

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

Release Number: 20174901F

Release Date: 12/8/2017

CC:LB&I:HMP:CIN1C: MASHapiro  
POSTF-124150-17

UILC: 461.06-01

date: August 08, 2017

to: Internal Revenue Service  
Attn: Manager

from: Marc A. Shapiro  
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subject: All-events test Reductions

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =  
Program =  
Number =  
Reduction(s) =  
Services =  
Location A =  
  
Date 1 =  
Year 2 =  
Date 3 =  
Year 1 =

ISSUE

Whether Taxpayer may deduct the estimated value of Reductions, under the all-events test under section 461, where students have earned Number, but have not yet completed attendance for the first 2 weeks of the following academic term (the following tax year)?

CONCLUSION

Taxpayer's liability for Reductions was not fixed at year end, and accordingly, did not satisfy the all-events test.

FACTS

Taxpayer is among the largest providers of Services. Headquartered in Location A Taxpayer offers academic programs through  
<sup>1</sup> Taxpayer targets a large and diverse market, as its educational institutions offer students the opportunity to earn undergraduate and graduate degrees,

Taxpayer implemented a Program in the fiscal year ended Date 1, whereby, subject to the following requirements and , students are provided with a Reduction on the successful completion of Number during a term and complete attendance for the first two weeks of the following academic term (the following tax year for the liability at issue). The following information is contained in the :

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<sup>1</sup> Were Taxpayer to seek refund relief and file suit in U.S. District Court for Location A, the decision would be appealable to the United States Court of Appeals for the Circuit.

<sup>2</sup> We note that Taxpayer was requested to supply whatever document(s) students used to confirm attendance. Taxpayer responded that students do not actually confirm attendance. Rather, Taxpayer confirms the student's registration before applying the Reduction. "

" Taxpayer's response to IDR #8.



Taxpayer initiated the Program in Year 2. On its originally filed Form 1120, for the fiscal year ended Date 1, the estimated Reduction liability was not deducted. After the Third Circuit's opinion in Giant Eagle, Inc. v. Commissioner, 822 F.3d 666 (3d Cir. 2016), nonacq., 2016-40 I.R.B. 424, however, Taxpayer filed an amended return deducting the estimated Reduction liability.<sup>3</sup> Taxpayer subsequently filed its Form 1120 for the fiscal year ended Date 3, deducting the estimated Reduction liability consistent with the Year 1 amended Form 1120.

### LAW AND ANALYSIS

The Code allows a deduction for "expenses paid or incurred during the taxable year in carrying on any trade or business." I.R.C. § 162(a). Under an accrual method of accounting, in determining whether an amount has been incurred, one must satisfy the all-events test and determine if economic performance has occurred.<sup>4</sup> Section 461(h); Treas. Reg. § 1.461-1(a)(2)(i). The all-events test is satisfied if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy. Section 461(h)(4). See also United States v. Hughes Properties, Inc., 476 U.S. 593, 600 (1986).

A taxpayer may not deduct a liability that is contingent or an estimate of an anticipated expense, regardless of statistical certainty, "if it is based on events that have not occurred by the close of the taxable year." United States v. General Dynamics Corp., 481 U.S. 239, 243-44 (1987).

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<sup>3</sup> Taxpayer estimated that a percentage of the Reduction earned would not be used by students in a subsequent term, either because the student temporarily or permanently withdraws from school. The Taxpayer bases this "estimated breakage" on historical student trends and modifies it as trends evolve.

<sup>4</sup> No advice is requested, and no opinion is expressed, regarding whether the amount could have been determined with reasonable accuracy or whether the economic performance test was met.