

Internal Revenue Service

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[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:ITA:B05
PLR-115494-22

Date:
February 07, 2023

Legend

Taxpayer =
Services =

Customer =
Item =
Contract =
Location =
Year 1 =
Date 1 =
Date 2 =
X =
Y =

Dear _____ :

This responds to a letter dated _____, from Taxpayer’s representative, requesting a private letter ruling regarding the proper treatment of reimbursement payments received by Taxpayer for costs incurred in the performance of an agreement to relocate certain of Taxpayer’s facilities. In a supplemental letter dated _____, Taxpayer requests a ruling that the agreement in issue is a long-term contract under § 460 of the Internal Revenue Code, with the reimbursement payments, comprising the contract price, to be recognized by Taxpayer according to the percentage-of-completion method (PCM), and costs deducted as incurred.

FACTS

Taxpayer provides Services to Customer at Location pursuant to a contract entered into in Year 1 with an initial term of X years. As part of the contract, Taxpayer received title to facilities related to the provision of Services, while Customer retained title to the underlying land. A bill of sale was completed to effectuate these terms of the agreement. Also, as part of the contract, Customer granted Taxpayer an easement necessary for the provision of Services. The easement includes a provision that allows Customer to require that Taxpayer relocate facilities when in the interests of Customer.

Customer exercised this right. Customer required the relocation of facilities in order to remove Item, which was located within Taxpayer's facilities but with title retained by Customer. The parties entered into Contract on Date 1. Contract specifies the work required to be completed and provides for only those payments intended to reimburse taxpayer for its costs. The required work includes demolishing part of a building within which Item is located, adding on to another part of the building and to a second nearby building, and moving equipment from the demolished portion of the building to the new additions, as well as installing new equipment. Contract, as revised, provides for the payment of Y. Contract specifies that work is to be completed by Date 2.

Taxpayer represents that it does not profit or otherwise benefit from the cost reimbursement payments under Contract. Taxpayer represents that the payments under Contract are intended to keep Taxpayer in an economically unchanged position, that they cover only replacement of existing facilities that are fully functional and do not cover any expansions or upgrades.

LAW AND ANALYSIS

Section 460(f)(1) and section 1.460-1(b)(1) of the Income Tax Regulations provide that the term "long-term contract" means any contract for the manufacture, building, installation, or construction of property if such contract is not completed within the taxable year in which such contract is entered into. Section 1.460-1(a)(1) provides, in part, that a taxpayer generally must determine the income from a long-term contract using the PCM and cost allocation rules described in the regulations. See § 1.460-5.

Section 460(e)(3) provides that a "construction contract" means any contract for building, construction, reconstruction, or rehabilitation of real property, the installation of an integral component of real property, or the improvement of real property. Section 1.460-1(b)(2)(i) provides, in part, that if a taxpayer has to manufacture or construct an item to fulfill its obligations under the contract, the fact that the taxpayer is not required to deliver that item to the customer is not relevant. Whether the taxpayer has title to, control over, or bears the risk of loss from, the property manufactured or constructed by the taxpayer is also not relevant.

Contract requires Taxpayer to perform construction and was not completed in the year it was entered into. Contract is a long-term construction contract, and Taxpayer must use the PCM pursuant to § 460 to account for income under Contract. Taxpayer represents that Contract does not qualify for any of the exceptions set forth in section 460(e) to the requirement to use the PCM for a long-term construction contract.

A taxpayer using the PCM must include in income an amount based on the portion of the total contract price, as defined in § 1.460-4(b)(4)(i), that corresponds to the percentage of the entire contract that the taxpayer has completed by the end of a tax year. The percentage of completion must be determined by comparing allocable contract costs incurred with estimated total allocable contract costs. Under §1.460-4(b)(2), a taxpayer incurs and deducts allocable contract costs as they are included in the foregoing completion factor.

HOLDING

Based on the information submitted and representations made, we conclude that Contract is a long-term contract under section 460. As such, Taxpayer must account for income from Contract under the PCM and include a portion of the total contract price in gross income as it incurs and deducts allocable contract costs.

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,

John M. Aramburu
Senior Counsel, Branch 5
(Income Tax & Accounting)

cc: