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From: [REDACTED]
Sent: Tuesday, February 21, 2017 10:22:30 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: Your sec. 597 case

Good morning:

This responds to your request for our views regarding grounds for settlement of the case we discussed, which involves a taxpayer that acquired the assets of a failed bank in a prior taxable year that is now closed, and that improperly applied the rules under § 597 in computing items arising from the acquisition. The taxpayer has sought to correct these errors, and seeks resolution with the Service that would affect its acquisition basis in the assets, the treatment of post-acquisition loss guarantee payments received by Agency, and the amount of the taxpayer's six-year income inclusion under Treas. Reg. § 1.597-5(d)(2)(iii).

In terms of the applicable law, the legislative history underlying the current version of § 597 sets forth Congress's concern that a failed institution's net operating losses and built-in losses on assets transferred to an acquiring bank would generally be eliminated, and that the acquiring bank's purchase price should be allocated among the various assets acquired in the transaction to reflect the acquired assets' fair market values. See H.R. Rep. 101-54(II) (May 22, 1989) at p. 26-27. It would therefore be contrary to the purpose of § 597 for an acquiring bank to hold the failed bank's assets with a carryover basis, as proposed by the taxpayer in this case. In this regard, Treas. Reg. § 1.597-3(g) provides that "if, in structuring or engaging in any transaction, a principal purpose is to achieve a tax result that is inconsistent with the purposes of section 597 and the regulations thereunder, the Commissioner can make appropriate adjustments to income, deductions and other items that would be consistent with those purposes."

Accordingly, we recommend that you consider the following guidelines in resolving this case:

[REDACTED]

