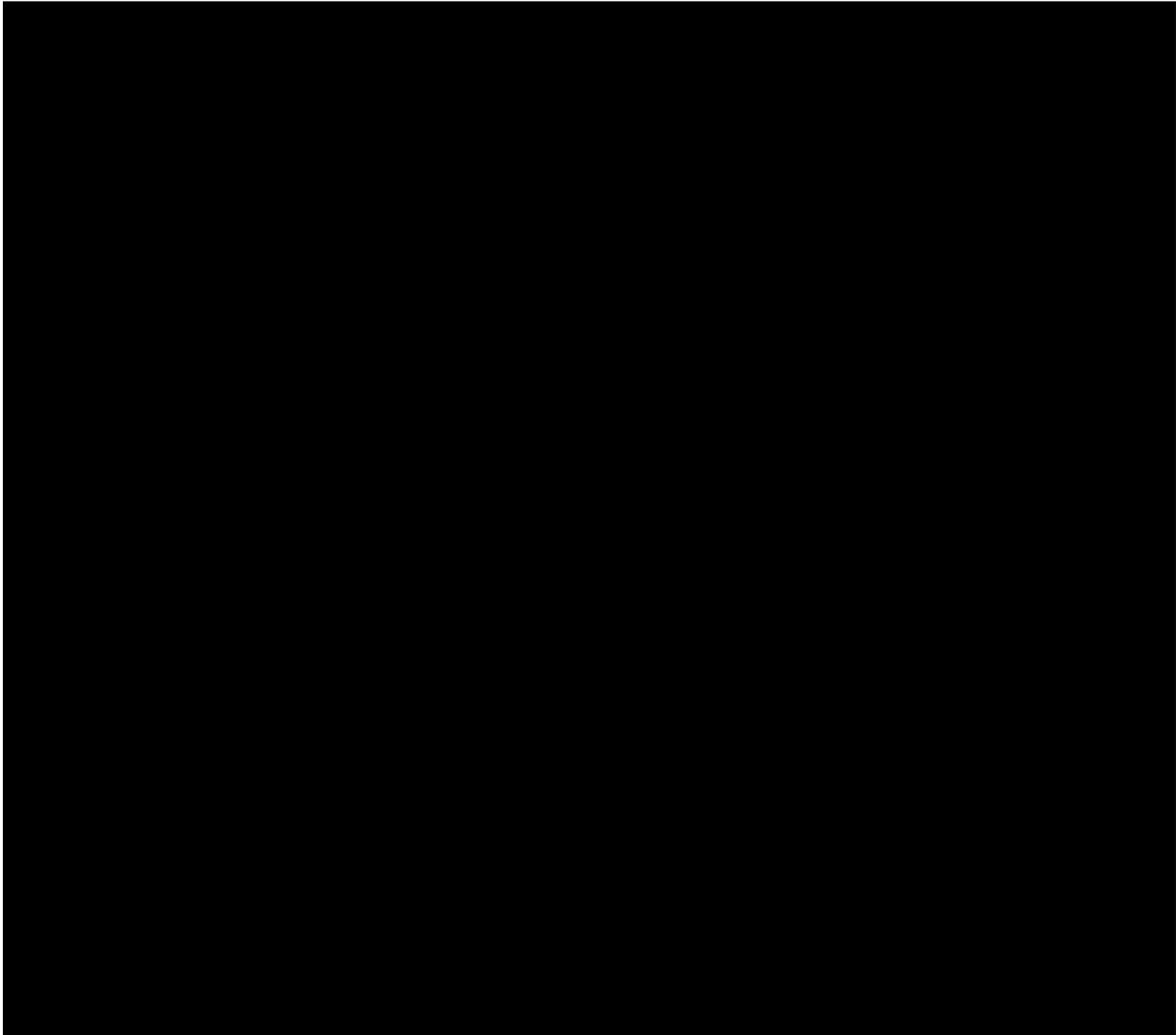
LAW AND ANALYSIS

I.R.C. § 162(a) provides that there will be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business. Section 263 generally provides that no deduction shall be allowed for the cost of permanent improvements or betterments made to increase the value of any property. Further clarification is found in Treas. Reg. § 1.263(a)-2(a), specifying that costs incurred to acquire property having a useful life substantially beyond the close of the taxable year are required to be capitalized under section 263.

It is well-established that deductions are a matter of legislative grace and that the taxpayer bears the burden of proving entitlement to the deduction sought. New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440 (1934); Commissioner v. Lincoln Sav. & Loan Ass'n, 403 U.S. 345, 352 (1971); INDOPCO, Inc. v. Commissioner, 503 U.S. 79 (1992).

The case law illustrates the highly factual nature of the inquiry and that the distinction between capital and deductible items is often a matter of "degree and not kind", INDOPCO, Inc. v. Commissioner, 503 U.S. 79 (1992)(quoting Welch v. Helvering, 290 U.S. 111, 114 (1933)), and therefore, each case "turns on its own special facts", id. (quoting Deputy v. du Pont, 308 488, 496 (1940)).

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS:





DEBORAH A. BUTLER

By: \_\_\_\_\_  
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