



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

July 2, 2001

OFFICE OF
CHIEF COUNSEL

Number: **200139025**
Release Date: 9/28/2001
UIL: 168.20-00
446.04-17

CC:P&SI:6CRamsey
CAM-121533-97

MEMORANDUM FOR: Industry Director, Natural Resources (LM:NR)

FROM: CHIEF, BRANCH 6
CC:P&SI:6

SUBJECT: WITHDRAWAL OF APPLICATION FOR CHANGE IN
ACCOUNTING METHOD

In accordance with § 8.07(2)(a) of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 32, this Chief Counsel Advice advises you that a taxpayer within your jurisdiction has withdrawn a Form 3115, Application for Change in Accounting Method. Pursuant to § 6110 (k)(3), this Chief Counsel Advice is not to be cited as precedent.

LEGEND:

A =

B =

C =

This memorandum advises you that certain issues set out in a Form 3115 submitted on behalf of A were withdrawn. A did not give any reason for the withdrawals.

A filed the Form 3115 to request permission to change its method of computing depreciation for right-of-way easement costs for electric power lines from using the straight-line method and a useful life of 84 or 46 years under § 167 to using an accelerated depreciation method and the recovery periods for asset classes 49.12-49.15 of Rev. Proc. 87-56 (or Rev. Proc. 83-35) or no class life under § 168 of the Code. At the time of withdrawal, we were tentatively adverse because Rev. Rul. 72-403 specifically states that right-of-way costs are costs paid for intangible assets and thus ineligible for depreciation under §168 and must be depreciated under §167.

Also, A withdrew its request for permission to change its method of depreciation for street lighting assets from depreciating as an asset described in asset class 49.14 to depreciating as an asset having no class life, or as an asset described in asset class

57.0. At the time of withdrawal we were tentatively adverse because the provision of street lighting is part of electric distribution described in asset class 49.14. 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 took into account costs of both generation and distribution. The street lights consume electricity. The amount of electricity used for a particular light over the period of a year (or less) can be estimated with a high degree of accuracy based on the average number of hours of use. No separate metering is necessary; running separate lines is frequently unnecessary. In the simplest case, the lighting fixture is simply placed on existing distribution poles where needed. The utility has electricity at the point street lighting is needed; thus, the utility provides the electricity for producing the light as a part of its business of distributing the electricity. Providing street lighting is part of the activity described in asset class 49.14.

The three revenue rulings consistent with the view that street lighting is part of distribution are briefly 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. Rev. Rul. 78-67 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 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 in a myriad of activities. Clearly, under § 1.167(a)-11(b)(4)(iii)(b) property shall be classified according to 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.

Finally, A withdrew its request to change its method of accounting for certain assets A capitalized into FERC Accounts 316, 325, 346, 393, 394, and 395. For tax purposes A included these assets in asset classes 49.12, 49.13, or 49.15. The withdrawal applied to assets not described in the asset classes for specific assets used in all business activities (that is, asset class 00.11 through asset class 00.4). The withdrawal applied to assets such as stores equipment; tools, shop, and garage equipment; and laboratory equipment. At the time of withdrawal we were tentatively adverse because these assets appear to be described in asset classes 49.12, 49.13, or 49.15. Merely because

an item of property is not specifically mentioned in these asset classes but is mentioned in certain FERC accounts does not mean the item is excluded from the scope of the asset classes. The depreciation asset classes are generally much broader than FERC accounts.

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

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

CHARLES B. RAMSEY
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Office of Associate Chief Counsel
(Passthroughs & Special Industries)