Internal Revenue Service

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Person To Contact:

Telephone Number:

Refer Reply To:
CCITA:04
PLR-153481-12

In Re:

Date:
June 27, 2013

Taxpayer =

b =

State2 =

State =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Business Premises =

State Agency =

x =

y =

Dear :

This letter responds to your private letter ruling request requesting the following rulings:

(1) Taxpayer does not include in gross income under § 61 of the Internal Revenue Code the relocation payments and additional payments it receives from State Agency under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Pub. L. No. 100-17 (Act), 42 U.S.C. §§ 4621-4638;
(2) Taxpayer may not deduct the relocation and related expenses under § 162 to the extent of the amount of the relocation payments and additional payments; and
(3) Taxpayer may not assign any basis under § 1012 to any substitute property acquired to replace non-movable equipment and leasehold improvements to the extent that such costs do not exceed the relocation payments and additional payments.

FACTS

Taxpayer is organized as a limited partnership under the laws of State2. Taxpayer is engaged in b, and uses the accrual method of accounting. Taxpayer has leased the Business Premises since Year 1 and extended its lease on Date 1. Taxpayer maintains locations in State and other states. On Date 2, State Agency informed the landlord that it intended to exercise its rights of eminent domain with respect to the Business Premises and real property improvements.

On Date 3, Taxpayer and State Agency executed a Memorandum of Agreement (MOA) for the reimbursement of Taxpayer's anticipated costs to relocate from Business Premises. The MOA requires Taxpayer to remove all business operations from Business Premises no later than Date 4.

Under the MOA, the parties agreed to relocation payments of $x for the costs of moving and reinstalling specific pieces of machinery and equipment. The MOA also provides that Taxpayer will receive additional payments for all other business relocation costs not included in the relocation payments. Taxpayer anticipates that the additional payments will be approximately $y.

Taxpayer incurred relocation expenses in Year 2 and Year 3 for replacement site location selection, business property appraisal, equipment purchases and relocation-related professional fees. Taxpayer represents that it has not deducted relocation expenses incurred in Year 2 on its Year 2 federal income tax return. Taxpayer expects to incur the majority of its costs to relocate its business operations, including the costs of substitute equipment during Year 4. Taxpayer expected to receive the relocation payments and additional payments from State Agency during Year 3 and Year 4.

LAW

Section 61(a) provides generally that except as otherwise provided, gross income means all income from whatever source derived. The Supreme Court has long recognized that the definition of gross income sweeps broadly and reflects Congress' intent to bring within its purview all accessions to wealth, unless excluded by another section of the Code. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955); *Commissioner v. Schleier*, 515 U.S. 323, 327 (1995).

Section 162 provides a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

Section 1012 provides that the basis of property shall be the cost of such property, except as otherwise provided in subchapters O, C, K and P.

Title II of the Act was enacted to establish a uniform policy for the fair and equitable treatment of all affected persons displaced as a result of federal and federally-assisted programs and projects in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement of such persons. 42 U.S.C. § 4621.

Under 42 U.S.C. 4622(a), whenever a program or project undertaken by a displacing agency will result in displacing any person, the head of such agency shall provide for the payment to the displaced person of (1) actual reasonable expenses in moving himself, his business or other personal property; (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and (3) actual reasonable expenses in searching for a replacement business.

Under 42 U.S.C. § 4601(6) a "displaced person" includes any person who moves from real property, or moves his personal property from real property as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part for a federal and federally-assisted program or project.

Under 42 U.S.C. § 4601(11), the term “displacing agency” includes any state agency carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

Under 42 U.S.C. § 4636, no payment received under 42 U.S.C. §§ 4621-4638 shall be considered as income for purposes of Title 26.

ANALYSIS

Income

Under 42 U.S.C. § 4636, a displaced person, like Taxpayer, does not include in gross income under the Internal Revenue Code relocation assistance payments made pursuant to 42 U.S.C. §§ 4621-4638. In addition, a taxpayer neither deducts under § 162 moving expenses incurred and paid from such relocation assistance payments nor assigns a basis under § 1012 to any property acquired with such payments. *Wolfers v. Commissioner*, 69 T.C. 975 (1978).

Deduction

Generally, a taxpayer may deduct moving expenses incurred in relocating a trade or business under § 162(a) to the extent that these expenses are ordinary and necessary expenses paid or incurred in carrying on a trade or business and are not subject to capitalization under another section of the Code. Rev. Rul. 78-388, 1978-2 C.B. 110; *Fowler & Union Horse Nail Co. v. Commissioner*, 17 B.T.A. 1071 (1929). To claim a deduction, however, taxpayer must demonstrate that an expense has been incurred. *INDOPCO, Inc. v. Commissioner*, 503 U.S. 79 (1992). Thus, a taxpayer may not claim a deduction for an expense for which there is a right or expectation of reimbursement. *See* Rev. Rul. 78-388. *Manocchio v. Commissioner*, 710 F.2d 1400 (9th Cir. 1983), *aff’g on other grounds* 78 T.C. 989, 994 (1982).

In *Manocchio*, the taxpayer took a flight-training course and claimed the expenses as a business deduction. As a veteran, the taxpayer was entitled to and did claim a reimbursement from the government for ninety per cent of the expense. Pursuant to 38 U.S.C. § 3101(a), the taxpayer excluded the VA payment from gross income. The Ninth Circuit reasoned that because the allowance he received was a direct reimbursement for the expenses, the taxpayer did not incur an expense as required by § 162. Finding a direct connection between the expense and the reimbursement, the appellate court concluded that taxpayer was not entitled to a deduction for the expenses paid.

Likewise, Taxpayer may not deduct these payments. The relocation payments and additional payments bear a direct connection to the expenses Taxpayer has incurred and anticipates it will incur for moving its operations from the Business Premises and its cost to purchase equipment that it cannot feasibly remove from the Business Premises.

Accordingly, Taxpayer is not entitled to a deduction under § 162 for the portion of these expenses that might otherwise be deductible under § 162 to the extent the relocation payments and the additional payments do not exceed Taxpayer's otherwise deductible expenses.

Basis

Section 1012 sets forth the foundational principle that the basis of property for tax purposes shall be the cost of such property. Cost, in turn, is defined by regulation as the amount paid for the property in cash or other property. Section 1.1012-1(a) of the Income Tax Regulations.

Taxpayer may not allocate any relocation payment or additional payment to the basis in property it purchases with such payments. Because these payments reimburse Taxpayer for the cost of such property, Taxpayer did not incur a cost to acquire said property.

CONCLUSIONS

Based solely on the facts as represented and the applicable law, we conclude as follows:

(1) Pursuant to 42 U.S.C. § 4636, Taxpayer does not include in gross income under § 61 of the Code the relocation payments and additional payments described in § 42 U.S.C. §§ 4621-4638 it receives from State Agency.
(2) Taxpayer may not deduct under § 162 moving expenses for existing equipment, the installation of existing and substitute equipment, relocation expenses incurred at the new location and pre-existing locations and professional and service fees related to the relocation, including negotiation of the MOA with State Agency to the extent they were reimbursed with the relocation payments and the additional payments.
(3) Taxpayer may not assign any basis under § 1012 to substitute equipment acquired to replace non-movable equipment and leasehold improvements at the new location to the extent such costs are reimbursed with the relocation payments and the additional payments.

Except as expressly stated in Conclusions 1, 2, and 3 in the preceding paragraph, we do not express or imply an opinion 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.

The taxpayer must attach a copy of this letter to any federal tax return to which it is relevant. If the taxpayer files its returns electronically, the taxpayer must attach a statement that provides the date and control number of this letter ruling.

The rulings contained in this letter are based upon information and representations that the taxpayer submitted under penalties of perjury. 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.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to the taxpayer's authorized representative.

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure: Copy for section 6110 purposes