

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-123973-20

Date:

February 19, 2021

LEGEND:

Taxpayer =
P1 =
State =
Business =

Companies =
Commission1 =
Commission2 =
Date1 =
Date2 =
Act =
Fund =
Certificate =
Event =
Year =
Day =
Period =
\$X =
Amount =
Eligible Losses =

Dear :

This letter is in response to a letter dated October 13, 2020, and subsequent correspondence, submitted by Taxpayer, requesting rulings under § 197 of the Internal

Revenue Code. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, an accrual basis taxpayer, is a holding company, and is the common parent of a consolidated group of corporations that includes P1 and that files a consolidated return on a calendar year basis.

P1 is incorporated under the laws of State, and is primarily engaged in the Business in State. P1 is regulated by Commission1 and Commission2.

On Date 1, State enacted the Act to address the Event in State and the liabilities of the Companies, including P1, resulting from the Event. The Act contains both mandatory and optional provisions. Among the optional provisions are the availability of the Certificate and the creation of the Fund. Under the Act, P1 may apply for and receive a Certificate from Commission1 if it meets certain requirements. Upon receipt of the Certificate, P1 is entitled to the benefit of a new standard of review under the Act for purposes of determining whether P1 acted prudently with respect to the Event in State.

The Act allows Companies to agree to the creation of an optional Fund. P1 has provided timely notification of its commitment to participate in the Fund. The Fund will be capitalized with a \$X financed by State and another approximately \$X contributed by Companies. The contributions will consist of initial and annual contributions, the amount of which is determined as set forth in the Act. P1 made their initial contribution and first annual contribution on Date2, and has committed to make annual contributions for Period after Year due by Day for each calendar year. For subsequent years in the Period, P1 will make annual contributions based on the Fund's allocation metric as determined each year for P1.

Provided P1 has received a current Certificate and made the initial and annual contributions, it is eligible to participate in and receive certain rights under the Fund. In the event of damages covered by the Act, the Fund will reimburse P1 for any Eligible Losses. Once all rights to insurance or indemnification have been exhausted, P1 must apply to Commission1 for a determination whether P1 acted prudently with respect to the Eligible Losses reimbursed by the Fund. If P1 has a current Certificate, P1's conduct is deemed to have been reasonable unless a party to the proceeding creates a serious doubt as to the reasonableness of P1's conduct.

To the extent Eligible Losses of P1 are found to have been prudently incurred, P1 has no obligation to reimburse the Fund. To the extent the Eligible Losses are found to have been imprudently incurred, P1 is obligated to reimburse the Fund.

Even if Eligible Losses are found to have been imprudently incurred, P1 with a current Certificate would enjoy the benefit of a limit on liability (Liability Cap). Under the Liability Cap, the obligation of P1 to repay the Fund is limited to Amount under the Act. The Liability Cap will be adjusted annually.

If P1 pays the initial contribution, but does not pay one or more annual contributions, reimbursements to P1 for Eligible Losses may be reduced via set off or P1 may be subject to a lien. In addition, in the event of an annual contribution default, P1's obligation for repayments to the Fund for Eligible Losses imprudently incurred by P1 would likely be denied the Liability Cap. The statutory prudence standard would nevertheless continue to apply notwithstanding the failure to make annual contributions.

Taxpayer represents that the conveyance of the rights described above under the Fund to P1 occurs upon the initial contribution. P1's subsequent payment of each required annual contribution does not create any new rights not already received upon payment of the initial contribution. Such payment is made in further payment for the rights created by the initial contribution. It is anticipated that P1 will continue to hold the rights for an indeterminate number of years thereafter making the initial contribution.

RULINGS REQUESTED

Taxpayer requests the following rulings:

1. The payment of the initial contribution by P1 will entitle P1 to receive from State an amortizable § 197 intangible within the meaning of § 197(d)(1)(D); and
2. Each annual contribution will be treated as an additional payment to retain the rights obtained under the Fund that is subject to capitalization and the additional basis will be subject to amortization under § 197 over the remaining amortization period of the amortizable § 197 intangible created by the initial contribution.

LAW AND ANALYSIS

Section 263(a) provides that no deduction is allowed for any amount paid out for new buildings or for permanent improvements or betterments to increase the value of any property or estate or any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made.

Section 1.263(a)-4(b)(1) of the Income Tax Regulations generally provides that a taxpayer must capitalize an amount paid to acquire or create an intangible. Section 1.263(a)-4(d)(1), in relevant part, provides that a taxpayer must capitalize amounts paid to create an intangible, and the determination of whether an amount is paid to create an

intangible described in the subsection is to be made based on all of the facts and circumstances.

Section 197(a) provides that a taxpayer shall be entitled to an amortization deduction with respect to any amortizable § 197 intangible. Section 197(c)(1) provides that, in general, the term “amortizable section 197 intangible” means any § 197 intangible which is acquired after August 10, 1993, and which is held in connection with the conduct of a trade or business or an activity described in § 212.

Section 197(c)(2) provides that the term “amortizable section 197 intangible” does not include any § 197 intangible that is not described in § 197(d)(1)(D), (E), or (F), and that is created by the taxpayer.

Section 197(d)(1)(D) provides that the term “section 197 intangible” means, among other things, any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof. Section 1.197-2(b)(8) provides that § 197 intangibles include any license, permit, or other right granted by a governmental unit (including for purposes of § 197, an agency or instrumentality thereof) even if the right is granted for an indefinite period or is reasonably expected to be renewed for an indefinite period. These rights include, for example, a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license. The issuance or renewal of a license, permit, or other right granted by a governmental unit is considered an acquisition of the license, permit, or other right.

Section 197(e)(4) provides that the term “section 197 intangibles” does not include, among other things, any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof. The term also does not include any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if (1) such right has a fixed duration of less than 15 years, or (2) is fixed as to amount and, without regard to § 197, would be recoverable under a method similar to the unit-of-production method.

Section 1.197-2(d)(2)(ii)(A) provides that a § 197 intangible is created by the taxpayer to the extent the taxpayer makes payments or otherwise incurs costs for its creation, production, development, or improvement. Except as provided in § 1.197-2(d)(2)(iii), § 1.197-2(d)(2)(i) generally provides that amortizable § 197 intangibles do not include any § 197 intangible created by the taxpayer (a self-created intangible). However, § 1.197-2(d)(2)(iii)(A) provides that the exception for self-created intangibles does not apply to any § 197 intangible described in § 197(d)(1)(D), (E), or (F).

Section 1.197-2(f)(1)(i) provides, that except as provided in § 1.197-2(f)(2), the amortization deduction allowable under § 197(a) is computed as follows: (i) the basis of an amortizable § 197 intangible is amortized ratably over the 15-year period beginning on the later of (A) the first day of the month in which the property is acquired; or (B) in

the case of property held in connection with the conduct of a trade or business, the first day of the month in which the conduct of the trade or business begins.

Section 1.197-2(f)(2) provides guidance on the treatment of contingent amounts. Section 1.197-2(f)(2)(i) provides that any amount that is properly included in the basis of an amortizable § 197 intangible after the first month of the 15-year period described in § 1.197-2(f)(1)(i) and before the expiration of that period is amortized ratably over the remainder of the 15-year period. For this purpose, the remainder of the 15-year period begins on the first day of the month in which the basis increase occurs.

Section 1.197-2(f)(2)(iii) directs taxpayers to §1.461-1(a)(1) and (2) for rules governing the time for which certain contingent amounts are taken into account in determining the basis of an amortizable § 197 intangible.

Section 1.461-1(a)(2) provides the general rule for the taxable year of deduction for accrual-method taxpayers. Under an accrual method of accounting, a liability is incurred, and generally taken into account for Federal income tax purposes, in the taxable year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability. Applicable provisions of the Code, the Income Tax Regulations, and other guidance published by the Secretary prescribe the manner in which a liability that has been incurred is taken into account. For example, under § 263 or 263A, a liability that relates to the creation of an asset having a useful life extending substantially beyond the close of the taxable year is taken into account in the taxable year incurred through capitalization and may later affect the computation of taxable income through depreciation or otherwise over a period including subsequent taxable years, in accordance with applicable Internal Revenue Code sections and guidance published by the Secretary.

In this case, Taxpayer represents that the conveyance of the rights described above under the Fund to P1 occurs upon the initial contribution and continues for an indefinite number of years. The subsequent payment of each required annual contribution does not create or confer any additional or independent rights to P1, but merely retains the rights granted upon the initial contribution.

Therefore, Taxpayer's payments for these rights granted by State under the Act include the initial contribution and the annual contributions. These payments are attributable to the acquisition of an amortizable § 197 intangible under § 197(d)(1)(D) and § 1.197-2(b)(8). Because the amounts of the annual contributions are contingent upon the Fund's allocation metric for P1 for each year during the Period, these amounts become amortizable when added to the basis of the amortizable § 197 intangible.

CONCLUSION

Based solely on the facts and representations submitted and the relevant law and analysis as set forth above, we conclude the following:

1. The payment of the initial contribution by P1 will entitle P1 to receive from State an amortizable § 197 intangible within the meaning of § 197(d)(1)(D); and
2. Each annual contribution will be treated as an additional payment to retain the rights obtained under the Fund that is subject to capitalization and the additional basis will be subject to amortization under § 197 over the remaining amortization period of the amortizable § 197 intangible created by the initial contribution.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the tax consequences of the facts described above under any other provisions of the Code.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative. We also are sending a copy of this letter ruling to the appropriate operating division director.

Sincerely,

Jaime C. Park
General Attorney, Branch 7
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes