

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-110082-06

Date:

October 16, 2006

LEGEND

Taxpayer =

B =

Dear :

This is in reply to your request that the revocation of LTR 2005-18-014 (December 30, 2004) be applied prospectively only, in accordance with § 7805(b) of the Internal Revenue Code. The purpose of this letter is to inform you that Taxpayer is granted relief under § 7805(b) and that the revocation of LTR 2005-18-014 will apply to Taxpayer without retroactive effect.

LTR 2005-18-014 concluded that Taxpayer's payment to B was includible in B's gross income and deductible by Taxpayer. LTR 2006-13-022 (October 28, 2005) revoked LTR 2005-18-014 and invited Taxpayer to submit a request to limit the retroactive effect of the revocation. Taxpayer submitted its § 7805(b) request in January of 2006.

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Section 601.201(l)(5) of the Statement of Procedural Rules provides that except in rare or unusual circumstances, the revocation of a private letter ruling will generally not be applied retroactively to the taxpayer to whom the letter ruling was issued if (i) there has been no misstatement or omission of material facts; (ii) the facts subsequently developed are not substantially different than those on which the ruling was based; (iii) there has been no change in the applicable law; (iv) the ruling was originally issued for a prospective or proposed transaction; and (v) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking the letter ruling retroactively would be to the taxpayer's detriment. Section 11.06 of Rev. Proc 2006-1, 2006-1 I.R.B. 1, sets forth substantially the same language as the language provided in § 601.201(l).

Under § 601.201(7), "[i]f a ruling is issued covering a continuing action or a series of actions and it is determined that the ruling was in error or no longer in accord with the position of the Service, the Assistant Commissioner (Technical) ordinarily will limit the retroactivity of the revocation or modification to a date not earlier than that on which the original ruling was modified or revoked. To illustrate, if a taxpayer rendered service or provided a facility which is subject to the excise tax on services or facilities, and in reliance on a ruling issued to the same taxpayer did not pass the tax on to the user of the service or the facility, the Assistant Commissioner (Technical) ordinarily will restrict the retroactive application of the revocation or modification of the ruling." Section 11.08 of Rev. Proc. 2006-1 contains similar language.

Section 601.201(9) states, "In the case of rulings involving completed transactions, other than those described in [subparagraph (7) of this paragraph], taxpayers will not be afforded the protection against retroactive revocation provided in subparagraph (5) of this paragraph in the case of proposed transactions since they will not have entered into the transactions in reliance on the rulings."

Based upon the information submitted and representations made by Taxpayer, the Service has determined that § 7805(b) relief is appropriate in this case. Therefore, the revocation of PLR 2005-18-014 is not effective until October 25, 2005, the date on which the PLR was revoked.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

Except as expressly provide herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax and Accounting)