



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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MEMORANDUM FOR: INDUSTRY DIRECTOR, NATURAL RESOURCES (LM:NR)

FROM: CHIEF, BRANCH 6 (CC:P&SI:6)
PASSTHROUGHS AND SPECIAL INDUSTRIES

SUBJECT: WITHDRAWAL OF REQUEST FOR CHANGE IN
ACCOUNTING METHOD

In accordance with § 8.07(2)(a) of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, 32, this Chief Counsel Advice advises you that a taxpayer within your jurisdiction has withdrawn a Form 3115, Application for Change in Accounting Method. Pursuant to § 6110 (k)(3), this Chief Counsel Advice is not to be cited as precedent.

LEGEND:

Taxpayer =

Date =

This memorandum advises you that a Form 3115 submitted on behalf of Taxpayer is withdrawn. Taxpayer withdrew in light of the fact that we were tentatively adverse to part of Taxpayer's request for change in accounting method.

Taxpayer filed its Form 3115, in part, to request permission to change its method of computing depreciation for right-of-way easement costs for electric power lines from using the straight-line method and a useful life of 84 years for transmission related costs and 46 years for distribution related costs under § 167 to using an accelerated depreciation method and the recovery period for asset classes 49.14 of Rev. Proc. 87-56 (or Rev. Proc. 83-35). At the time of withdrawal, we were tentatively adverse because Rev. Rul. 72-403 specifically states that right-of-way costs are costs paid for intangible assets, thus ineligible for depreciation under §168, and must be depreciated under §167.

Also, Taxpayer filed its Form 3115, in part, to request permission to change its method of accounting from depreciating its street lighting assets under asset class 49.14, Electric Utility Transmission and Distribution Plant, to depreciating the street lighting as

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an asset having no class life. At the time of withdrawal we were tentatively adverse because the provision of street lighting is part of electric distribution described in asset class 49.14.

Distribution is the final step in the sale of electricity. Until recently, users of electricity generally did not pay for distribution separately from the charge for the generation, although in setting rates public utility commissions considered both aspects. The street lights consume electricity. The amount of electricity used for a particular light over any period can be estimated with a high degree of accuracy based on the estimated hours of use. No separate metering is necessary and running separate lines is frequently unnecessary. In the simplest case, the lighting fixture is placed where needed on existing distribution poles. The utility has electricity where street lighting is needed; thus, the utility provides the electricity and the equipment for producing the light as a part of its business of distributing the electricity.

Three revenue rulings consistent with our analysis that street lighting is part of distribution are mentioned below. Rev. Rul. 78-67, 1978-1 C. B. 64, discusses expenditures for light watchmen (a lighting fixture containing a photoelectric cell installed on a pole usually on a customer's premises similar in appearance to a street light) and concludes that expenditures for the light watchmen are additions to a utility's distribution system and are subject to the repair allowance provision that applied to ADR property. Rev. Rul. 83-146, 1983-2 C. B. 17, discusses propane storage tanks and related customer installations leased by a retailer of propane and finds the propane storage tanks and related customer installations are related to the taxpayer's business of furnishing gas to customers. Finally, in Rev. Rul. 77-476, 1977-2 C. B. 5, an oil pipeline used by a public utility to move oil to an inland generation plant from the utility's dock is determined to be part of the activity of generation of electricity rather than pipeline transportation. This ruling shows that the asset classification system looks at activities broadly and is not intended to divide a taxpayer's business into a myriad of activities.

Under § 1.167(a)-11(b)(4)(iii)(b) property is classified according to its primary use even though the activity in which such property is primarily used is insubstantial in relation to all the activities of a taxpayer. However, for an activity to be classified as a separate activity, the activity must be substantial (although it may be insubstantial in relation to all of other activities of the taxpayer), significant, and separate; not, as here, merely part of the activity in question. Providing street lighting is simply part of distribution of electricity to the ultimate consumer. This activity is included in asset class 49.14. For purposes of determining Taxpayer's depreciation deduction, these assets continue to be used as part of its business of distributing electricity. Likewise, recognizing that these assets may be sold by Taxpayer, purchased by a municipality, and subject to new ratemaking that acknowledges that Taxpayer would no longer own the assets, does not indicate that these assets were never part of distribution.

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The method changes would have been effective with the taxable year beginning Date and would have resulted in a negative § 481(a) adjustment/decrease in taxable income.

If you have any questions on this matter, do not hesitate to call me or Alan Cooper

PETER C. FRIEDMAN
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Office of Associate Chief Counsel
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