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Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
November 2, 1999

Taxpayer =

Dear

On May 22, 1991, the Internal Revenue Service issued LTR 9133034 to Taxpayer. The purpose of this letter is to inform you that LTR 9133034 is hereby revoked in accordance with section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47.

LTR 9133034 held that Taxpayer may amend its previously filed federal income tax returns for taxable years beginning after December 31, 1986 (i.e. taxable years 1987 through 1989) to elect the fair market value method of apportioning interest expense. Taxpayer had originally elected to apportion its interest expense under the tax book value method for those years. We hereby revoke LTR 9133034 because its holding is inconsistent with the judicial "doctrine of election."

The doctrine of election as it applies to federal tax law consists of the following two elements: (1) There must be a free choice between two or more alternatives; and (2) there must be an overt act by the taxpayer communicating the choice to the Commissioner, i.e., a manifestation of the choice. See Grynberg v. Commissioner, 83 T.C. 255, 261 (1984). See also Bayley v. Commissioner, 35 T.C. 288, 298 (1960), acq., 1961-2 C.B. 4; Burke & Herbert Bank & Trust Co. v. Commissioner, 10 T.C. 1007, 1009 (1948). Under the doctrine of election, a taxpayer that makes a conscious election under the tax laws may not, without the consent of the Commissioner, revoke or amend its election merely because events do not unfold as planned. See, e.g., JE Riley Inv. Co. v. Commissioner, 311 U.S. 55 (1940); Pacific Nat'l Co. v. Welch, 304 U.S. 191 (1938).

Pacific National Co. v. Welch, 304 U.S. 191 (1938), is "often regarded as the fundamental authority for the development" of the doctrine of election. Estate of Stamos v. Commissioner, 55 T.C. 468, 473 (1970). In Pacific National, the taxpayer had the option to treat certain income under the deferred payment or installment method. The taxpayer reported the income using one method and later sought a refund based on a computation under the other method. Among the reasons articulated by the Supreme Court for its refusal to allow the taxpayer's change from one method to the other is that such changes would impose burdensome uncertainties upon the administration of the revenue laws and would require recomputation and readjustment of tax liability for subsequent years. Id. at 194. Pacific National established the general rule that a taxpayer who elects a proper method on a return may not later revoke or change that election and substitute another method.

Taxpayer's request to amend its 1987 through 1989 federal income tax returns to elect the fair market value method presented the two elements required for application of the doctrine of election. Taxpayer had a free choice between apportioning its interest expense based on either the tax book value or the fair market value method. Taxpayer also affirmatively manifested its choice to use the tax book value method on its original 1987 through 1989 returns.

A limited number of exceptions to the doctrine of election have been recognized and may permit taxpayers to revoke affirmative elections made on their federal tax returns. Courts have allowed elections on amended returns in the following factual situations: (1) The amended return was filed prior to the date prescribed for filing a return; (2) the taxpayer's treatment of the contested item in the amended return was not inconsistent with his treatment of that item in his original return; or (3) the taxpayer's treatment of the item in the original return was improper and the taxpayer elected one of several allowable alternatives in the amended return. See Grynberg 83 T.C. at 262; Goldstone v. Commissioner, 65 T.C. 113, 116 (1975).

Taxpayer's request to amend its 1987 through 1989 returns to elect the fair market value method did not present any of these exceptions to the doctrine of election. Taxpayer did not seek to amend the returns prior to the date prescribed for their filing. Taxpayer's request to utilize the fair market value method was inconsistent with its prior use of the tax book value method. Finally, Taxpayer properly and allowably elected the tax book value method for apportioning interest expense on its original 1987 through 1989 returns.

The doctrine of election thus properly barred Taxpayer from amending its 1987 through 1989 federal income tax returns to elect the fair market value method of apportioning interest expense. Accordingly, we hereby revoke LTR 9133034.

Section 7805(b)(8) of the Code provides that the Secretary of the Treasury or his delegate may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect.

Section 12.04 of Rev. Proc. 99-1 provides that a letter ruling found to be in error or not in accord with the current view of the Service may be revoked or modified, unless it was a part of a closing agreement. If a letter ruling is revoked or modified, the revocation or modification applies to all taxable years open under the statute of limitations unless the Service uses its discretionary authority under section 7805(b) to limit the retroactive effect of the revocation or modification. Pursuant to the authority of section 7805(b) of the Code, we hereby provide that this revocation of LTR 9133034 will apply to Taxpayer without retroactive effect.

The revocation and section 7805(b) ruling in this letter are directed only to the taxpayer that requested the original ruling. Section 6110(k)(3) of the Internal Revenue Code provides that letter rulings may not be used or cited as precedent. A copy of this letter is being sent to the district director that has jurisdiction over the examination of Taxpayer's returns. Questions regarding this letter may be directed to the contact person listed above.

Sincerely,

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Irwin Halpern
Senior Technical Reviewer
Branch 3
Office of Associate Chief Counsel
(International)

cc: Chief, Examination Division
District Director, Buffalo, New York