

Internal Revenue Service

Number: **200613022**

Release Date: 3/31/2006

Index Number: 61.00.00-00, 61.49-00,
162.00-00, 162.02-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-143840-05
Date: October 28, 2005

Legend

Taxpayer =
B =

Dear :

This letter concerns LTR 200518014 (PLR-129030-04) issued to Taxpayer on December 30, 2004. In LTR 200518014, the Internal Revenue Service (Service) concluded that Taxpayer's payment to B under an agreement is included in B's gross income as ordinary income under §§ 61 and 64 of the Internal Revenue Code. In addition, the Service concluded that the payment from Taxpayer to B under the agreement is an ordinary and necessary business expense deductible under § 162. In a telephone conversation with your authorized representative, we informed you of our intention to revoke the letter ruling. The purpose of this letter, therefore, is to revoke LTR 200518014 because it is not in accord with the views of the Service.

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 § 7805(b) to limit the retroactive effect of the revocation or modification. Under § 7805(b)(8), the Secretary of the Treasury or his delegate may prescribe the extent, if any, to which any ruling relating to the internal revenue laws shall be applied without retroactive effect. For the reasons discussed below, LTR 200518014 is revoked with retroactive effect. If, however, you wish to request that retroactivity be limited under § 7805(b), you may submit your request in accordance with section 11.11 of Rev. Proc. 2005-1, 2005-1 I.R.B. 48, to our office. We will give such request careful consideration and you will be given the opportunity for a conference of right.

Section 11.06 of Rev. Proc. 2005-1 provides that except in rare or unusual circumstances, the revocation of a private letter ruling will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued or to a taxpayer whose liability was directly involved in the letter ruling provided:

- 1) There has been no change in the applicable law;
- 2) The letter ruling was originally issued for a proposed transaction; and
- 3) The taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

In the present case, it is our view that LTR 200518014 was not issued in connection with a proposed transaction. As provided in section 11.10 of Rev. Proc 2005-1, a taxpayer is not protected against the retroactive revocation of a letter ruling involving a transaction completed before the issuance of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. If you have any questions, please contact
of our office at

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
(Income Tax & Accounting)