Internal Revenue Service

Number: **200922005**
Release Date: 5/29/2009

Index Number: 197.00-00

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:B07
PLR-137614-08
Date: February 19, 2009

Re:

Taxpayer	=
Parent	=
Date 1	=
State	=
County	=
Site	=
Plant X	=
Plant Y	=
Commission A	=
Commission B	=
Commission C	=
X	=
Y	=

Dear :

This letter is in response to your letter dated Date 1, and subsequent correspondence, submitted on behalf of Taxpayer, requesting a letter ruling on whether a combined license issued by Commission C is a § 197 intangible.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer, a wholly-owned subsidiary of Parent, is a regulated public utility, organized and incorporated under the laws of State. Taxpayer joins in the consolidated Federal income tax return filed for the affiliated group by Parent. Parent files its consolidated return on a calendar-year basis. Parent and Taxpayer use the accrual method of accounting.

Taxpayer supplies electric generation, transmission and distribution service to customers throughout certain areas of State and is subject to the regulatory jurisdiction of Commission A and Commission B. Taxpayer currently operates multiple generating units at Site. Taxpayer is undertaking steps to obtain approvals that would permit the construction and operation of Plant X and Plant Y, which would add additional nuclear generation at the Site. Taxpayer has received land use approval from County that would qualify Site for Plant X and Plant Y. Taxpayer also has received from Commission A an affirmative Determination of Need for construction of Plant X and Plant Y, which establishes Commission A's determination that additional power is required to provide reliable, cost-effective power to Taxpayer's customers, and Commission A's approval of nuclear technology as a cost-effective source of such power. The next major approvals include a site certification from State and the combined license for each Plant X and Plant Y from Commission C.

Commission C is a federal regulatory agency whose mission is to license and regulate the civilian use of nuclear materials. Commission C is authorized to issue a combined license authorizing construction and operation of a nuclear power plant conditioned on the successful completion of inspections, tests, analyses, and acceptance criteria. Commission C’s process for obtaining the combined license for utilities includes the following: (1) an early site permit process whose objective is to review various siting issues including site, safety, environmental impact and emergency preparedness. The permit allows an applicant to obtain approval for a reactor site and to hold on to the site for future use. The permit also allows for the use of certified standard plant designs that can be used as “pre-approved” design for the permitted site; (2) the design certification process that allows an applicant to obtain pre-approval of a standard nuclear plant design that can be certified by Commission C for X years. The application for a standard design certification must include proposed tests, inspections, analyses, and the acceptance criteria relevant to the proposed standard design; and (3) the combined construction and operation license process whose objective is to resolve all safety and environmental issues before authorizing construction.

The application for a combined license must contain financial information about the applicant, an assessment of the need for power, and descriptions of the numerous required inspections, tests, analyses, and acceptance criteria necessary to ensure that the plant has been properly constructed and will operate safely.

Once a plant is constructed, and not less than 180 days prior to the initial loading of nuclear fuel, the licensee must notify Commission C of the expected dates of fuel

load in addition to the proposed date of the first nuclear reaction. Commission C will then publish notice of a hearing opportunity on whether the inspections, tests, analyses, and acceptance criteria have been met. After Commission C finds that the inspections, tests, analyses, and acceptance criteria have been met, Commission C will have the authority to authorize the operation of the nuclear reactor.

A combined license is issued for a definite time period that cannot exceed Y years from the date Commission C finds that the inspections, tests, analyses, and acceptance criteria have been met. A combined license may then be renewed pursuant to Commission C's requirements.

RULING REQUESTED

Taxpayer requests the Service issue the following ruling:

Whether the combined license issued by Commission C for each of Plant X and Plant Y is a § 197 intangible within the meaning of § 197(d)(1)(D) of the Internal Revenue Code and that each combined license is not excepted from the definition of § 197 by reason of § 1.197-2(c)(3) of the Income Tax Regulations or otherwise.

LAW AND ANALYSIS

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. 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 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)(2) provides that the term "section 197 intangible" does not include any interest in land. Section 1.197-(2)(c)(3) provides that § 197 intangibles do not

include any interest in land. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral right, timber right, grazing right, riparian right, air right, zoning variance, and any other similar right, such as a farm allotment, quota for farm commodities, or crop acreage base. An interest in land does not include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television service. Section 1.197-(2)(c)(3) further provides that the cost of acquiring a license, permit, or other land improvement right, such as a building construction or use permit, is taken into account in the same manner as the underlying improvement.

Section 197 was added to the Code by § 13261(a) of the Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312, 532, 1993-3 C.B. 1, 120 (the "1993 Act"). In discussing the interests in land that are not § 197 intangibles, the Conference Report for the 1993 Act states that "[t]he costs of acquiring licenses, permits, and other rights relating to improvements in land, such as building construction or use permits, are to be taken into account in the same manner as the underlying improvement in accordance with present law." H.R. Rep. No. 213, 103d Cong., 1st Sess., 516, 679 (1993), 1993-3 C.B. 393, 557.

Before the enactment of the 1993 Act, numerous Tax Court cases held that the costs of obtaining a Federal Communications Commission ("FCC") radio or television construction permit and broadcasting license are capitalized to an intangible asset. See Radio Station WBIR, Inc. v. Commissioner, 31 T.C. 803 (1959); KWTX Broadcasting Co. v. Commissioner, 31 T.C. 952, aff'd per curiam, 272 F.2d 406 (5th Cir. 1959). The FCC licenses in these cases involved the cost of obtaining a construction permit for broadcast facilities and the cost of obtaining a broadcasting license. Arguably, an FCC construction permit is related to the broadcast tangible property and has the same economic useful life as the tangible property. However, the Tax Court capitalized all FCC related costs into a license intangible. Radio Station WBIR, 31 T.C. at 816; KWTX Broadcasting, 31 T.C. at 961. Similarly, a combined license issued by Commission C is a separate intangible asset.

CONCLUSION

Based solely on the facts and representations submitted and the relevant law and analysis as set forth above, we conclude that the combined license issued by Commission C for each of Plant X and Plant Y is a § 197 intangible within the meaning of § 197(d)(1)(D), and that each combined license is not excepted from the definition of § 197 by reason of § 1.197-2(c)(3).

We also note that the amortization under § 197 for the costs of the combined license that are appropriately allocable to the § 197 intangible is subject to § 263A.

Except as specifically set forth above, we express no opinion concerning the Federal income tax consequences of the facts described above under any other

provisions of the Code. Specifically, no opinion is expressed or implied on (i) when the amortization of each combined license at issue begins in accordance with § 1.197-2(f)(1)(i), and (ii) what costs incurred while obtaining each combined license at issue are allocable to tangible property and what costs are allocable to the § 197 intangible.

In accordance with the power of attorney, we are sending copies of this letter to Taxpayer's authorized representatives. We are also sending a copy of this letter to the appropriate operating division director.

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.

Sincerely,

Kathleen Reed

KATHLEEN REED
Chief, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):
copy of this letter
copy for section 6110 purposes