

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B07
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Date:
May 17, 2011

Re: Request for Private Letter Ruling Regarding § 1397C(d)

Taxpayer	=
State 1	=
State 2	=
Location	=
Year 1	=
Year 2	=
Year 3	=
<u>B</u>	=
<u>C</u>	=
<u>D</u>	=
<u>E</u>	=
<u>F</u>	=
<u>G</u>	=
<u>H</u>	=
<u>I</u>	=
<u>J</u>	=
<u>K</u>	=

Dear :

This letter is in response to your letter dated November 8, 2010, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a letter ruling under § 1397C(d)(4) of the Internal Revenue Code.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a C-corporation incorporated under the laws of State 1, and is headquartered in Location.

Taxpayer produces and transmits sports programming in State 2. Taxpayer primarily provides live transmissions of B, C, and D sports, and E games on television and the internet.

In Year 1, Taxpayer was founded and began providing live transmissions of State 2 C sports on the internet. Beginning in Year 2, Taxpayer began providing sports programming on digital channels of several local television stations for broadcast to television viewers in State 2. Taxpayer pays each television station a fee for access and use of a 24-hour, 7-day a week digital channel. Taxpayer has not acquired any licensing rights or ownership in these television stations.

Taxpayer does not have any affiliation agreements with any cable operator to provide programming. The local television stations on which Taxpayer has purchased access and use of a digital channel have contracts with cable operators to retransmit the local television station's programming to the cable operators for distribution to subscribers, including Taxpayer's programming. Taxpayer is not a party to these contracts, and does not share in any revenue the television stations receive from the cable operators, including subscriber fees.

Taxpayer also uploads its programming to satellite. As a result, a cable operator may pull down Taxpayer's programming from the satellite. Taxpayer does not receive any payment from the satellite or cable operators.

Most of the sports programming produced by Taxpayer is live sports events for which Taxpayer obtains the rights to broadcast. Taxpayer also has acquired from the E the rights to broadcast certain of its G games.

Taxpayer currently has one primary source of income and it is advertising revenue. Taxpayer's advertising revenue is derived primarily from sales of local spot advertising and infomercial advertising. Taxpayer generally retains this advertising revenue. However, in some cases where Taxpayer does not pay a fee for the right to broadcast a sports event, the advertising revenue from that event is split between Taxpayer and the party of the event. For the Year 3 taxable year, Taxpayer earned approximately H percent of its gross revenue from advertising. For the current taxable year, Taxpayer projects that it will earn approximately I percent of its gross revenue from advertising.

Taxpayer currently does not receive any income, including subscriber fees, from the local television stations, cable operators, or satellite operators for Taxpayer's programming. Although Taxpayer projects receiving \$J in license fees during its current taxable year, which is approximately K percent of its projected gross revenue for the current taxable year, there is not currently any licenses in place or contracts in place for license fees. For prior taxable years, Taxpayer did not receive any income, including subscriber fees, from the local television stations, cable operators, or satellite operators for Taxpayer's programming.

RULING REQUESTED

Taxpayer requests that the Service issue the following ruling:

The trade or business currently conducted by Taxpayer does not constitute a trade or business consisting predominantly of the development or holding of intangibles for sale or license pursuant to § 1397C(d)(4) for purposes of determining whether Taxpayer's trade or business is a qualified business under § 45D(d)(3).

LAW AND ANALYSIS

Section 45D provides the rules for the new markets tax credit. For purposes of § 45D(d), the term "qualified business" is defined in § 45D(d)(3) as having the meaning given to such term by § 1397C(d); except that (A) in lieu of applying § 1397C(d)(2)(B), the rental of others of real property located in any low-income community is treated as a qualified business if there are substantial improvements located on such property, and (B) § 1397C(d)(3) does not apply.

Section 1397C(d)(1) provides that except as otherwise provided in § 1397C(d), the term "qualified business" means any trade or business.

Section 1397C(d)(4) provides that the term "qualified business" shall not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

Taxpayer's trade or business is the production and transmission of sports programming, which extensively involves the use of intangibles. Taxpayer acquires or creates intangibles (e.g., licenses from third parties for the rights to broadcast their sports events and from its own self-created programming). In the cases where Taxpayer does not pay a fee for the right to broadcast the sports event but Taxpayer splits the advertising revenue from that event with the party of the event, we view the portion of the advertising revenue provided by Taxpayer to the party to be in the nature of a license fee paid by Taxpayer for its right to broadcast the event.

Currently, Taxpayer receives advertising revenue related to its sports programming or to infomercials. For the Year 3 taxable year, Taxpayer's advertising revenue was at least 80 percent of its gross revenue. For the current taxable year, Taxpayer estimates that its advertising revenue also will be at least 80 percent of its projected gross revenue. Taxpayer currently does not receive any subscriber fees or other revenue from the local television stations, cable operators, or satellite operators for Taxpayer's programming. While the local television stations on which Taxpayer has purchased access and use of a digital channel may sell or otherwise exploit Taxpayer's programming to cable operators, without Taxpayer's permission, Taxpayer is not a party to these contracts or arrangements between the local television stations and cable operators. Although Taxpayer projects that it will receive license fees during the current taxable year, the projected amount of \$J is less than 9 percent of Taxpayer's projected gross revenue for the current taxable year. Accordingly, Taxpayer has demonstrated that its trade or business does not consist predominantly of developing or holding intangibles for sale or license.

CONCLUSION

Based solely on the facts and representations submitted and the relevant law and analysis as set forth above, we conclude that Taxpayer's trade or business of producing and transmitting sports programming, as currently conducted by Taxpayer, does not constitute a trade or business consisting predominantly of the development or holding of intangibles for sale or license pursuant to § 1397C(d)(4).

Except as set forth above, we express no opinion concerning the Federal income tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed or implied on whether the requirements of the new markets tax credit under § 45D are satisfied, whether Taxpayer is a qualified active low-income community business under § 45D(d)(2), or whether Taxpayer satisfies § 1397C(d)(2) (as modified by § 45D(d)(3)) or § 1397C(d)(5).

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

KATHLEEN REED

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes