

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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CC:LB&I:HMP:BOS1:MJGormley
POSTF-115202-16

date: June 27, 2016

to: Senior Team Coordinator, LB&I, Group

from: Michele J. Gormley
Senior Counsel (Boston, Group 1)
(Large Business & International)

subject:

UIL: 61.00-00, 451.00-00

This memorandum is in response to your request for our review of three Notices of Proposed Adjustment to be issued to

Background:

I.

Brief Factual Summary:

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Issues:

1.

Conclusion:

Thereafter, you applied a benefits and burdens analysis and settled case law to the facts of this case. Your analysis included consideration of the eight Grodt & McKay Realty factors. 77 T.C. 1221, 1237 (1981).

We have reviewed both your NOPA and the relevant transaction documents⁵ and agree with your conclusion.

2.

Conclusion:

You relied on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990),

In Indianapolis Power, the Supreme Court stated that: it depends upon the parties “rights and obligations at the time the payments are made” and held that customer deposits paid to a utility were security and did not constitute prepayment of income, taxable upon receipt. 493 U.S. at 211. The determination of what constituted income to the utility company depended on the nature of the rights and obligations that the recipient assumed when the money was received.

Indianapolis Power

There is no accession to wealth if the money has to be returned. 493 U.S. at 208.

You also rely on Highland Farms, Inc. and Subsidiary v. Commissioner, 106 T.C. 237 (1996),

In Highland Farms, under the terms of a purchase agreement, prospective residents of an apartment or lodge paid a lump-sum entry fee before taking occupancy. The entry fees were refundable on a prescribed percentage basis over a term of 5 or 20 years. The Court held the entry

fees did not constitute prepaid rent or advance payments for services that must be reported in the year of receipt. Relying on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203, 211-212 (1990), the Highland Farms Court determined there was no accession to wealth until the entry fee became nonrefundable.

We agree with your analysis and your conclusion.

3.

Conclusion:

the well-established rule of tax accounting that for an accrual-method Taxpayer, "deductions are to be taken in the year in which the deductible items are incurred." Brown v. Helvering, 291 U.S. 193, 199 (1934).

an accrual-method taxpayer is prohibited under the "all-events test" from deducting a liability "any earlier than when economic performance with respect to such item occurs." I.R.C. § 461(h). Treasury Regulations § 1.461-1(a)(2)(i) additionally requires that "all the events have occurred that establish the fact of the liability" and "the amount of the liability can be determined with reasonable accuracy."

We agree with your analysis and conclusion.

II.

Brief Factual Summary:

Issues:

1.

Conclusion:

Thereafter, you applied a benefits and burdens analysis and settled case law to the facts of this case. Your analysis included consideration of the eight Grodt & McKay Realty factors. 77 T.C. 1221, 1237 (1981).

We concur with your analysis and conclusions.

2.

Conclusion:

You relied on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990),

In Indianapolis Power, the Supreme Court stated that: it depends upon the parties “rights and obligations at the time the payments are made” and held that customer deposits paid to a utility were security and did not constitute prepayment of income, taxable upon receipt. 493 U.S. at 211. The determination of what constituted income to the utility company depended on the nature of the rights and obligations that the recipient assumed when the money was received.

in Indianapolis Power the money was subject to an express obligation to repay when and if the customer terminated the agreement.

There is no accession to wealth if the money has to be returned. 493 U.S. at 208.

You also rely on Highland Farms, Inc. and Subsidiary v. Commissioner, 106 T.C. 237 (1996),

In Highland Farms, under the terms of a purchase agreement, prospective residents of an apartment or lodge paid a lump-sum entry fee before taking occupancy. The entry fees were refundable on a prescribed percentage basis over a term of 5 or 20 years. The Court held the entry fees did not constitute prepaid rent or advance payments for services that must be reported in the year of receipt. Relying on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203, 211-212 (1990), the Highland Farms Court determined there was no accession to wealth until the entry fee became nonrefundable.

We agree with your analysis and your conclusion.

3.

Conclusion:

the well-established rule of tax accounting that for an accrual-method Taxpayer, "deductions are to be taken in the year in which the deductible items are incurred." Brown v. Helvering, 291 U.S. 193, 199 (1934).

an accrual-method Taxpayer is prohibited under the "all-events test" from deducting a liability "any earlier than when economic performance with respect to such item occurs." I.R.C. § 461(h). Treasury Regulations § 1.461-1(a)(2)(i) additionally requires that "all the events have occurred that establish the fact of the liability" and "the amount of the liability can be determined with reasonable accuracy."

We agree with your analysis and conclusion.

III.

Issues:

1.

Conclusion:

Thereafter, you applied a benefits and burdens analysis and settled case law to the facts of this case. Your analysis included consideration of the eight Grodt & McKay Realty factors. 77 T.C. 1221, 1237 (1981).

We agree with your analysis and conclusion.

2.

Conclusion:

You relied on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203 (1990),

In Indianapolis Power, the Supreme Court stated that: it depends upon the parties "rights and obligations at the time the payments are made" and held that customer deposits paid to a utility were security and did not constitute prepayment of income, taxable upon receipt. 493 U.S. at 211. The determination of what constituted income to the utility company depended on the nature of the rights and obligations that the recipient assumed when the money was received.

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Indianapolis Power the money was subject to an express obligation to repay when and if the customer terminated the agreement.

There is no accession to wealth if the money has to be returned. 493 U.S. at 208.

You also rely on Highland Farms, Inc. and Subsidiary v. Commissioner, 106 T.C. 237 (1996),

In Highland Farms, under the terms of a purchase agreement, prospective residents of an apartment or lodge paid a lump-sum entry fee before taking occupancy. The entry fees were refundable on a prescribed percentage basis over a term of 5 or 20 years. The Court held the entry fees did not constitute prepaid rent or advance payments for services that must be reported in the year of receipt. Relying on Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203, 211-212 (1990), the Highland Farms Court determined there was no accession to wealth until the entry fee became nonrefundable.

We agree with your analysis and your conclusion.

3.

Conclusion:

for an accrual-method Taxpayer, "deductions are to be taken in the year in which the deductible items are incurred." Brown v. Helvering, 291 U.S. 193, 199 (1934). In addition, you note an accrual-method Taxpayer is prohibited under the "all-events test" from deducting a liability "any earlier than when economic performance with respect to such item occurs." I.R.C. § 461(h). Treasury Regulations § 1.461-1(a)(2)(i) additionally requires that "all the events have occurred that establish the fact of the liability" and "the amount of the liability can be determined with reasonable accuracy."

We agree with your analysis and conclusion.

This advice was coordinated with IT&A Branches 1,5 and 6.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Please do not hesitate to contact the undersigned at (617) 788-0799 if we can be of further assistance.

Sincerely,

ELISE F. ALAIR
Associate Area Counsel
(Large Business & International)

By: _____
Michele J. Gormley
Senior Counsel (Boston, Group 1)
(Large Business & International)