

**Office of Chief Counsel
Internal Revenue Service**

memorandum

CC:LM:RFP:MIA:TL-N-1109-01
DRSmith

date: April 3, 2001

to: Ivan Ceballos, Group Manager, LMSB, Group 1717
Miami POD

from: Associate Area Counsel (LMSB), Miami

subject: [REDACTED]

This memorandum responds to your request for assistance dated February 16, 2001. This memorandum should not be cited as precedent.

ISSUES

Whether the taxpayer filed a timely and proper election to amortize goodwill, or whether the taxpayer's treatment of this item constituted an improper change in its method of accounting or a change in the treatment of a material item?

CONCLUSION

The manner in which the taxpayer filed this election does not conform to the requirements set forth in Treas. Reg. § 1.197-1T(e)(2). Therefore, the election does not satisfy the requirements for a valid election, and the taxpayer's amortization of goodwill constitutes an unauthorized change of accounting method or a change in the treatment of a material item. At this point, no relief is available under Treasury Decision 8528.

FACTS

The [REDACTED] is a private, member-owned club operated as a corporation not for profit under the laws of the state of Florida. The club provides amenities, a hotel, marina, and other facilities for the pleasure and recreation of club member-owners and their guests. On [REDACTED], the taxpayer, [REDACTED], purchased the club facilities from the developer at a contract price of \$ [REDACTED]. After certain adjustments made at closing, the price was adjusted to \$ [REDACTED]. The purchase price of the club facilities was allocated to the various classes of property and equipment acquired, based upon fair

market values, appraisals, and other available information. The amount of \$ [REDACTED] was allocated to goodwill, to be amortized over a period of [REDACTED] years.

The taxpayer timely filed its corporate income tax return for the tax year ended [REDACTED]. In that return, it purported to make an election to amortize goodwill beginning with that taxable year. The amortization deduction claimed for the tax year ended [REDACTED] was in the amount of \$ [REDACTED]. With regard to this amortization, all the taxpayer did was list this on its depreciation schedule, Form 4562. No separate election statement was included, as required by Treas. Reg. § 1.197-1T(e)(1). No mention of amortization of goodwill was made anywhere else in the return.

The taxpayer claimed deductions for the amortization of goodwill in the amount of \$ [REDACTED] for each of the tax years [REDACTED] through [REDACTED]. A Form 5701 proposing to disallow these items was issued to the taxpayer on [REDACTED].

ANALYSIS

Treas. Reg. § 1.197-1T sets forth the requirements for filing a timely and valid election to amortize intangibles such as goodwill. As announced in Treasury Decision 8528, dated March 10, 1994, the regulations provide that, for purposes of making a retroactive election to apply the OBRA '93 intangibles provisions to property acquired between July 25, 1991 and August 10, 1993, such election must be made in the tax return for the taxable year of the taxpayer which includes August 10, 1993. Treas. Reg. § 1.197-1T(b)(5). The regulations also set forth, at Treas. Reg. § 1.197-1T(e)(2)(i) through (ix), the required content of the election statement. Specifically, the regulations require that the election statement must contain the taxpayer's name, address and TIN, a statement that the taxpayer is making the retroactive election, the identification of the transition period property affected by the retroactive election, the name and TIN of the person from whom the property was acquired, the manner and date of acquisition, the basis at which the property was acquired, and the amount of depreciation, amortization, or other cost recovery under I.R.C. § 167 or other Code provision claimed with respect to the property. The statement must also identify each taxpayer under common control with the electing taxpayer by name, TIN, and Internal Revenue Service Center where the taxpayer's income tax return is filed. Also required is a listing of any persons required to be notified of the retroactive election as specified earlier in the regulation, and a certification that written notification has been provided to each such person. The taxpayer is also required to state that the transition period property being amortized under I.R.C.

§ 197 is not subject to the anti-churning rules of I.R.C. § 197(f)(9). The election must be signed by an individual who is authorized to sign the taxpayer's federal income tax return.

Treas. Reg. § 1.197-1T(e)(2) provides that, for an election to be valid, the written election statement must contain the foregoing information. The taxpayer's election in this case provided none of the foregoing information. There was nothing remotely close to substantial compliance here. Therefore, there was no valid election.

An Engineer Memorandum Report (Form 3213), dated January 23, 2001, was included with your incoming memorandum. In the report, the valuation engineer indicated that she had informally discussed this matter with the principal draftsman of T.D. 8258, and was advised that, in his view, the amortization should be disallowed at the examination level, and that the taxpayer should be advised that it has the right to seek an exception from the National Office.

Please be advised that, since this memorandum constitutes nondocketed significant legal advice, it is subject to a 15-day post review in the Office of Chief Counsel. Therefore, no action should be taken to implement the advice contained in this memorandum until at least the expiration of the 15-day period.

If there are any questions, please contact the undersigned at (305) 982-5333.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

DAVID R. SMITH
Associate Area Counsel (LMSB)
Miami, Florida

cc: TSS 4510
Attn: Associate Chief Counsel (IT&A)