INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE-MIS No.:	TAM-132874-02/CC:ITA:B3

Taxpayer's Name:

Taxpayer's Address:

Taxpayer's Identification No.:
Year Involved:
Date of Conference:

LEGEND:

Taxpayer	=
Parent	=
Company A	=
Company B	=
Payment	=
State	=
a	=
b	=
c	=
d	=
e	=
f	=
g	=
h%	=

i%	=
j%	=
k	=
l	=
m	=
n	=
o	=
p	=
$q	=
r	=
s	=
t	=
u	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
Year 11	=
Year 12	=
Year 13	=
Year 14	=
Year 15	=
Year 16	=
Month 1	=
Month 2	=
Month 3	=
Month 4	=
Month 5	=
Month 6	=
Month 7	=
Month 8	=
Month 9	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
Date 12	=
Date 13	=
Date 14	=
Date 15	=
Date 16	=
Date 17	=

ISSUES:

(1) Whether the Payment made by Taxpayer to the State Treasury is deductible under §162 of the Internal Revenue Code as an ordinary and necessary business expense.

(2) If the Payment is not deductible, whether Taxpayer is entitled to relief under § 7805(b) from retroactive revocation of TAM 200126008 (TAM-104871-00, March 6, 2001).

CONCLUSIONS:

(1) The Payment is not deductible under § 162 as an ordinary and necessary business expense.

(2) Taxpayer is not entitled to relief under § 7805(b) from retroactive revocation of TAM 200126008.

FACTS:

Background

On March 6, 2001, the national office issued TAM 200126008 ("original TAM"), which held that Taxpayer could deduct the Payment under § 162 as an ordinary and necessary business expense. The Associate Area Counsel (LM:F) requested that the national office reconsider the original TAM. Upon reconsideration, the national office has determined that the original TAM was incorrect and should be revoked retroactively.

Corporate History

Parent, until it was acquired by Company A in Month 1, Year 16, was a State corporation engaged in the health insurance business through its subsidiaries. Taxpayer was a stock insurance company organized under the laws of State. Prior to Year 15, Taxpayer was known as a, and was a mutual insurance company. Beginning in early Year 15, Taxpayer was a wholly owned subsidiary of Parent. During the year at issue, Taxpayer used an accrual method of accounting and filed its return on a calendar year basis.

Taxpayer was incorporated in State in Year 1 as a nonstock corporation. Taxpayer was also the successor to a number of other b and c organizations in State. The b organizations were originally formed as hospital service plans providing prepaid hospitalization and the c organizations were originally formed as medical service plans providing prepaid medical services. Eventually, these organizations were combined into one plan serving all of State, except for a small portion of northern State, under a license from d. As used hereinafter, references to Taxpayer include its corporate predecessors.

As did most states, State subjected these organizations to a special regulatory regime. Under this regime, Taxpayer was classified for state regulatory purposes as a "health services plan" rather than as an insurance company. As a health services plan, Taxpayer was regulated under the provisions of the State Code dealing with health rather than as an insurance company under State law. In Year 2, however, "sweep in" legislation subjected Taxpayer to e different insurance company statutes, and subsequent legislation expanded the scope of the sweep in provisions. In Year 6, the health services plan provisions of State law were recodified as part of the insurance statutes, and thereafter Taxpayer's regulation closely resembled that of an insurance company.

As a result of these changes, Taxpayer concluded that its status as a health services plan hampered its ability to compete with commercial insurance companies. Accordingly, in Month 1 Year 10, Taxpayer converted from a health services plan to a mutual insurance company.

Organization as a Nonprofit

Taxpayer's original articles of incorporation provided that the corporation "is not organized for profit and no dividends shall be declared." The language prohibiting the declaration of dividends was eliminated from the charter in Year 3, while the provision that the corporation was not organized for profit remained. Similar language remained in Taxpayer's charter until Year 7, and was in the charter of Taxpayer's sole member, f, from Year 5 to Month 2 Year 7, and from Month 3 Year 8 until the merger of f into Taxpayer.

From Year 1 to Year 4, the composition of Taxpayer's membership varied, but generally consisted of the participating hospitals and representatives of the community. From Year 4 to Month 4 Year 5, Taxpayer had no members. From Month 4 Year 5 to Month 5 Year 6, Taxpayer's sole member was f. f's charter contained language prohibiting the inurement of its net earnings to any person. In Month 5 Year 6, f changed its name to g; it continued to be the sole member of Taxpayer until Month 9 Year 9, when it merged into Taxpayer. The prohibition on private inurement first appeared in Taxpayer's Amended and Restated Articles of Incorporation dated Date 1.

Following its mutualization transaction in Month 1 Year 10, Taxpayer's policyholders were its members. Taxpayer's articles of incorporation continued to state that Taxpayer was not organized for profit but instead was organized exclusively for the promotion of social welfare within the meaning of § 501(c)(4). In addition, the articles provided that no part of Taxpayer's earnings were to inure for the benefit of any private person.

Tax-Exempt Status

Taxpayer has always been exempt from State income tax (as are all commercial insurance companies). Instead, commercial insurers are subject to a State tax on gross premiums. However, from Year 1 through Year 7, Taxpayer was exempt from this State premium tax.

Commercial insurance companies had long contended that Taxpayer's exemption from the State premium tax gave it an unfair competitive advantage. In Year 6, the u authorized a study to determine whether Taxpayer should continue to retain its exemption from State premium tax. That study concluded that the benefits provided to Taxpayer through the exemption from premium tax exceeded the benefits realized by State and the public, and that Taxpayer should become subject to the premium tax. Therefore, the u enacted legislation subjecting Taxpayer to the premium tax effective Date 2.

Although the u had concluded that Taxpayer should become subject to the gross premium tax, it also recognized that Taxpayer provided certain social benefits and community services that were not provided by commercial insurers. The most significant of these benefits was Taxpayers' maintenance of an "open enrollment" program. Under the open enrollment program, Taxpayer offered to provide health care coverage to any State resident who requested coverage, regardless of health history, employment status, age, or geographical location. Effectively, the open enrollment program made Taxpayer the health insurer of last resort in State.

As an inducement to Taxpayer to continue the open enrollment coverage, the u provided that Taxpayer's premium tax rate would be h% (rather than the standard i% rate) for as long as Taxpayer maintained its open enrollment program. This rate reduction was intended to offset the losses Taxpayer habitually incurred on the open enrollment program. The legislation provided for continued monitoring of the open enrollment program to ensure that the benefits provided through the reduced premium tax rate did not exceed the net losses incurred by Taxpayer on the open enrollment program.

In Year 8, Taxpayer's premium tax liability began to increase. The u enacted legislation requiring all health insurance companies to offer coverage to small groups. As part of that change, Taxpayer became subject to the full premium tax rate on premiums paid by small groups. In Year 1, the u changed the law to require Taxpayer to pay the j%[1] rate on all group insurance premiums. Thus, Taxpayer continued to receive the reduced premium tax rate of h% only with respect to individual health insurance policies, which was the only market in which Taxpayer was the only insurer required by State law to accept all business.

Negotiations with the k

Because of the rapid pace of change taking place in the health insurance industry, which required large investments for systems development and expansion, Taxpayer's management eventually reached the conclusion that Taxpayer needed better access to the capital markets. Taxpayer's status as a mutual insurance company did not provide it with access to the equity markets. Therefore, in Year 11 Taxpayer began to consider the possibility of converting from a mutual insurance company to a stock insurance company.

[1] When Taxpayer first became subject to the premium tax in Year 8, the standard premium tax rate was i%. When Taxpayer became subject to the full premium tax in Year 1 on all group insurance, the rate had declined to j%.

In Year 12, Taxpayer began to meet with representatives of the k of the l to explore the possibility of a demutualization in which Taxpayer would become a stock insurance company. A variety of possibilities were discussed with the k, including transactions in which Taxpayer would contribute operating assets to a for-profit subsidiary that would issue stock in a public offering and the formation of a stock holding company to acquire all of the membership interests in Taxpayer.

Ultimately, Taxpayer proposed a transaction in which it would create a new holding company ("Holding"), Holding would create a new subsidiary ("Interim"), and Interim would merge with and into Taxpayer, with Taxpayer surviving as a stock corporation and first-tier subsidiary of Holding. Pursuant to this plan, Taxpayer's members would receive cash and/or common stock of Holding. Taxpayer and the k began an informal review process that explored Taxpayer's proposal. The k retained legal, accounting, tax, and actuarial experts (at Taxpayer's expense) to assist in analyzing the various issues to be considered by the l in connection with the proposal.[2] Taxpayer and the k and their respective advisors concluded that the demutualization was permissible under State Code section m, which permitted a mutual insurance company to convert to a stock insurance company pursuant to a plan of conversion approved by the l. In addition, section n, which had been enacted in Year 10 to authorize the conversion of Taxpayer from a health services plan to a mutual insurance company, specifically contemplated the possibility of a subsequent conversion to a stock insurance company. Because it was a mutual insurance company whose members were its policyholders, Taxpayer took the position in its meetings with the k that Taxpayers' policyholders were its owners and therefore were entitled to the stock and cash distributed upon demutualization.

Taxpayer and the k were aware that a number of other similar organizations were considering or had undertaken transactions to obtain access to the capital markets. These transactions had generated debate over the nature of these organizations and how the transactions should be treated.

On Date 3, Taxpayer filed an application with the l to convert from a nonstock, not-for-profit mutual insurance company to a for-profit stock corporation (the Month 6 Year 13 Application). The Month 6 Year 13 Application was filed with the l on the basis of Sections m and o of the Code of State, 1950, as amended. Section m of the State Code provided that "[n]o mutual insurance company . . . shall be converted into a stock corporation unless such conversion and the plan for conversion are approved by the Commission." Section o required the approval of the plan by the l before the plan could be submitted to the stockholders or members, and provided that approval of the l could

[2] Taxpayer reimbursed the k for its costs in connection with the demutualization and capitalized those costs for tax purposes.

be granted only if, after a hearing, the l determined that the plan of merger is "fair, equitable, consistent with law, and that no reasonable objection to the plan exists."

Negotiations with the s

In a letter dated Date 4, the s of State notified the l of his intention to participate in the demutualization proceeding. In a letter dated Date 5, the t of State identified several fundamental issues raised by the Month 6 Year 13 Application, noting:

Letter from the t to the l, dated Date 5, at 2.

In a subsequent letter to counsel for Taxpayer, the t elaborated further on the "principal legal issues" raised by the Month 6 Year 13 Application. First, the t contended that although the State Code permitted the merger of a nonstock corporation into a stock corporation, it was possible that the distribution of stock and cash to members in the merger would violate other provisions of the Code prohibiting the distribution of earnings by a nonstock corporation. Second, the t asserted
The t further stated:

Letter from the t to counsel for Taxpayer, dated Date 14, at 3.

Accordingly, the t asserted, under State law it was possible that the doctrines of *cy pres*, equitable approximation, or constructive trust would require all or some portion of Taxpayer's assets to be distributed to the public before a merger and distribution of cash/stock to eligible members.

Following the announcement by the s of his intention to intervene in the proceedings, Taxpayer began negotiations with the s over the possibility of a settlement pursuant to which Taxpayer would make a payment in satisfaction of any potential claims that could be made against it by reason of its prior status as a non-profit or "public benefit" corporation. In its analysis of a potential settlement, the s drew a distinction between two forms of nonstock corporations: charities, which are organized exclusively for public benefit, and commercial or for-profit entities. The legal advisor to the s later described the s's position as follows:

Letter from the legal advisor to the s to the t, dated Date 15, at 7. The s thus took the position that Taxpayer was a hybrid between a mutual benefit corporation, whose assets are equitably owned by its members, and a public benefit corporation, whose assets must be devoted to charitable or public purposes.

After extensive negotiations, in Month 7 Year 13 Taxpayer and the s reached an agreement pursuant to which Taxpayer would be required to make a payment equal to its surplus as of Date 6, the last day prior to its becoming subject to the State premium tax. The rationale behind this agreement was articulated by the legal advisor to the s:

Letter from the legal advisor of the s to the t, dated Date 15, at 7. The agreement with the s contemplated that this payment be made to a new charitable foundation, the purpose of which would be to provide medical care for the poor and to provide other charitable activities.

Having reached an agreement with the s, Taxpayer filed a revised Application (the "Month 4 Year 14 Application") seeking approval of the demutualization transaction under the provisions of State law authorizing the merger of nonstock corporations into stock corporations, and the provision of the State Insurance Code relied on in its Month 6 Year 13 Application.

State Legislation

Although the l had authority under State law to approve the demutualization transaction, State law was not clear on the portion of Taxpayer's assets that were dedicated to public purposes. Despite the agreement with the s, some persons continued to take the position that, because of Taxpayer's organization as a tax-exempt, not-for-profit corporation, it should be required to devote all of its assets to charitable purposes. Taxpayer was concerned that these persons might challenge the revised plan before the l or, following approval of the plan by the l, might appeal the l's decision to the State Supreme Court. In addition to uncertainty over the size of the charitable payment it might ultimately be required to make, Taxpayer was concerned that such a challenge could take several years to resolve, during which time it would be unable to proceed with the demutualization.

Second, Taxpayer was seeking confirmation from the federal Securities and Exchange Commission (SEC) that the issuance of Parent stock in the demutualization was exempt from federal securities registration requirements by virtue of section 3(a)(10) of the Securities Act of 1933. Under that section, an exemption from federal registration was available, provided that the issuance was the subject of a fairness hearing at the state level. Based on conversations between Taxpayer's advisors and SEC staff, it was unclear whether the SEC would agree that the provisions of State law applicable to the merger of a nonstock corporation into a stock corporation would satisfy the SEC's requirement of a fairness hearing at the state level. Although failure to satisfy that requirement would not have precluded the transaction from occurring, it could have delayed the transaction for several months and increased the expense of the transaction.

For these reasons, Taxpayer concluded that state legislation confirming its settlement with the s would be advisable. Accordingly, amid considerable public interest, Taxpayer began to seek enactment of legislation in the u to facilitate its conversion to a for-profit stock corporation.

As finally enacted, section p of the Code of State modified and codified the settlement with the s. Section p reads as follows:

During the process of considering this legislation, the concept of the payment from Taxpayer going into a trust was replaced by a direct payment to State. The payment amount agreed to by the s was incorporated in the legislation. However, several legislators insisted that this amount should be adjusted to the “present value” of the Date 6 surplus figures. Although there is no formal legislative history for this provision, several members of the u indicated that the $q increase in the state payment was intended to represent "interest" on the stated surplus.

State Code section p was enacted by the u and signed by the Governor of State. Shortly after the statute was enacted, Taxpayer filed a revised application for approval of its demutualization plan and requested that the plan be considered at a l hearing. The policyholders of Taxpayer approved the plan to demutualize at a special meeting on Date 7. The l began public hearings on Date 8 to determine whether any policyholder's interest would be harmed as a result of the demutualization and issued its ruling approving the transaction in Month 8 Year 14. Taxpayer prepared an amended plan incorporating certain changes required by the l and filed it with the l on Date 9. The l approved the amended plan on Date 10.

Based on the provisions of the statute pertaining to the fairness hearing, the SEC issued a no-action letter under section 3(a)(10) of the Securities Act of 1933 on Date 11.

The demutualization was effected through the creation of a new holding company, Parent. A newly formed subsidiary of Parent, r, merged with and into Taxpayer effective Date 12. The reorganization and an initial public offering of Parent stock closed on Date 12, and the Payment was paid to the State Treasury on Date 13. Taxpayer deducted the Payment in Year 14 for financial accounting purposes and federal income tax purposes.

LAW AND ANALYSIS:

ISSUE (1)

Section 162 allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. *See also* §1.162-1(a) of the Income Tax Regulations. Upon reconsideration, we have determined that the Payment made by Taxpayer is not deductible under § 162 because it was made to satisfy Taxpayer's obligation under the charitable trust doctrine. In response, Taxpayer asserts that the Payment was not made to satisfy a charitable trust obligation and, instead, was made to reimburse State for Taxpayer's prior exemption from State premium tax.[3] In support of these assertions, Taxpayer states that (1) the State *cy pres* statute applies only to trusts, and therefore does not apply to Taxpayer because it was a nonprofit corporation that did not receive any property in trust for educational, charitable, or eleemosynsary purposes; (2) the amount of the Payment was originally

[3] Taxpayer further argues that, because the Payment is based on the amount of Taxpayer's prior tax exemption, the repayment of that amount to State should be deductible as a tax or other business expense. As explained below, however, we do not agree with Taxpayer's factual characterization of the Payment amount and, thus, have not addressed Taxpayer's legal argument for deductibility.

contemplated to be the amount of its prior tax exemption in State; and (3) the Payment cannot represent Taxpayer's charitable trust obligation because it was made to State and not to a charitable organization.

Under the charitable trust doctrine, the s has authority to impose a constructive trust upon funds impressed with charitable purposes. The State t described the basis and extent of that authority in a letter to members of the State u.

Letter from the t to members of the u, dated Date 16, at 1. The letter from the t went on to discuss the rationale for imposing a constructive trust on the assets Taxpayer held during the period of its public benefit status in State:

Letter from the t to member of the u, dated Date 16, at 2-3 (footnote omitted). Thus, despite Taxpayer's statement that the State *cy pres* statute did not apply to it, the s cited the State *cy pres* statute as relevant authority for imposing a constructive trust on Taxpayer's assets. In addition, the s did not rely solely on the State *cy* pres statute for his authority; he also relied on an extensive body of common law. In any case, the s believed he had proper *cy pres* or similar authority and, in fact, asserted that authority to enforce Taxpayer's charitable trust obligation.

Taxpayer's next argument is that the Payment was based on Taxpayer's prior tax exemption in State. This argument, however, is contradicted by the letter from t to the members of u, which explains exactly how the amount of the Payment was determined:

Letter from the t to members of the u, dated Date 16, at 4 (emphasis added).

Taxpayer's final argument is that the Payment cannot represent a charitable trust obligation because it was made to State and not to a charitable organization. Taxpayer's original agreement with the s contemplated that the Payment would be made to a charitable organization, the purpose of which would be to provide medical care for the poor and to provide other charitable activities. During the process of considering the legislation confirming the agreement with s, the concept of the Payment going to charity was replaced by a direct payment to State. The fact that the Payment was redirected to State does not change our view that the Payment represents Taxpayer's charitable trust obligation. In fact, the t contemplated that State might use the Payment for a different purpose than the one advocated by the s. In the letter from the t to members of the u, the t explains:

Letter from the t to member of the u, dated Date 16, at 4. We do not think t's statement suggests that the s changed his mind regarding the origin and purpose of the Payment. To the contrary, the letter suggests the s believed Taxpayer's charitable trust obligation could be satisfied even if the Payment was not made to a charitable foundation. Thus, we are not persuaded by Taxpayer's argument that State's receipt of the Payment is inconsistent with the charitable trust doctrine.

In summary, we do not agree with Taxpayer's factual assertions regarding the Payment. The information submitted with the original request for technical advice provides ample support for our conclusion that the Payment was made to satisfy Taxpayer's charitable trust obligation. Under the charitable trust doctrine, Taxpayer's Payment represented the assets held in trust for the benefit of the public during its nonprofit status in State. The transfer of these assets back to the public does not constitute a deductible expense within the meaning of § 162(a).

ISSUE (2)

Section 7805(b)(8) provides that the Secretary may prescribe the extent, if any, to which any ruling (including any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect. Section 22.06 of Rev. Proc. 2003-2, 2003-1 I.R.B. 76, 106, provides that a TAM or TEAM revoking or modifying a letter ruling, TAM, or TEAM will be applied retroactively to the taxpayer whose tax liability was directly involved in the letter ruling if –

(1) there has been a misstatement or omission of controlling facts; or
(2) the facts at the time of the transaction are materially different from the controlling facts on which the letter ruling, TAM, or TEAM was based.

Generally, in all other circumstances, a TAM or TEAM revoking or modifying a letter ruling or another TAM or TEAM will not be applied retroactively to the taxpayer for whom the letter ruling, TAM, or TEAM was issued or to a taxpayer whose tax liability was directly involved in the letter ruling, TAM, or TEAM, provided that –

(1) there has been no change in the applicable law;
(2) in the case of a letter ruling, it was originally issued for a proposed transaction; and

(3) the taxpayer directly involved in the letter ruling, TAM, or TEAM acted in good faith in relying on the letter ruling, TAM, or TEAM and revoking or modifying it retroactively would be to the taxpayer's detriment.

In this case, the only relevant factor is whether Taxpayer acted in good faith in relying on the TAM and revoking it retroactively would be to the taxpayer's detriment. Taxpayer's primary argument for detrimental reliance is that it disclosed the result of the original TAM in its financial statements. Taxpayer's Form 10-K for the year ended December 31, 2001, states, in part:

Taxpayer's disclosure does not rise to the level of detrimental reliance required by Rev. Proc. 2003-2. First, Taxpayer did not recognize the impact of the potential refund on its consolidated financial statements. Second, the language in the Form 10-K makes clear that the refund is subject to various contingencies. Thus, although Taxpayer asserts otherwise, a reader of the financial statements could not reasonably conclude that a refund necessarily would be forthcoming. Finally, even if investors chose to rely on Taxpayer's statements, Taxpayer has not demonstrated why reliance by investors, as compared to reliance by Taxpayer, is relevant to the § 7805(b) determination.

Taxpayer's second argument with regard to § 7805(b) is that we must grant relief to Taxpayer because we granted relief to Company B in LTR 200228016 (April 9, 2002), with regard to the revocation of LTR 9853007 (September 29, 1988). In support of this argument, Taxpayer relies on *IBM Corp. v. United States*, 343 F.2d 914 (Ct. Cl. 1965). The facts in *IBM* were as follows: During 1951-58, IBM and Remington Rand were the only two manufacturers of large electronic computing systems. Until early 1955, both had paid a 10% excise tax on the sale or lease of "business machines." In early 1955, Remington Rand requested and obtained a ruling from the Service that a certain type of machine was not subject to this tax. IBM asked for a similar ruling a few months later.

The Service did not immediately rule on IBM's application, and two years later, informed Remington Rand that it was revoking its previous ruling, but that the new ruling would not be applied retroactively to Remington Rand. As a result, Remington Rand was able to dispose of machines for 6 years without paying the excise tax (it had applied for and received a refund after its ruling request was granted). Just before the Service notified Remington Rand that it was going to revoke its previous ruling, the Service notified IBM that it would not grant IBM's request for a ruling, stating that the machines at issue were subject to excise taxes.

The Court of Claims held that the Service had abused its discretion under § 7805(b) by affording opposite treatment to the only two competitors in the business of large electronic computing systems. The court held that the Service had discriminated against IBM by imposing the excise tax on it, while Remington had been relieved of that same tax for a period of six years. The *IBM* decision has since been limited by the Court of Claims to situations in which a taxpayer makes a prompt application to obtain a private letter ruling to the same effect as a ruling issued to another taxpayer where the taxpayers are competitors and the industry or items at issue are similar in all material respects. *Knetsch v. United States*, 348 F.2d 932 (Ct. Cl. 1965); *Bornstein v. United States*, 345 F.2d 558 (Ct. Cl. 1965).

Taxpayer asserts that, although it does not compete directly with Company B for customers, Company A is a direct competitor of some of Company B's subsidiaries for certain individuals in certain markets. In *IBM*, the two competing taxpayers were the only two manufacturers of a particular product. In the instant case, Taxpayer (or Company A) and Company B generally conduct business in separate and distinct geographical areas. Any competition between Taxpayer (or Company A) and Company B is much less direct and much more diluted than the amount of competition present in *IBM*. Taxpayer also states that, even where it does not directly compete for customers with Company B, it is affected by direct competition from Company B for capital and investors, which in turn affects Company A's ability to acquire other companies in the industry. All businesses, however, compete for capital and investors. This type of competition was not the type contemplated in *IBM*.

Even if Taxpayer could show that it or Company A is a competitor of Company B, Taxpayer has not met the basic requirement of *IBM* that it make a prompt application to obtain a private letter ruling to the same effect as the ruling issued to Company B. In fact, Taxpayer did not request a private letter ruling at any time. Instead of attempting to obtain advance approval for its deduction, Taxpayer filed an amended federal income tax return and deducted the amount of the Payment in full. Thus, Taxpayer has not met the requirements of *IBM* and is not entitled to relief under § 7805(b).

CAVEAT(S):

A copy of this technical advice memorandum is to be given to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.