

**Internal Revenue Service**

Department of the Treasury

Number: **200116032**  
Release Date: 4/20/2001  
Index Number: 7805.01-01

Washington, DC 20224

Person to Contact:

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Refer Reply To:

CC:IT&A:06-PLR-109974-99

Date:

January 19, 2001

EIN:

Taxpayer =

Tax Year 1 =

Tax Year 2 =

Tax Year 3 =

Dear \_\_\_\_\_ :

This letter is in response to your request that the Service, pursuant to section 7805(b)(8)<sup>1</sup>, make the partial revocation of PLR 9441020 effective as of the beginning of Tax Year 3. In PLR 199927012 we revoked the following rulings:

The following specific deductions for Tax Year 1 will be treated as part of Taxpayer's consolidated specified liability loss:

- a) allowable deductions for interest expense resulting from federal tax deficiencies relating to tax years at least 3 years prior to Tax Year 1;
- b) assessments of state tax and related interest expense attributable to tax years at least 3 years prior to Tax Year 1;
- c) amounts allowed as a deduction with respect to other liabilities arising under federal or state laws for matters occurring at least 3 years prior to Tax Year 1; and
- d) deductions allowable in Tax Year 1 attributable to product liability costs and expenses incurred in the litigation of product liability claims.

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<sup>1</sup> All references to sections refer to sections of the Internal Revenue Code of 1986 as applicable to the tax years at issue.

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We revoked rulings (a) and (b) on the grounds that liabilities for state taxes, interest thereon, and federal tax deficiency interest do not constitute liabilities arising under either federal or state law within the meaning of section 172(f)(1)(B). Thus, we explicitly concluded that such deductions could not generate a specified liability loss, within the meaning of section 172(f)(1)(B), under any circumstances.

We revoked ruling (c), which applied to deductions for liabilities not specifically identified by Taxpayer but represented to arise under federal or state law, on the grounds that there was insufficient information to determine if the liabilities at issue arose under either federal or state law within the meaning of section 172(f)(1)(B). In computing its specified liability losses for the taxable years at issue Taxpayer took into account the following items not specifically identified in the original ruling request, but asserted to arise under federal or state law within the meaning of section 172(f)(1)(B): deductions for workers' compensation liabilities, deferred vacation pay, and "other items". Taxpayer has conceded that PLR 9441020's scope does not extend to these deductions. Therefore, no 7805(b)(8) issues arise with regard to these deductions.

Finally, even assuming that the deductions at issue met the other section 172(f) requirements, we noted there was insufficient information to determine if Taxpayer used the Tax Court's Internet Corp. and Subsidiaries v. Commissioner, 111 T.C. 294 (1998), rev'd and remanded, 209 F.3d 901 (6<sup>th</sup> Cir. 2000) method in determining to what extent, if any, the deductions generated Taxpayer's consolidated net operating loss (NOL). Thus, although we did not question Taxpayer's assertion that it incurred deductions qualifying as product liability deductions within the meaning of section 172(f)(1)(A), we also revoked ruling (d).

In reliance upon PLR 9441020, Taxpayer made millions of dollars of contributions to its pension trust which were not required by the funding requirements. These contributions resulted in an increased need for cash and substantial interest expense. Furthermore, Taxpayer relied on PLR 9441020 in effecting settlements of state tax and other liabilities.

We issued the original ruling in Tax Year 2. Taxpayer did not file its Tax Year 1 return until after it received the original ruling. At that time Taxpayer had already sustained a substantial NOL in Tax Year 1 and anticipated incurring, and did subsequently incur, another NOL in Tax Year 2. The Tax Year 2 NOL was generated in whole or in part by deductions for state taxes, interest thereon, and federal tax deficiency interest. By its terms the original ruling only addressed deductions incurred in Tax Year 1. Therefore, prior to addressing the section 7805(b)(8) issue we must determine if PLR 9441020's scope extends to deductions incurred in Tax Year 2.

Section 12.06 of Rev. Proc. 2001-1, 2000-1 I.R.B. 1, 47 provides that a letter ruling issued on a particular transaction represents a holding of the Service on that transaction only. It will not apply to a similar transaction in the same year or any other year. However, section 12.07 of Rev. Proc. 2001-1 provides that if a letter ruling is

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issued covering a continuing action or series of actions and the letter ruling is later found to be in error or no longer in accord with the position of the Service, the appropriate Associate Chief Counsel ordinarily will limit the retroactive effect of the revocation or modification to a date that is not earlier than that on which the letter ruling is revoked or modified.

A continuing action or series of actions includes a series of transactions arising from a common precipitating event, such as a series of periodic workers' compensation payments made to compensate an employee for an injury suffered in the course of employment, or a series of payments made pursuant to the terms of an installment sale. However, the examples of continuing actions or series of actions provided in Rev. Proc. 2001-1 suggest that in appropriate circumstances the concept may extend to routine transactions that are technically independent but fall into the same class and regularly recur.

Because deductions for state taxes, interest thereon, and interest on federal tax deficiencies constitute deductions that Taxpayer regularly incurs, an argument can be made that Taxpayer's incurrence of such deductions constitutes a continuing action or series of actions within the meaning of Rev. Proc. 2001-1. In any event, in the instant case Taxpayer is only contending PLR 9441020's scope should also extend to Tax Year 2 rather than to subsequent taxable years. Notwithstanding that Taxpayer only requested a ruling with regard to deductions incurred in Tax Year 1, the particular tax year held no particular relevance to the ultimate issue to be decided, that is whether the deductions at issue could generate a specified liability loss. In light of the recurring nature of the deductions at issue and the fact that the original ruling was issued during Tax Year 2, we believe it was reasonable for Taxpayer to assume deductions incurred in Tax Year 2 would merit the treatment accorded those incurred in Tax Year 1. Therefore, we conclude that PLR 9441020's scope includes deductions incurred in Tax Year 2.

Section 12.05 of Rev. Proc. 2001-1 provides that except in rare or unusual circumstances, the revocation or modification of a letter ruling will not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose tax liability was directly involved in the letter ruling provided that--

- (1) there has been no misstatement or omission of material facts;
- (2) the facts at the time of the transaction are not materially different from the facts on which the letter ruling was based;
- (3) there has been no change in the applicable law;
- (4) the letter ruling was originally issued for a proposed transaction; and
- (5) the taxpayer directly involved in the letter ruling acted in good faith in relying

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on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

Section 7805(b)(8) provides that the Secretary of the Treasury may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. The facts and circumstances in this case establish the requisite Taxpayer reliance and we believe that section 7805(b)(8) relief is appropriate. Therefore, in accordance with Taxpayer's request the revocation of PLR 9441020 is effective as of the beginning of Tax Year 3.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

Sincerely,  
/s/ Heather Maloy  
Associate Chief Counsel  
(Income Tax & Accounting)

Enclosures:

Copy of this letter  
Copy for § 6110 purposes