INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE-MIS No.: TAM-124724-21

Khin Chow
Director, Field Operations (North Central), Eastern Compliance
LB&I:EC:GL

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference:

LEGEND:

Taxpayer =
Plan 1 =

Plan 2 =

Plan 3 =

Year 1 =
Year 2 =
Year 3 =

ISSUE:

Whether Taxpayer is entitled to deduct estimated future retiree benefits as unpaid loss adjustment expenses ("LAE") in its Year 1, Year 2, and Year 3 taxable years under § 832(b)(5) of the Internal Revenue Code ("Code"), or whether § 404(a)(5) applies and precludes deductibility of such amounts until the year in which retiree benefits are includible in gross income of the employee receiving the benefits.

CONCLUSION:

Section 404(a)(5) applies during the Year 1, Year 2, and Year 3 taxable years and specifically precludes Taxpayer from deducting under § 832(b)(5) the unpaid LAE for retiree benefits prior to the taxable year in which such benefits are includible in the gross income of those receiving the benefits. These deduction limitations apply regardless of whether the benefits would otherwise be deductible under any other Code provision.

FACTS:

Taxpayer is taxed as a non-life insurance company under part II of subchapter L of the Code and is the common parent of an affiliated group of corporations.

Taxpayer offers certain retired claims employees the opportunity to participate in plans providing certain retiree benefits (referred to collectively as the “Plans”). Plan 1 provides medical and prescription drug coverage for retired employees . Plan 2 allows eligible retirees to submit claims for reimbursement for certain medical expenses. Plan 3 provides a term life insurance benefit, with Taxpayer paying a portion of the premium. Retired employees are eligible to participate in the Plans if they meet certain criteria, including hire date and years of service. A retired employee must elect to participate in the Plans. The terms of the Plans provide that the Taxpayer reserves the right to discontinue or modify the Plans in its sole discretion.

For its Year 1 through Year 3 taxable years, Taxpayer included in its calculation of unpaid LAE the discounted value of the actuarially determined future retiree benefits to be provided to retired claims employees under the Plans.

LAW AND ANALYSIS:

Section 831(a) imposes a tax for each taxable year on the taxable income of every insurance company other than a life insurance company.

Section 832 provides that the taxable income of an insurance company subject to the tax imposed by § 831 is the gross income as defined in § 832(b) less the deductions allowed by § 832(c).

Section 832(b) provides that the gross income of an insurance company subject to tax under § 831(a) includes the combined gross amount earned for the taxable year from investment income and underwriting income, as provided in § 832(b), computed on the basis of the annual statement approved by the National Association of Insurance Commissioners (“NAIC”). Section 1.832-4(a)(2) provides, in part, that “the underwriting and investment exhibit is presumed to reflect the true net income of the company, and insofar as it is not inconsistent with the provisions of the Code will be recognized and used as a basis for that purpose."

Under § 832(b)(3), underwriting income consists of the premiums earned on insurance contracts during the taxable year, less losses incurred and expenses incurred. Section 832(b)(5) defines "losses incurred" as an amount equal to the losses paid during the taxable year, reduced by salvage and reinsurance recovered during the taxable year, plus all unpaid losses on life insurance contracts and all discounted unpaid losses (as defined in § 846) outstanding at the end of the taxable year, less all unpaid losses on life insurance contracts and all discounted unpaid losses outstanding at the end of the preceding taxable year; plus estimated salvage and reinsurance recoverable at the end of the preceding year, less estimated salvage and reinsurance recoverable at the end of the taxable year.

Section 832(b)(6) provides that expenses incurred do not include any unpaid loss adjustment expenses shown on the annual statement, but that such amounts are to be treated as part of the insurance company's unpaid losses.

Section 832(c) lists various categories of allowable deductions, including "all ordinary and necessary business expenses incurred, as provided under § 162," taxes as provided under § 164, and other deductions, as provided in part VI of subchapter B (§ 161 and following, relating to itemized deductions for individuals and corporations), and subchapter D (§ 401 and following, relating to pension, profit sharing, stock bonus plans, etc.). See § 832(c)(1), (c)(4), and (c)(10). Section 832(c)(4) provides that in computing the taxable income of an insurance company subject to tax under § 831, a deduction is allowed for losses incurred as defined in § 832(b)(5).

Section 1.832-4(b) provides, in part, that an insurance company must be prepared to demonstrate that the part of the deduction for losses incurred which represents unpaid losses comprises only actual unpaid losses. These losses must be stated in amounts which, based upon the facts in each case and the company's experience in similar cases, represents a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of unpaid losses which, in the opinion of the district director, are in excess of a fair and reasonable estimate will be disallowed as a deduction.

Section 846 requires unpaid losses (other than unpaid losses on life insurance contracts) to be discounted to reflect the time value of money. Under § 846(b)(1), the starting point for determining discounted unpaid losses is the amount of unpaid losses reported on the annual statement approved by the NAIC that the taxpayer is required to file with insurance regulators of a state.

Section 846(f)(2) states the term "unpaid losses" includes any unpaid loss adjustment expenses shown on the annual statement.

Section 404(a) provides that if compensation is paid or accrued on account of any employee under a plan deferring the receipt of compensation, the compensation is not deductible under chapter 1 of subtitle A of the Code, but if the compensation would "otherwise be deductible," it is deductible under § 404, subject to the limitations imposed by § 404 as to the amounts deductible in any year.

Section 404(a)(5) provides that compensation paid under a nonqualified plan (that is, a plan to which the contributions are not deductible under § 404(a)(1), (2), or (3)) of deferred compensation is deductible in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan.

Section 404(b)(1) provides that if there is no plan, but there is a method or arrangement of compensation which has the effect of a plan deferring the receipt of compensation, § 404(a) shall apply as if there were such a plan. Section 404(b)(2)(A) provides that any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents is treated as a plan deferring the receipt of compensation, and the determination of when benefits are includible in an employee's gross income is to be made without regard to any provision (in chapter 1 of the Code) that excludes the benefits from gross income. Section 404(b)(2)(B) provides that § 404(b)(2)(A) does not apply to any benefit provided through a welfare benefit fund as defined in § 419(e).

Section 1.404(b)-1T, Q&A-1, provides, in part, that § 404(a) governs the deduction of compensation paid or incurred with respect to compensation and benefit plans, or methods or arrangements, however denominated, which defer the receipt of any amount of compensation or benefit, including fees and other payments. Under § 404(a) and (b), if otherwise deductible, a contribution paid or incurred with respect to a nonqualified plan, or method or arrangement, is deductible in the taxable year of the employer in which or with which ends the taxable year of the employee in which the amount attributable to the contribution is includible in the gross income of the employee (without regard to any applicable exclusion under chapter 1, subtitle A, of the Code).

Section 1.404(b)-1T, Q&A-2(a), provides that, for purposes of § 404(a), (b), or (d), a plan, or method or arrangement, defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. The determination of whether a plan, or method or arrangement, defers the receipt of compensation or benefits is made separately with respect to each employee and each amount of compensation or benefit.

Section 1.404(b)-1T, Q&A-2(b)(1) provides that a plan, or method or arrangement, is presumed to be one that defers the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the third month after the end of the employer's taxable year in which the services are provided ("2½ month period"). In addition, benefits are "deferred benefits" if, assuming the benefits were cash compensation, such benefits would be considered deferred compensation. Thus, a plan, or method or arrangement, is presumed to be one providing for deferred benefits to the extent benefits for services are received by an employee after the 2½ month period following the end of the employer's taxable year in which the related services are provided.

Under Treas. Reg. §1.404(b)-1T, Q&A-2(b), this presumption may be rebutted only by demonstrating that it was impracticable to avoid the deferral of the receipt by an employee of the amount of compensation or benefits beyond the applicable 2½ month period and that, as of the end of the employer's taxable year, such impracticability was unforeseeable. A plan, or method or arrangement, is not considered to defer the receipt of compensation or benefits for more than a brief period of time after the end of the employer's taxable year to the extent that compensation or benefits are received by the employee on or before the end of the applicable 2½ month period. See Treas. Reg. §1.404(b)-1T, Q&A-2(c).

ANALYSIS:

A retired claims employee must meet certain criteria (including hire date and years of service) to be eligible to participate in the Plans. Because the Plans require an employee to perform services (prior to retirement) to be eligible to participate in the Plans, these services are related to the benefits provided under the Plans. When an employee retires, assuming all other eligibility requirements are met, the employee is eligible to participate in and receive benefits under the Plans as a result of the performance of services in the taxable year in which the employee retired and in prior taxable years. A retired employee generally has a right to retiree benefits under a Plan at the time the retired employee elects coverage under the Plan. Such right to retiree benefits is created through the performance of services by the employee for the Taxpayer prior to retirement. The taxable year in which the employee retires is the last taxable year in which an employee performs services related to the participant's retiree benefits under the Plan.

A plan is presumed to be one that defers the receipt of compensation for more than a brief period of time after the end of an employer's taxable year to the extent that compensation is received after the 15th day of the third month after the end of the employer's taxable year in which the related services are provided, i.e., the 2½ month period. Section 1.404(b)-1T, Q&A-2(b)(1). After an employee retires and becomes eligible for benefits under a Plan, benefits may be paid both within and after the end of the 2½ month period following the end of the Taxpayer's taxable year in which the employee retired). To the extent benefits under a Plan will be received by a participant after the end of the 2½ month period following the taxable year in which the employee retired, such benefits are presumed to be deferred compensation.

Taxpayer has not demonstrated that it was impracticable to avoid the deferral of the receipt by a participant of the amount of compensation or benefits beyond the applicable 2½ month period and that, as of the end of the Taxpayer's taxable year, such impracticability was unforeseeable. See § 1.404(b)-1T, Q&A-2(b)(2). Therefore, the retiree benefits that will be paid to a participant after the 2½ month period following the end of the Taxpayer's taxable year in which the employee retired are deferred compensation as described in § 1.404(b)-1T, Q&A-2(a). Benefits received under the Plan will not be considered deferred compensation to the extent that the compensation or benefits will be paid to the participant on or before the end of the applicable 2½ month period following the end of the Taxpayer's taxable year in which the employee retired.

Taxpayer argues that the retiree benefits did not represent deferred benefits as defined in § 404(b) during the taxable years Year 1-Year 3 because employees did not have a legally binding right to future benefits. Taxpayer cites Treas. Reg. §1.404(b)-1T, Q&A-2(a), which provides that: “a plan, or method or arrangement, defers the receipt of compensation or benefits to the extent it is one under which an employee receives compensation or benefits more than a brief period of time after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed.” Taxpayer further argues that the term “deferred compensation” for § 404 purposes should be interpreted in the same manner as that term has been interpreted in other regulations under related Code provisions.

Treas. Reg. § 31.3121(v)(2)-1(b)(3)(i) states that a plan provides for the deferral of compensation with respect to an employee only if, under the terms of the plan and the relevant facts and circumstances, the employee has a legally binding right during a calendar year to compensation that has not been actually or constructively received and that, pursuant to the terms of the plan, is payable to (or on behalf of) the employee in a later year. The § 3121(v) regulations further state that an employee does not have a legally binding right to compensation if that compensation may be unilaterally reduced or eliminated by the employer after the services creating the right to the compensation have been performed. The § 409A regulations similarly apply the “legally binding right” standard for defining deferred compensation, including making clear that where an employer has a unilateral right to reduce or eliminate the future compensation, the employee does not have a legally binding right to the compensation. According to Treas. Reg. § 1.409A-1(b)(1), a plan provides for a deferral of compensation if, under the terms of the plan and the relevant facts and circumstances, a service provider has a legally binding right during a taxable year to compensation that, pursuant to the terms of the plan, is or may be payable to (or on behalf of) the service provider in a later taxable year. Further, a service provider does not have a legally binding right to compensation to the extent that compensation may be reduced unilaterally or eliminated by the service recipient or other person after the services creating the right to compensation have been performed. However, the regulations under §§ 3121(v) and 409A do not override § 404 and its corresponding regulations in determining whether nonqualified postretirement benefits are characterized as deferred compensation for purposes of deductibility.

Taxpayer argues that, because the terms of the Plans provide Taxpayer with the ability to unilaterally discontinue or modify the Plans, employees did not have a right to retiree benefits under the Plans during the taxable years Year 1-Year 3, and therefore § 404 does not apply to those years. It is unclear what right (if any) an active employee actually had to retiree benefits under the Plans during the taxable years Year 1-Year 3 (prior to such employee retiring and electing coverage under the Plans), and whether Taxpayer's ability to discontinue or modify the Plans is unqualified. Applicable law other than the Code (for example, state contract law) would determine whether an employee has a right to future benefits under the Plans. For purposes of § 404, an employee did not need a legally binding right to retiree benefits under the Plans during the taxable years Year 1-Year 3 for benefits attributable to services performed in those years to be considered deferred compensation. The timing of the benefit payment in relation to when the related services are provided determines whether § 404(a)(5) is applicable.

Section 1.404(b)-1T, Q&A-2(b)(1) provides that a plan, or method or arrangement, is presumed to be one that defers the receipt of compensation for more than 2½ months after the end of the employer's taxable year in which the services are provided. When Treas. Reg. §1.404(b)-1T, Q&A-2(a) is read together with Section 1.404(b)-1T, Q&A-2(b)(1), the completion of the related services is key to measuring the 2½ month period; the 2½ month period begins after the end of the employer's taxable year in which the services creating the right to such compensation or benefits are performed. The year of retirement is the last year in which services are performed that create the right to benefits under the Plans. For benefits actually paid to retirees under the terms of the Plans, the 2½ month period would begin after the end of the taxable year in which the employee retired. To the extent the retiree benefits are paid in the future, the retiree benefits are deferred compensation subject to § 404(a)(5) because they will be paid after the end of the 2½ month period (measured from the end of the year of retirement).

The legislative history of § 404 further supports the position that retiree benefits constitute deferred compensation as described in § 404(b). In the Tax Reform Act of 1984, Congress amended § 404(b)(1) in order to expand the scope of the special accounting rule in § 404(a) to include any "method or arrangement of ... compensation which has the effect of a ... plan deferring the receipt of compensation." The legislative history indicates that this change was intended to clarify that the deduction timing rules of § 404(a) are not confined to qualifying pension, profit sharing, and stock bonus plans, but are applicable to all compensation arrangements which defer the receipt of compensation by an employee or independent contractor. See H.R. Rep. No. 98-432, Pt. 2, 1283 (1984).

In describing this change, Congress specifically addressed the treatment of employee benefit plans that provide benefits in the future:

> The committee is concerned that an employer may promise to provide an employee or independent contractor with a benefit some time in the future and, even though the benefit is not funded, may claim a deduction before the benefit is provided to the employee. Accordingly, the committee has concluded that it is appropriate to provide that if the benefit or other compensation is <u>provided under a plan, method, arrangement, or similar understanding that a benefit will be provided in the future</u>, it will be treated as provided under a plan deferring the receipt of compensation.
> …
> An unfunded deferred benefit plan would be considered to be a plan of deferred compensation for purposes of the rules relating to the timing and amount of employer deductions for contributions. For example, <u>if a plan provided that current employees will be entitled to life insurance protection after retirement, the benefit would be considered to be deferred compensation with respect to current employees</u> under the bill because, as to those employees, it will not be provided until after retirement.

H.R. Rep. No. 98-432 at 1282-1283 (1984). (Emphasis added.)

This language indicates that Congress intended § 404 to apply to plans that were intended to provide deferred benefits in the future. The scenario of providing deferred benefits to current employees after their retirement was specifically contemplated by Congress, with the indication that such an arrangement should be considered deferred compensation even before retirement and subsequent payment of the future benefit.

In discussing the treatment of welfare benefit funds, Congress further stated:

> Of course, no advance deduction is to be allowed with regard to a plan which provided medical or life insurance benefits exclusively for retirees, since such a plan would be considered a deferred compensation plan subject to the rules of section 404 rather than the provision applicable to funded welfare benefit plans.

H.R. Rep. No. 98-861, 1157 (1984).

Taxpayer claims a deduction under § 832(b) attributable to benefits to be paid in the future under a plan, method, or arrangement that has the effect of providing deferred compensation to employees after retirement. This type of deferred benefits arrangement is one which Congress explicitly intended to be subject to § 404.

However, Taxpayer asserts that the timing restrictions in § 404 are not applicable to its liability for payments of accrued retiree benefits for claims personnel because the tax treatment of these items is controlled by the loss reserve provisions of subchapter L. In addition, Taxpayer asserts that pursuant to § 832(b) the amounts at issue were included in its determination of unpaid losses, which is a component of gross income, not a deduction. Taxpayer asserts the amounts at issue therefore are not subject to § 404(a)(5) because, as a component of gross income, they are not amounts that are "otherwise deductible" under the Code.

Taxpayer emphasizes that it is required to include estimates of its liability for payment of retiree health benefits for claims personnel when determining the amount of unpaid loss adjustments includible in unpaid losses on its NAIC annual statement. For purposes of determining an insurance company's income from premiums and deductions for losses, the Code adopts the accounting terms and concepts of the NAIC annual statement. See § 832(b)(1)(A). In addition, § 846(b)(1) provides that the starting point for determining discounted unpaid losses on insurance contracts, which are a component of "losses incurred" under § 832(b)(5), is "the unpaid losses shown on the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer." Section 846(f)(2) states the term "unpaid losses" includes any unpaid loss adjustment expenses shown on the annual statement. Thus, Taxpayer's argument is that because it must provide for the estimated liability for the payment of retiree benefits for claims personnel as part of the unpaid losses shown on its annual statement, the NAIC accounting treatment required to be used under §§ 832 and 846 for these items is controlling for tax purposes. Taxpayer argues that § 832 and § 1.832-4(b) prohibit any adjustment to a reserve that is mandated by NAIC guidance and determined in accordance with actuarial standards. Taxpayer asserts that if annual statement accounting requires inclusion of a particular item in losses, that item must also be included in losses under § 832. See State Farm Mut. Auto. Ins. Co. v. Commissioner, 698 F.3d 357 (7th Cir. 2012); Sears, Roebuck & Co. v. Commissioner, 972 F.2d 858 (7th Cir. 1992), rev.g 96 T.C. 51 (1991). Taxpayer also asserts that a reserve determined in accordance with actuarial standards constitutes a "fair and reasonable estimate of the amount the company will be required to pay" and therefore must be included in losses incurred under § 1.832-4(b). See Acuity v. Commissioner, 106 T.C.M. 2013-209.

However, no case, including those cited by Taxpayer, has addressed the propriety of a reserve adjustment when inclusion of an amount in the reserve is inconsistent with the provisions of the Code. Under § 1.832-4(a)(2), the underwriting and investment exhibit of the annual statement "is presumed to reflect the true net income of the company, and insofar as it is not inconsistent with the provisions of the Code will be recognized and used as a basis for that purpose." (Emphasis added.) Here, the annual statement is inconsistent with the provisions of the Code, specifically § 404, and therefore, to the extent it is inconsistent, is not recognized and used as a basis for determining Taxpayer's gross income under § 832.

Taxpayer's argument that subchapter L is controlling regarding the timing of the deduction is also inconsistent with the broad scope of the deduction timing rules of § 404. In the Tax Reform Act of 1984, Congress amended § 404(b)(1) in order to expand the scope of the special accounting rule in § 404(a) to include any "method or arrangement of ... compensation which has the effect of a ... plan deferring the receipt of compensation.” The legislative history indicates that this change was intended to clarify that the deduction timing rules of § 404(a) are not confined to qualifying pension, profit sharing, and stock bonus plans, but are applicable to all compensation arrangements which defer the receipt of compensation by an employee or independent contractor. See H.R. Rep. No. 98-432, Pt. 2, 1283 (1984).

In the Tax Reform Act of 1986, in what was described as a “clarifying amendment” to the 1984 changes with respect to the treatment of deferred compensation arrangements, Congress amended the general rule of § 404(a), eliminating the references to §§ 162 and 212, in order to clarify that the timing restrictions for deferred compensation arrangements apply to all forms of compensation for services rendered, regardless of the provision under which this compensation would be deductible. The legislative history explained the Congressional intent underlying this statutory change as follows:

> The bill clarifies that the deduction-timing rules for deferred compensation arrangements apply to any plan or method of deferring compensation regardless of the section under which the amounts might otherwise be deductible and that the amount shall be deductible under section 404(a)(5) and shall not otherwise be deductible under any other section. This clarification is necessary to prevent taxpayers from asserting that deferred compensation is attributable to capitalizable compensation expenses and, thereby, accelerate the timing of the deduction of such deferred compensation.

S. Rep. No. 99-313, 1013 (1986).

Accordingly, even if the unpaid loss adjustment expenses would ordinarily be taken into account as part of its losses incurred under § 832(b)(5), the deduction timing rules in § 404(a)(5) take precedence. That is, the timing restrictions in § 404(a)(5) apply for purposes of determining the deductibility of all deferred compensation payments and deferred benefits under chapter 1 of the Code, including deferred compensation payments or deferred benefits that would otherwise qualify for deduction as part of losses incurred under § 832(b)(5).

In the Tax Reform Act of 1986, Congress amended § 832(b)(6) to provide that unpaid LAE are to be treated as part of the insurance company’s unpaid losses, not expenses incurred. Taxpayer relies on legislative history indicating that Congress did not intend LAE to be subject to the rules generally applicable under the cash and accrual methods of accounting to conclude that Congress did not intend § 404 to apply to amounts included in LAE. See S. Rep. No. 99-313, 1013 (1986). However, the purpose underlying § 404(a)(5) is to ensure that employers do not have the tax incentive to adopt deferred compensation or deferred benefit plans instead of qualified pension plans. See H.R. Rep. No 77-2333, 103 (1942). To achieve this purpose the employer's deduction for deferred compensation or deferred benefits is allowed no earlier than when the compensation or benefits are includible in the gross income of the participants in the plan. Thus, the rules for nonqualified deferred compensation provide a “matching rule” that ensures that the employer is not allowed a deduction with respect to deferred compensation or deferred benefits until such compensation or benefits are taxed to the employee. The “matching rule” applies specifically for the purposes of § 404, and is fundamentally different than the general income and expense matching concepts of § 446(b). Permitting the rules under subchapter L to trump the nonqualified deferred compensation deduction rules under § 404(a)(5) would frustrate this purpose.

Finally, the Taxpayer argues that the timing restrictions of § 404(a)(5) cannot be applied to its estimated liability for payment of retiree benefits for claims personnel because, under the definition of “underwriting income” in § 832(b)(3), “losses incurred” are subtracted from the “premiums earned” in determining underwriting income, and such underwriting income is a component of an insurance company's “gross income” under § 832(b)(1). Thus, the amounts included in “losses incurred” under § 832(b)(5) are taken into account in determining insurance company gross income under § 832(b)(1). Taxpayer therefore asserts that § 404(a)(5) is inapplicable here because it applies only to amounts that “would otherwise be deductible” under the Code.

Taxpayer's argument is not persuasive and is inconsistent with the manner in which “losses incurred” are generally characterized. Section 832(c)(4) provides that “losses incurred” as defined in § 832(b)(5) is a deduction for purposes of determining insurance company taxable income.

In addition, the regulations under § 1.832-4(b) specifically refer to the amounts taken into account as losses incurred as a deduction, noting that an insurance company must be prepared to demonstrate that “the part of the deduction for ‘losses incurred’ that represents unpaid losses at the close of the taxable year comprises only actual unpaid losses.”

Moreover, in the overwhelming majority of the cases in which amounts taken into account as losses incurred under § 832(b)(5) have been at issue, the courts have characterized an insurance company's “losses incurred” as a deduction for tax purposes. See, e.g., Western National Mutual Insurance Company v. Commissioner, 102 T.C. 338, 343-44 (1994), aff'd, 65 F.3d 90 (7^{th} Cir.1995); Maryland Deposit Insurance Fund Corp. v. Commissioner, 88 T.C. 1050, 1057-1058 (1987); Minnesota Lawyers Mutual Insurance Co. v. Commissioner, T.C.M. 2000-203, aff'd, 285 F.3d 1086 (8th Cir. 2002).

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.