Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

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Date:
January 20, 2016

TY:

Legend
Taxpayer =

State Agency =
State A =
State B =
DE =

Business Premises =

New Location =
Highway =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
$a =
$b =
$c =
$d =
$e =
$f =
$g =
$h =
$i =

$i =
Tax Year 1 =
Tax Year 2 =
Tax Year 3 =

Dear :

This letter is in response to a request for a private letter ruling dated September 14, 2015, submitted on behalf of Taxpayer by your authorized representative. Specifically, you are requesting that the Service rule that (i) Payments received by Taxpayer from State Agency under Title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act, Pub. L. No. 91-646, as amended by the Uniform Relocation Act Amendments of 1987, Title IV of Pub. L. No. 100-17 ("Relocation Act"), 42 U.S.C. §§ 4601 et seq. are not includible in Taxpayer's gross income under § 61 of the Internal Revenue Code ("Code"); (ii) Taxpayer's relocation and related expenses will not be deducted under § 162 to the extent those expenses do not exceed Relocation Payments and Additional Payments (as discussed below) received; and (iii) Taxpayer will not take a depreciable basis under § 1012 in any new equipment acquired to replace certain non-movable equipment or improvements (as discussed below) with the relocation assistance payments received under the Relocation Act to the extent those costs do not exceed Relocation Payments and Additional Payments received.

STATEMENT OF FACTS

Taxpayer is a State A limited liability company that is classified as a partnership for federal income tax purposes under Treas. Reg. § 301.7701-3(b)(1)(i). Taxpayer owns all of the membership interests in DE, a State A limited liability company that is disregarded as an entity separate from its owner under Treas. Reg. § 301.7701-3(b)(1)(ii). Taxpayer uses the accrual method of accounting for federal income tax purposes and reports on a calendar year-end accounting period.

Taxpayer conducts certain business through DE in State B. During the time in issue, Taxpayer held title to Business Premises. Taxpayer owned all operating assets and property, plant, and equipment located at the Business Premises, including machinery, furniture, fixtures, information technology equipment, buildings and other improvements.

As State B grew, State Agency determined that the main lanes of Highway had to be expanded. Consequently, Business Premises became subject to an asserted right of eminent domain undertaken by State Agency related to the acquisition of a right of way for construction of improvements to Highway. Taxpayer represents that the expansion of Highway is a Federally-assisted project. Funding for the expansion of Highway is provided by a combination of sources including State Agency funds and earmarked Federal assistance, thereby characterizing payments from State Agency to Taxpayer as eligible payments for moving expenses pursuant to Title II of the Relocation Act.

On Date 1, Taxpayer received a notice of intention from State Agency as part of the expansion of Highway pursuant to State Agency's authority to acquire real property for controlled-access highways. On Date 2, Taxpayer and State Agency executed the Memorandum of Agreement of Date 3 (the "MOA") for the compensation payable to Taxpayer for the partial taking of the Business Premises, including a taking of the main office building and a warehouse.

The MOA also required Taxpayer to remove its business operations from the condemned portion of the Business Premises no later than Date 4. Taxpayer was required to: (i) relocate its business operations – including inventory, machinery, and equipment -- from the condemned portion of Business Premises to a new site (or to a portion of Business Premises that was not condemned); (ii) sell any heavy operating equipment not readily movable; and (iii) abandon certain improvements.

To accomplish the relocation, Taxpayer will acquire land and construct improvements at a new location, which will ultimately hold part of the relocated business operations at New Location. As part of the relocation, Taxpayer may relocate some operations or equipment to a warehouse located on that part of the Business Premises that was not condemned, whereas other operations and equipment will be relocated to more distant pre-existing locations owned by Taxpayer inside and outside State B. In addition, certain equipment that cannot be moved economically or efficiently will be replaced with substitute equipment to be installed at New Location or other locations ("Pre-Existing Locations") before Taxpayer relocates from Business Premises. Any equipment replaced with substitute equipment will be dismantled and moved at a later date or sold by Taxpayer to third parties.

Taxpayer ultimately entered into several agreements with State Agency for the reimbursement of Taxpayer's anticipated costs to relocate from Business Premises. Under these agreements, Taxpayer will receive agreed-upon Relocation Act compensation payments from State Agency for the costs of moving and reinstalling specific pieces of machinery and equipment ("Relocation Payments"). Taxpayer and State Agency have agreed to Relocation Payments in the total amount of $a. Under the agreement with State Agency, Taxpayer will also receive compensation payments from State Agency for all other business relocation-related costs not included in Relocation Payments ("Additional Payments"). Taxpayer estimates that Additional Payments to be received from State Agency will approximate $b. Taxpayer expects to acquire substitute equipment for the assets which require replacement and incur moving and installation expenses and other related expenses.

Taxpayer expects to receive Relocation Payments and Additional Payments from State Agency during Tax Year 1, Tax Year 2, and Tax Year 3. Taxpayer has already incurred $c in relocation costs during Tax Years 1 and 2 in connection with replacement site

location selection, business property appraisal, equipment purchases, and relocation-related professional fees. Taxpayer received Relocation Payments in the amounts of $d in Tax Year 1; $e in Tax Year 2; and $e in Tax Year 3. Taxpayer received Additional Payments of $f in Tax Year 1; $g in Tax Year 2; and $h in Tax Year 3. Taxpayer incurred relocation costs in Tax Year 1 of $i and in Tax Year 2 of $j. Taxpayer has already taken a position on its Federal income tax return for Tax Year 1 with respect to the Relocation Payments and the Additional Payments. Therefore, Taxpayer is not requesting a private letter ruling with respect to Relocation Payments and Additional Payments received in Tax Year 1. Instead, this ruling request is limited to Relocation Payments and Additional Payments received in Tax Year 2 and Tax Year 3.

Taxpayer represents that all payments received under the Relocation Act from State Agency will be expended on moving existing equipment, buying substitute equipment, installation of existing equipment or substitute equipment, relocation expenses incurred at New Location or Pre-Existing Locations, and professional and service fees related to the relocation, including negotiating the MOA with State Agency.

LAW AND ANALYSIS

Income Ruling:

Section 61(a) provides generally that except as otherwise provided, gross income means all income from whatever source derived. The Supreme Court has long recognized that the definition of gross income sweeps broadly and reflects Congress' intent to bring within its purview all accessions to wealth, unless excluded by another section of the Code. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 430 (1955); *Commissioner v. Schleier*, 515 U.S. 323, 327 (1995).

Title II of the Relocation Act was enacted to establish a uniform policy for the fair and equitable treatment of all affected persons displaced as a result of federal and federally-assisted programs and projects in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to minimize the hardship of displacement of such persons. 42 U.S.C. § 4621.

Under 42 U.S.C. § 4622(a), whenever a program or project undertaken by a displacing agency will result in displacing any person, the head of such agency shall provide for the payment to the displaced person of (1) actual reasonable expenses in moving himself, his business or other personal property; (2) actual direct losses of tangible personal property as a result of moving or discontinuing a business, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and (3) actual reasonable expenses in searching for a replacement business.

Under 42 U.S.C. § 4601(6), a "displaced person" includes any person who moves from real property, or moves his personal property from real property, as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part for a federal and federally-assisted program or project.

Under 42 U.S.C. § 4601(11), the term "displacing agency" includes any state agency carrying out a program or project with federal financial assistance, which causes a person to be a displaced person.

Under 42 U.S.C. § 4636, no payment received under 42 U.S.C. §§ 4621-4638 shall be considered as income for purposes of Title 26.

Pursuant to 42 U.S.C. § 4636, Taxpayer does not include in gross income under § 61 of the Code the Relocation Payments and Additional Payments received by it from State Agency pursuant to 42 U.S.C. §§ 4621-4638.

Deduction Ruling:

Section 162(a) of the Code generally allows a deduction for the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. *See also* § 1.162-1(a) of the Income Tax Regulations.

Moving expenses incurred to relocate a business are generally ordinary and necessary business expenses deductible under § 162(a) provided that they are not subject to capitalization under another section of the Code. *Electric Tachometer Corporation v. Commissioner*, 37 T.C. 158, 161 (1961), *acq.*, 1962-2 C.B. 4 (expenses to move machinery or equipment from one location to another, in contrast to improvements added or new installations made at the time of the move, are ordinary and necessary business expenses).

However, taxpayers are not allowed deductions under § 162(a) for expenditures for which they have a right or expectation of reimbursement. *Burnett v. Commissioner*, 356 F.2d 755, 759 (5th Cir. 1966); Rev. Rul. 80-348, 1980-2 C.B. 31. In *Charles Baloian Co., Inc. v. Commissioner*, 68 T.C. 620, 628-29 (1977), *nonacq. on other grounds*, 1978-2 C.B. 3, the Tax Court held that moving expenses were nondeductible to the extent they were reimbursed by a Government agency because the taxpayer's right to reimbursement was fixed and matured without substantial contingency prior to the move when the agency issued a written authorization to incur moving expenses in a specified amount.

In Rev. Rul. 78-388, 1978-2 C.B. 110, an accrual method taxpayer incurred expenses to move its business as a result of its property being taken by the State under its eminent domain power. The taxpayer's request for a relocation payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 was approved

by the responsible Government agency during the taxable year the move occurred and the relocation costs were incurred. The taxpayer received the payment in a subsequent year. The Service held that the moving expenses were not deductible to the extent that they were reimbursable. *See also* Rev. Rul. 79-263, 1979-2 C.B. 82 (farmer denied § 162 deduction for portion of replacement feed expenditures for which farmer received prior approval by Government agency for partial reimbursement since farmer suffered no economic detriment with respect to these expenditures).

If, on the other hand, there is a possibility or a contingency that at some future date the taxpayer might receive reimbursement in whole or part, the taxpayer is entitled to deduct its expenditure. *Electric Tachometer Corporation*, 37 T.C. at 161. *See also Varied Investments, Inc. v. United States*, 31 F.3d 651, 653 (8th Cir. 1994). In *Electric Tachometer Corporation*, the taxpayer was allowed to deduct moving expenses in the year paid for moving machinery as the result of a condemnation action since there was no fixed right of reimbursement but only an indefinite and general right to recover its expenses. *Electric Tachometer Corporation*, 37 T.C. at 161-62. In *Varied Investments*, the taxpayer was entitled to a § 162 deduction in the taxable year it transferred money to a trust to provide for the satisfaction of a judgment, as it had no fixed right to reimbursement after three insurers denied coverage, even though the taxpayer later recovered some insurance proceeds. *Varied Investments*, 31 F.3d at 653.

In this case, Taxpayer has represented that: (i) State Agency has agreed to pay Taxpayer a specified amount of Relocation Payments and Additional Payments for other business relocation-related costs, pursuant to the Relocation Act; (ii) Taxpayer will use the Relocation Payments and Additional Payments received under the Relocation Act for moving existing equipment, purchasing substitute equipment, installing existing equipment or substitute equipment, relocation expenses incurred at the New Location or Pre-Existing locations, and professional and service fees related to the relocation; (iii) Taxpayer has not deducted the relocation expenses it incurred in Tax Year 1 on its Tax Year 1 federal income tax return; and (iv) Taxpayer will not deduct under § 162 its relocation and related expenses to the extent the Relocation Payments and Additional Payments under the Relocation Act are sufficient to cover those expenses.

Therefore, Taxpayer is not entitled to deduct under § 162 the relocation expenses that are otherwise deductible under that section to the extent those expenses do not exceed the Relocation Payments and Additional Payments made to it by State Agency under the Relocation Act, as these payments are directly connected to the relocation expenses Taxpayer represents it has incurred and will incur in Tax Years 2 and 3.

<u>Basis</u>:

Taxpayer is requesting a ruling that it will not take a depreciable basis under § 1012 in any new equipment acquired with the relocation assistance payments received by it from State Agency under the Relocation Act to the extent of the net

amount of reimbursements received and amounts spent on relocation and related expenses.

Section 1012 provides that the basis of property shall be the cost of such property, except as otherwise provided in subchapters O, C, K and P. Cost, in turn, is defined by regulation as the amount paid for the property in cash or other property. Section 1.1012-1(a) of the Income Tax Regulations.

Taxpayer may not allocate any Relocation Payment or Additional Payment to the basis in property it purchases with such payments. Because these payments reimburse Taxpayer for the cost of such property, Taxpayer did not incur a cost to acquire said property. Therefore, Taxpayer cannot assign a basis under § 1012 to any property acquired with such payments. *Wolfers v. Commissioner*, 69 T.C. 975 (1978). Accordingly, Taxpayer cannot not take a depreciable basis under § 1012 in any new equipment acquired with the Relocation Payment or Additional Payment received by it from State Agency under the Relocation Act to the extent those costs do not exceed Relocation Payments and Additional Payments received.

CONCLUSIONS

Based solely on the facts as represented and the applicable law, we conclude as follows:

(1) Pursuant to 42 U.S.C. § 4636, Taxpayer does not include in gross income under § 61 of the Code the Relocation Payments and Additional Payments described in § 42 U.S.C. §§ 4621-4638 it receives from State Agency.

(2) Taxpayer cannot deduct under § 162 moving expenses for existing equipment, purchasing substitute equipment, the installation of existing and substitute equipment, relocation expenses incurred at the New Location and pre-existing locations and professional and service fees related to the relocation, including negotiation of the MOA with State Agency to the extent such costs are reimbursed with Relocation Payments or Additional Payments from State Agency.

(3) Taxpayer cannot assign any basis under § 1012 to substitute equipment acquired to replace non-movable equipment and leasehold improvements at the New Location to the extent such costs are reimbursed with Relocation Payments or Additional Payments from State Agency.

Except as expressly stated in Conclusions 1, 2, and 3 in the preceding paragraphs, we do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement 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.

Enclosed is a copy of the letter showing the deletions proposed to be made when it is disclosed under § 6110.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to the taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

William A. Jackson
Branch Chief, Branch 5
(Income Tax & Accounting)

Enclosure (1) Copy of letter for section 6110 purposes