

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

Number: **201630015**

Release Date: 7/22/2016

CC:PSI:B5:DSelig
POSTF-109368-15

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 199.00-00, 199.03-00, 199.03-09

date: April 13, 2016

to: Thomas J. Kane
Division Counsel
(Large Business & International)

Barbara B. Franklin
Deputy Division Counsel (Operations)
(Large Business & International)

from: Nicole R. Cimino
Senior Technician Reviewer, Branch 5
(Passthroughs & Special Industries)

subject: Section 199 Chief Counsel Request on the Qualified Film Issue

This Chief Counsel Advice responds to your request for clarification of CCA 201545018. In particular, you asked that we clarify whether League contracted with Network to produce a qualified film for Taxpayer for purposes of § 199. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =

League =

Network =

Contract =

Game Broadcasts =

b =

c =

ISSUE

Whether Network performed its production activities with respect to the Game Broadcasts pursuant to the Contract so that it is necessary to determine whether Taxpayer had the benefits and burdens of ownership of the Game Broadcasts during the period of production for purposes of §§ 1.199-3(f)(1) and 1.199-3(k)(8)?

CONCLUSION

Network produced the Game Broadcasts on its own behalf pursuant to the rights granted to Network in Contract rather than pursuant to a contract with Taxpayer for purposes of §§ 1.199-3(f)(1) and 1.199-3(k)(8). For this reason, gross receipts that Taxpayer derived from the Contract are non-DPGR, and a benefits and burdens of ownership analysis is not required.

FACTS

The facts considered and the terms used in this Chief Counsel Advice are stated in CCA 201545018.

ANALYSIS

You requested clarification regarding whether Network produced the Game Broadcasts for Taxpayer for purposes of §§ 1.199-3(f)(1) and 1.199-3(k)(8), rather than on its own behalf pursuant to rights granted by Contract. For the reasons explained below, we conclude that Network produced the Game Broadcast on its own behalf rather than on behalf of Taxpayer. Therefore, all gross receipts that Taxpayer derived from the Contract are non-DPGR as the gross receipts cannot be considered derived from a disposition of qualified film produced by Taxpayer.

Network is a producer of television programming as part of its business, and seeks out events of the type offered by Taxpayer to make programming for its own stations. Network entered into the Contract to make the Game Broadcasts for itself. A review of the facts indicates that Network controlled most aspects of the creative production of the Game Broadcasts. First, Network had editorial control over how to film the game, and how to incorporate that film into coherent and complex broadcasts that were consistent with Network standards. For example, Network had largely unfettered discretion to decide which of several camera feeds it would broadcast at any point during the game,

when and where to zoom in on players, umpires, cheerleaders, coaches, etc., when to show a replay (in slow or real-time motion), which players to focus on, and when to pan to the live audience or the sidelines. Network also decided whether and when to add graphics, sound effects and music. Network also provided the commentators who described events on the field and provided background, statistical information and color commentary. Network decided when to use various technologies such as the SkyCam. All of these activities were part of creating a unique Game Broadcast, which involved a much different experience than simply recording a game broadcast for Taxpayer. Moreover, all of these activities were largely within the discretion of Network.

Further, Network provided and controlled all equipment essential to the Game Broadcasts and a game day staff of b employees and freelance contractors. Those employees were responsible for all aspects of production from setting up and testing the equipment, to recording the games, producing the game feeds, monitoring the broadcasts, and tearing down the production equipment. Network's employees included a director, who was responsible for calling out the camera shots, a technical director who controlled the cameras, and a producer, who decided on whether and when to show replays and commercials. Network's producer was in charge of the particular broadcast.

Network also brought in support staff, graphics staff, and audio staff. About c Network employees worked inside the broadcasting trucks. The remaining staff worked at the stadiums. Network's graphics team prepared thousands of graphics to be shown at specific times throughout a broadcast. Based on these facts, Network, not Taxpayer, is the producer of the Game Broadcasts on its own behalf and not pursuant to a contract for purposes of §§ 1.199-3(f)(1) and 1.199-3(k)(8). Accordingly, all gross receipts that Taxpayer derived from the Contract are non-DPGR as the gross receipts cannot be considered derived from a disposition of qualified film produced by Taxpayer.

However, if the IRS were to determine that Network produced the Game Broadcasts pursuant to a contract for purposes of §§ 1.199-3(f)(1) and 1.199-3(k)(8) then a benefits and burdens of ownership analysis would be required.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS

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 David Selig at 202-317-4137 if you have any further questions.