

Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **200836026**

Release Date: 9/5/2008

CC:ITA:2

POSTF-105930-08

UILC: 461.06-01

date: May 9, 2008

to: Benjamin W. McClendon, Attorney CC:LM:RFP:JAX:NAS

from: Thomas D. Moffitt, Chief CC:ITA:2

subject: Proper Timing of Accrual for Commission Expenses Originally Advanced as Loans to Insurance Agents

This Chief Counsel Advice responds to your request for assistance dated February 13, 2008. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

ISSUE

Whether Taxpayer may treat its commission liability as incurred upon payment and prior to the receipt of the premiums to which the commission liability relates.

CONCLUSION

Further factual development is necessary to determine the appropriate time for treating Taxpayer's commission liability as incurred.

FACTS

The taxpayer is an insurance company that is in the business of issuing policies of insurance that are classified into different product lines. The taxpayer uses a hybrid of the accrual and reserve methods of accounting overall and accounts for its commission liability on the accrual method.

The taxpayer uses independent brokers to sell its insurance products and compensates these brokers with commissions. These commissions are based on premiums charged to insured individuals. The taxpayer issues certain insurance policies that are paid for through deductions to employee payroll accounts. For example, a given employee may sign up for a certain type of insurance that is underwritten by the taxpayer. The applicable insurance premiums would be deducted automatically from the employee's paycheck and remitted to the taxpayer. For these policies, the premiums are not paid in advance. Instead, the premiums are paid periodically throughout the coverage period.

LAW AND ANALYSIS

Section 461(a) provides that the amount of any deduction or credit must be taken for the taxable year that is the proper taxable year under the method of accounting used in computing taxable income.

Section 461(h) and § 1.461-1(a)(2)(i) provide that, under an accrual method of accounting, a liability is incurred, and is generally taken into account for federal income tax purposes, in the taxable year in which (1) all the events have occurred that establish the fact of the liability, (2) the amount of the liability can be determined with reasonable accuracy, and (3) economic performance has occurred with respect to the liability. See also § 1.446-1(c)(1)(ii)(A). Section 461(h)(1) provides that the all events test is not met any earlier than when economic performance occurs.

Section 1.461-4(d)(2) provides that if the liability of the taxpayer arises out of the provision of services to the taxpayer, economic performance occurs as the services are provided.

The facts surrounding Taxpayer's contracts with its brokers will determine when the taxpayer's liability to pay broker commissions under any policy becomes fixed. Until these facts are developed we have no legal issues to address.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-7900 if you have any further questions.

George E. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Thomas D. Moffitt
Branch Chief, Branch 2
(Income Tax & Accounting)