

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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, ID No.

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Refer Reply To:

CC:PSI:B05

PLR-153845-06

Date:

November 29, 2006

LEGEND

Taxpayer =

Contributor =

Dear :

This letter revokes private letter ruling 200638002 issued to Taxpayer.

Section 118(a) provides the general rule that a corporation's gross income does not include any contribution to the capital of the corporation. Section 118(b) excludes from section 118(a) a contribution in aid of construction or any other contribution as a customer or potential customer.

The letter ruling concluded that the transfer of the facilities by Contributor to Taxpayer will not be a contribution in aid of construction under section 118(b) and will be excludable from the gross income of Taxpayer as a nonshareholder contribution to capital under section 118(a). The conclusion was expressly based on a representation by Taxpayer and Contributor that Contributor is not a customer or potential customer of Taxpayer.

In a letter, dated September 8, 2006, Taxpayer's authorized representative provided additional facts in which Contributor and Taxpayer engage in certain customer relationships.

Section 11.05(1) of Rev. Proc. 2006-1, 2006-1 I.R.B. 1, 49, provides that an Associate Office will revoke a letter ruling and apply the revocation retroactively to the taxpayer for whom the letter ruling was issued if there has been a misstatement or omission of controlling facts.

The representation that Contributor was not a customer or potential customer of Taxpayer was a controlling fact in reaching the conclusion. Therefore, under section 11.04 of Rev. Proc. 2006-1, the revocation is retroactive to all years open under the period of limitations.

Sincerely,

/s/ Susan J. Reaman

SUSAN J. REAMAN
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

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