



Revenue Service on the tax treatment of environmental cleanup costs under §§ 162 and 263 of the Internal Revenue Code in transactions that span past and future taxable years. These special procedures will be available to taxpayers during a two-year trial period beginning on the date that the proposed revenue procedure is finalized.

The Service welcomes comments on this proposed revenue procedure. In particular, the Service invites comments on whether this proposed revenue procedure should be extended to other tax issues besides the tax treatment of environmental cleanup costs. Comments should be submitted by April 5, 1997 either to:

The Internal Revenue Service
P.O. Box 7604 Ben Franklin Station
Washington, D.C. 20044
Attn: CC:CORP:T:R (IT&A Branch
5), room 5228,

or electronically via the Service internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

Rev. Proc. 97-**

SECTION 1. PURPOSE

This revenue procedure provides special procedures for requesting written guidance from the Internal Revenue Service on the tax treatment under §§ 162 and 263 of the Internal Revenue Code of environmental cleanup costs incurred in transactions that span several years, including future years and prior years (whether or not under examination). These special procedures are available for letter ruling requests submitted during the two-year period beginning on **month, day, year**. The purpose of this revenue procedure is to facilitate the resolution of issues involving the capitalization or deduction of environmental cleanup costs for both prior and future years of a single environmental cleanup transaction.

SECTION 2. BACKGROUND

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.

.02 Section 263 generally prohibits deductions for capital expenditures. Section 263(a)(1) provides that no deduction is allowed for any amount paid out for permanent improvements or betterments made to increase the value of any

Environmental Cleanup Costs; Private Letter Rulings

Notice 97-7

This notice provides a proposed revenue procedure that, when finalized, will provide special procedures for requesting written guidance from the Internal

property or estate. Under § 263(a)(2), no deduction is allowed for any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

.03 Rev. Proc. 97-1, 1997-1 I.R.B. 11 (Jan. 6, 1997), provides procedures under which the Service issues letter rulings, determination letters, and information letters on specific issues. Section 2.01 of Rev. Proc. 97-1 defines a “letter ruling” as a written statement issued to a taxpayer by the national office that interprets and applies the tax laws to the taxpayer’s specific set of facts. Ordinarily, the national office issues letter rulings on income tax issues only on prospective transactions or completed transactions if the letter ruling request is submitted before the return is filed for the year in which the transaction was completed. All references to Rev. Proc. 97-1 in this revenue procedure include Rev. Proc. 97-1’s successors.

.04 Rev. Proc. 97-2, 1997-1 I.R.B. 64 (Jan. 6, 1997), provides procedures under which the national office issues technical advice to a district director or a chief, appeals office. Section 2 of Rev. Proc. 97-2 defines “technical advice” as advice or guidance in the form of a memorandum furnished by the national office upon the request of a district director or a chief, appeals office, submitted in accordance with Rev. Proc. 97-2 in response to any technical or procedural question that develops during a proceeding on the interpretation and proper application of tax law, tax treaties, regulations, revenue rulings, notices, or other precedents published by the national office, to a specific set of facts. All references to Rev. Proc. 97-2 in this revenue procedure include Rev. Proc. 97-2’s successors.

SECTION 3. SCOPE

.01 *In general.* Except as provided in section 3.05 below, this revenue procedure applies to requests for guidance on the deductibility (under § 162) or capitalization (under § 263) of environmental cleanup costs incurred in continuing transactions (e.g., occurring over prior and future taxable years). Taxpayers may request a letter ruling under this revenue procedure that will cover all tax years in which costs are incurred under the transaction (“transaction years”), even if they include years for which a

return has been filed, and even if such return is under examination or before an appeals office.

.02 *Environmental cleanup costs.* For purposes of this revenue procedure, environmental cleanup costs include, in general, any costs associated with the assessment, mitigation, or remediation of environmental hazards, whether latent or imminent, on the taxpayer’s property or on the property of another. These environmental hazards include, but are not limited to, soil contamination, water contamination, air pollution, leaking underground storage tanks, asbestos, and lead paint.

.03 *Factual nature of question.* Section 7.01 of Rev. Proc. 97-1 provides that the national office ordinarily will not issue letter rulings in certain areas because of the factual nature of the problem. Although the question of whether amounts are deductible or must be capitalized is generally dependent upon the taxpayer’s specific facts, only in rare or unusual circumstances will the national office decline to issue a letter ruling under this revenue procedure solely because of the factual nature of the question.

.04 *Alternative plans and hypothetical situations.* Section 7.02 of Rev. Proc. 97-1 provides that the national office ordinarily will not issue a letter ruling on alternative plans of proposed transactions or hypothetical situations. However, the national office will issue a letter ruling under this revenue procedure on proposed parts of a continuing plan of environmental cleanup provided that the taxpayer provides all facts necessary for the Service to reach a determination. If the taxpayer’s plan changes before the environmental cleanup transaction is completed, the taxpayer may request that the national office modify or supplement its letter ruling to address the changes to the plan. See section 8 of this revenue procedure.

.05 *Excluded situations.* Taxpayers may not request guidance under this revenue procedure in the following situations:

(1) The entire environmental cleanup transaction is completed, and the time for filing returns, with extensions, for all years covering the transaction has passed.

(2) The entire environmental cleanup transaction is a proposed transaction, and the taxpayer may request a letter ruling under Rev. Proc. 97-1.

(3) The identical environmental cleanup issue is in the taxpayer’s return

for an earlier period and that issue is pending in litigation in a case involving the taxpayer (or a related taxpayer within the meaning of § 267, or a member of an affiliated group of which the taxpayer is also a member within the meaning of § 1504).

SECTION 4. REQUESTING A LETTER RULING

.01 *Taxpayers not under examination or before appeals office.* A taxpayer requesting a letter ruling on the tax treatment of environmental cleanup costs may do so under this section 4.01 if no return for any transaction year is under examination or before an appeals office. Except as provided by this revenue procedure, a request under this section 4.01 must meet the requirements of Rev. Proc. 97-1 for a letter ruling request. In addition, if a taxpayer submits a letter ruling request covering a transaction year for which a return has already been filed, a copy of the letter ruling request must also be submitted to the district office having jurisdiction over the taxpayer’s return.

.02 *Taxpayers under examination or before appeals office.* A taxpayer requesting a letter ruling on the tax treatment of environmental cleanup costs incurred under a continuing transaction must do so under this section 4.02 if any transaction year is under examination or before an appeals office. Taxpayers may request a ruling under this section even if, at the time the request is submitted, the identical environmental cleanup issue—

(1) is being examined by a district director;

(2) is being considered by an appeals office;

(3) has been examined by the district director or considered by an appeals office and the statutory period of limitations has not expired for assessment or for filing a claim for refund or credit of tax; or

(4) has been examined by a district director or considered by an appeals office and no settlement or closing agreement covering the issue or liability has been entered into by a district director or by an appeals office.

Except as provided in this revenue procedure, a letter ruling request made under this subsection must meet the general requirements of Rev. Proc. 97-2 for a taxpayer-initiated request for technical advice. Once an environmental cleanup issue is identified, all requests

for letter rulings should be made at the earliest possible stage in any proceeding. The taxpayer must submit its request (and the applicable user fee) for each letter ruling under this section 4.02 to the district or appeals office having jurisdiction over its return. The district or appeals office will, in all cases, forward the original request, and any additional statements of the taxpayer and the district or appeals office, to the national office using Form 4463 (Request for Technical Advice), with the following statement typed or printed at the top of the form: "REQUESTED UNDER REV. PROC. 97-**."

SECTION 5. PROCESSING THE RULING REQUEST

.01 *Taxpayers not under examination or before appeals office.* A letter ruling request submitted under section 4.01 of this revenue procedure generally will be processed under the procedures set forth in Rev. Proc. 97-1. Thus, the procedures for requesting additional information, conferences, withdrawal of requests, etc. are the same as those provided in Rev. Proc. 97-1. The original letter ruling will be issued to the taxpayer that requested it, and a copy of the letter ruling, whether favorable or adverse, will be sent to the district director that has jurisdiction over the taxpayer's return.

.02 *Taxpayers under examination or before appeals office.* A letter ruling request submitted under section 4.02 of this revenue procedure generally will be processed under the procedures set forth in Rev. Proc. 97-2 for a taxpayer-initiated request for technical advice except as provided in this section.

(1) *Contacting the taxpayer.* Usually, within 21 calendar days after the national office receives a taxpayer's letter ruling request, a Service representative will contact both the taxpayer (or the taxpayer's authorized representative) and the examining or appeals officer to discuss the substantive or procedural issues in the letter ruling request and to ask for any additional information necessary in order to process the request.

(2) *Coordination with district and appeals office.* During the processing of a taxpayer's letter ruling request, the national office will continuously coordinate the evaluation of the request with the district or appeals office having jurisdiction over the case. If the district or appeals office either determines that the national office should not consider

the taxpayer's request or disagrees with the taxpayer's statement of facts and issues, then the district or appeals office will notify the taxpayer in writing. For these purposes, the Service will follow the procedures set forth in section 9.04 of Rev. Proc. 97-2, except that the district or appeals office will, in all cases, forward the taxpayer's request, with any additional statements, to the national office as provided in section 4.02 of this revenue procedure.

(3) *Withdrawing the ruling request.* The district director or chief, appeals office, may not withdraw a request for a letter ruling submitted under section 4.02 of this revenue procedure. However, a taxpayer may withdraw such a request at any time before the letter ruling is signed by the national office, provided that the district director or the chief, appeals office, consents to the withdrawal. If the district director or the chief, appeals office, consents to this withdrawal, the national office will send its views to the district director or the chief, appeals office. If the district director or the chief, appeals office, does not consent to the withdrawal, then the letter ruling request will be processed as a request for technical advice under Rev. Proc. 97-2 and the scope of the technical advice memorandum will be limited to years under examination. Pursuant to the principles of Rev. Proc. 97-1, including but not limited to section 15.10 thereof, the user fee generally will not be refunded if the taxpayer withdraws its request for a letter ruling under this section.

(4) *Reply by national office.* Replies to letter ruling requests issued under section 4.02 are made in two parts. Each part identifies the taxpayer by name, address, taxpayer identification number, and the years under examination by the district director or under consideration by an appeals office. The first part is a transmittal memorandum addressed to the district or appeals office. The second part is a letter ruling as defined in section 2.01 of Rev. Proc. 97-1 that covers the transaction years addressed in the taxpayer's request. The national office will forward the transmittal memorandum and a copy of the letter ruling to the district director or the chief, appeals office, having jurisdiction over the taxpayer's return. At the same time, the national office will issue the original letter ruling to the taxpayer that requested it.

.03 *Coordination with industry specialization program.* Prior to issuance of

a letter ruling to a taxpayer under this revenue procedure, the national office will coordinate review of the proposed letter ruling with a representative of the environmental cleanup costs issue specialization team.

.04 *Disclosure.* The text of a letter ruling issued under this revenue procedure is open to public inspection under § 6110. The Service will make appropriate deletions from the text before it is made available for inspection. To help the Service make the deletions required by § 6110, a request made under this revenue procedure must be accompanied by the statement described in section 8.01(9) of Rev. Proc. 97-1.

SECTION 6. EFFECT OF THE LETTER RULING

.01 *General rule.* A taxpayer ordinarily may rely on a letter ruling issued by the Service pursuant to this revenue procedure subject to the conditions and limitations described in section 12 of Rev. Proc. 97-1. A letter ruling issued on a specific environmental cleanup transaction represents a holding by the Service on that transaction only. It will not apply to any transaction not specifically addressed in the letter ruling.

.02 *Return previously filed.* The conclusion in the letter ruling, whether adverse or favorable to the taxpayer, will generally be applied prospectively to all future transaction years. In addition, if a letter ruling involves tax years for which a return has already been filed, it will generally apply retroactively to all open years unless the Service exercises discretionary authority under § 7805(b) to limit the retroactive effect of the conclusion.

.03 *Use in examining the taxpayer's return.* If a taxpayer is under examination or is later selected for examination, the letter ruling will be used by the district director in examining the taxpayer's returns for prior and future transaction years in the manner described in section 12.03 of Rev. Proc. 97-1.

.04 *Prior settlement or closing agreement.* A letter ruling issued under this revenue procedure will not affect any taxable year(s) that are the subject of a prior settlement or closing agreement entered into with the district director or an appeals office.

SECTION 7. REVOCATION OR MODIFICATION

A letter ruling found to be in error or not in accord with the current views of

the Service may be revoked or modified. If a letter ruling under this revenue procedure is revoked or modified, the revocation or modification applies to all open years 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. The criteria and procedures for revoking or modifying a letter ruling issued under this revenue procedure are the same as those provided in section 12 of Rev. Proc. 97-1. In addition, the procedures for requesting § 7805(b) relief, and the criteria for granting it, are the same as those provided in section 12.11 of Rev. Proc. 97-1.

SECTION 8. REQUESTING SUPPLEMENTAL LETTER RULINGS

If the material facts underlying a letter ruling issued under this revenue procedure change after the letter ruling is issued, the taxpayer may request that the Service modify or supplement the letter ruling. However, the request cannot be made after the transaction, as revised, is completed, and the time for filing returns, with extensions, for all years covering the transaction has expired. For example, if the Service issues a ruling allowing the taxpayer to deduct costs incurred under one method of land remediation, and the taxpayer later decides to use a different method of land remediation, the taxpayer may request a supplemental letter ruling addressing the new method. However, the taxpayer

may not request the supplemental letter ruling after the land remediation under the new method is completed and the time for filing its returns, with extensions, for all transaction years has passed. The request must comply with the requirements of sections 4.01 or 4.02 of this revenue procedure, whichever applies.

SECTION 9. CHANGE IN ACCOUNTING METHOD

Under § 446(e), a taxpayer receiving a letter ruling under this revenue procedure may be required to seek the Commissioner's consent to change its method of accounting, and § 481 may be applicable. In these cases, the national office will inform the taxpayer of the procedures for obtaining this consent.

SECTION 10. USER FEE REQUIREMENTS

Except as provided in sections 15.03 and 15.04 of Rev. Proc. 97-1, all requests submitted under this revenue procedure (including supplemental letter ruling requests under section 8 of this revenue procedure) must be accompanied by a user fee. The appropriate user fee is determined from the fee schedule provided in Appendix A of Rev. Proc. 97-1.

SECTION 11. ADDRESS FOR SUBMISSION

.01 Taxpayers not under examination or before an appeals office. All requests

for letter rulings submitted under section 4.01 of this revenue procedure (including the applicable user fee) should be sent to the Associate Chief Counsel (Domestic) at the same address provided in section 8.03(1) of Rev. Proc. 97-1.

.02 Taxpayers under examination or before appeals office. All requests for letter rulings submitted under section 4.02 of this revenue procedure (including the applicable user fee) should be sent to the examining or appeals officer, who must forward the request to the national office using the same address provided in section 8.03 of Rev. Proc. 97-2.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 97-1 is amplified. Rev. Proc. 97-2 is amplified and modified.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective for requests for letter rulings submitted during the two-year period from **month, day, year** to **month, day, year**.

DRAFTING INFORMATION

The principal author of this revenue procedure is Merrill D. Feldstein of the Office of Assistant Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Feldstein on (202) 622-4950 (not a toll-free call).
