

Internal Revenue Service

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TY:

LEGEND

Taxpayer:

Subsidiaries:

State:

A:

B:

C:

D:

E:

F:

Date X:

Date Y:

\$a:

\$b

\$c:

\$d:

\$e:

\$f:

Dear _____ :

This is in reply to Taxpayer's request for a ruling on behalf of its wholly-owned Subsidiaries, as to the obligations of Subsidiaries to file and furnish information returns pursuant to § 6041 of the Internal Revenue Code to property owners for payments Subsidiaries will make to such property owners and for costs Subsidiaries will incur on behalf of the property owners as a consequence of C.

FACTS

Subsidiaries operate facilities in State which produce A. State enacted C out of concern over the impact of A on B. Under C, Subsidiaries and other owners of similar facilities must provide nearby property owners with a permanent replacement D. Subsidiaries must provide a permanent replacement D to property owners by Date X. There are two ways Subsidiaries might provide the permanent replacement D, either by connection with State D system (average cost estimated at \$a) or by installing a system on the property (estimated at \$b) and maintaining it (estimated at \$c). Until the permanent replacement is set up, an alternative D will be supplied at approximately \$d per year per property owner.

In addition, Subsidiaries offer two programs, E and F, to eligible property owners. To enroll, the property owner must execute a release of liability that acknowledges that Taxpayer has fully compensated them for any damages and that they will not seek further compensation or bring legal action against Taxpayer or Subsidiaries in connection with their D. The validity of this release is the subject of current litigation.

In the future, Subsidiaries may offer some compensatory payments to additional property owners in exchange for their release from any liability for damage, but no details of the payments or the scope of such compensation have been determined.

Taxpayer requests the following rulings:

1. Subsidiaries are not required to issue information returns (Forms 1099) with regard to any property owner who receives these compensatory payments described above because they are not income to the property owner.

2. To the extent the Service is not able to grant ruling number 1 for any of the above described compensatory payments, Taxpayer requests a ruling that Subsidiaries are not required to issue information returns (Forms 1099) with regard to any property owner who receives the above-described compensatory payments because the income attributable to the payments is not fixed or determinable.
3. To the extent that some or all of the above-described compensatory payments are provided to additional property owners in the future, Subsidiaries will not be required to issue information returns (Forms 1099) to such property owners, consistent with Ruling 1 or 2.

LAW AND ANALYSIS

Section 6041(a) and § 1.6041-1(a)(1)(i) of the Income Tax Regulations provide, with exceptions not applicable here, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, aggregating \$600 or more in the taxable year must file an information return with the Internal Revenue Service. Under § 6041(d), the payor is required to furnish an information statement to the payee. Forms 1096 and 1099 are used for this reporting. Section 1.6041-1(a)(2).

The § 6041 information reporting requirement applies to payments made during the calendar year to another person of “fixed or determinable income.” Section 1.6041-1(a). Section 1.6041-1(c) provides that income is fixed when paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. As used in section 6041, “income” means “gross income”.

Section 61 and § 1.61-1(a) of the Income Tax Regulations provide that gross income includes all income from whatever source derived unless excluded by law. The Supreme Court of the United States has long recognized that the definition of gross income sweeps broadly and reflects Congress’ intent to exert the full measure of its taxing power and to bring within the definition of income “any accession to wealth.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955). Accordingly, any receipt of funds by a taxpayer is presumed to be gross income unless the taxpayer can demonstrate that the accession fits into one of the narrowly construed exclusions provided by law. See *Glenshaw Glass Co.* at 431; *United States v. Burke*, 504 U.S. 229, 248 (1992).

The nature of an amount received in settlement of a controversy is determined by the nature of the claims that are settled. *Lyeth v. Hoey*, 305 U.S. 188 (1938); *United States v. Safety Car Heating & Lighting Co.*, 297 U.S. 88 (1936); *Hort v. Commissioner*, 313

U.S. 28 (1941). If the amount received represents compensation or damages for lost profits, it is taxable as ordinary income. However, if the recovery is received as the replacement of capital destroyed or injured rather than for lost profits, the money received is a return of capital and not taxable to the extent the payment does not exceed the adjusted basis in the property. *Freeman v. Commissioner*, 33 T.C. 323, 327 (1959).

To the extent payments for damage to property exceed the adjusted basis in the property, the payments are gross income unless they qualify for an exclusion from or nonrecognition of income under another provision of the Code, such as § 1033. The burden is on the taxpayer to demonstrate that the amounts received are for capital replacement. *Raytheon Production Corporation v. Commissioner*, 1 T.C. 952 (1943), *aff'd*, 144 F.2d 110 (1st Cir. 1944), *cert. denied*, 323 U.S. 779 (1944).

To the extent that Subsidiaries' payments pursuant to C compensate property owners for damage to their property, the payments are not gross income to the extent they do not exceed the property owners' adjusted basis in their property and are gross income only to the extent those payments exceed the customers' adjusted basis in their property, unless another provision of the Code excludes or defers recognition of the income, such as § 1033.

Thus, to the extent that Subsidiaries' payments to property owners pursuant to C for a new D are compensation for damage to property, they are not payments of fixed or determinable income under § 6041. Under these facts, Subsidiaries cannot determine how much of such payments are for damage to property. Consequently, Subsidiaries cannot also determine how much of the payments constitutes fixed or determinable income under § 6041. Subsidiaries are therefore not required to report such payments under § 6041. See Rev. Rul. 80-22, 1980-1 C.B. 286.

The Service is unable to issue any ruling with respect to amounts paid or benefits provided by Subsidiaries under E or F. The provisions of programs E and F are the subject of current litigation. Pursuant to Rev. Proc. 2017-3, Section 4.02(6), the Service ordinarily does not issue a letter ruling on the tax effect of a transaction if any part of the transaction is involved in litigation by the parties affected by the transaction.

In addition, the Service is unable to issue any ruling in response to ruling request #3. This request presents a hypothetical situation. Pursuant to Rev. Proc. 2017-1, Section 6.12, the Service does not issue rulings on hypothetical situations.

CONCLUSION

Subsidiaries are not required to file or furnish information returns with respect to amounts paid and costs incurred in connection with providing property owners with a new D, as required under C.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Blaise G. Dusenberry
Senior Technician Reviewer
(Procedure & Administration)