Office of Chief Counsel
Internal Revenue Service
Memorandum

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subject: Accrual and Amortization of Broadcast Contracts

This Chief Counsel Advice responds to your request for advice. This advice may not be used or cited as precedent.

ISSUE

Whether a taxpayer has incurred a liability to pay licensing fees with respect to a multi-year broadcast contract upon execution of such contract.

CONCLUSION

No. A taxpayer has not incurred a liability to pay licensing fees with respect to the multi-year broadcast contract upon execution of such contract because mere execution of the contract does not fix the liability to pay the licensing fees.

FACTS

In order to air sporting events via over-the-air, cable, and satellite television platforms, broadcasting companies enter into contracts with sports leagues for the right to broadcast various events. In exchange for the right to broadcast these events,

broadcasting companies pay the sports leagues licensing fees. Specific broadcast contracts spell out the various terms of the rights and payments.

In a typical scenario, a broadcasting company enters into a multi-year broadcast contract with a sports league that covers more than one sports season. The contract specifies the number of events per season that the broadcasting company will have the right to broadcast, and specific amounts are charged as licensing fees with respect to each sports season. The contract generally provides for various adjustments in the case of non-performance by either the broadcasting company or the sports league, including reductions in the licensing fees with respect to a particular season if the sports league is unable to provide an event that is scheduled to be broadcast.

The licensing fees are often made due in installments during the sports season, with, in some cases, an additional lump sum amount due at the close of the sports season. Several broadcasting companies have argued that liability for the total amount of licensing fees under each contract is incurred in the year in which the broadcast contract is signed.

LAW AND ANALYSIS

Section 162(a) of the Internal Revenue Code allows a deduction for “all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.”

Section 461(a) provides that the amount of any deduction or credit must be taken for the taxable year that is the proper taxable year under the method of accounting used by the taxpayer in computing taxable income.

Section 1.461-1(a)(2)(i) of the Income Tax Regulations provides that, under an accrual method of accounting, a liability (including any item allowable as a deduction for Federal income tax purposes) is incurred, and is generally taken into account for federal income tax purposes, in the taxable year in which (1) all the events have occurred that establish the fact of the liability, (2) the amount of the liability can be determined with reasonable accuracy, and (3) economic performance has occurred with respect to the liability (the "all events test"). *See also* § 1.446-1(c)(1)(ii)(A).

The first prong of the all events test requires that all the events have occurred that establish the fact of the liability. It is fundamental to the all events test that, although expenses may be deductible before they become due and payable, liability first must be firmly established. *United States v. General Dynamics Corp.*, 481 U.S. 239, 243; 107 S. Ct. 1732, 1736 (1987). Therefore, the fact that the licensing fees are not due until the year in which the broadcast games are played is not the definitive fact in determining whether the liability for such licensing fees has been established.

Generally, however, under § 1.461-1(a)(2), all the events have occurred that establish

the fact of the liability when (1) the event fixing the liability, whether that be the required performance or other event, occurs, or (2) payment therefor is due, whichever happens earliest. Rev. Rul. 80-230, 1980-2 C.B. 169; Rev. Rul. 79-410, 1979-2 C.B. 213, amplified by Rev Rul. 2003-90, 2003-2 C.B. 353. The mere execution of a contract is not the required performance and, without more, is not an "other event" that establishes the fact of the taxpayer's liability. *See* Rev. Rul. 2007-3; 2007-4 I.R.B. 350, 351 (Jan. 22, 2007).

The broadcasting industry has argued that liability for the total amount of the broadcast contract is incurred upon execution of the contract pursuant to *United States v. Hughes Properties, Inc.*, 476 U.S. 593 (1986) (income accrued with respect to slot machines gives rise to deductible expense for unpaid jackpots for such slot machines where jackpot amounts are determined by gaming regulation and based on the amount the slot machines are played). *Hughes Properties* is distinguishable from this case because many other events occurred in *Hughes Properties* that fixed the taxpayer's liability in that case, whereas the execution of the broadcast contract is the only event to have occurred in this case. *See General Dynamics*, 481 U.S. at 244-245 (rendering of medical service is not the event that fixes employer's liability to reimburse employee for medical expense arising from such medical service; filing of claim by employee "is not a mere technicality * * * [and does not] represent the type of 'extremely remote and speculative possibility' that * * * [the Court] held in *Hughes*, 476 U.S. at 601, did not render an otherwise fixed liability contingent").

We conclude that the all-events test is not satisfied upon execution of the broadcast contracts.

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