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:

Refer Reply To:
CC:PSI:B07
PLR-101755-04
Date:
March 30, 2005

In Re:

Legend

Taxpayer =

x =

Dear :

We received your letter requesting rulings concerning the treatment of Taxpayer's commission expenses under § 173 of the Internal Revenue Code. This letter responds to your request.

The information submitted and the representations made are summarized as follows: Taxpayer is the publisher of various magazines. Taxpayer sells monthly subscriptions to its magazines that typically run for a period of 12 months. The subscriptions are sold through third-party sales agents that are paid a commission for each subscription sold. The subscription proceeds are collected by the sales agents prior to the start of the subscription term. The sales agents retain an agreed-upon portion of the proceeds as compensation for their services and remit the remaining amount to Taxpayer. Taxpayer processes both new and renewal subscriptions upon receipt of payment and supporting documentation from the sales agents. Taxpayer does not significantly vary the number of sales agents that it maintains agreements with from year to year.

For both financial statement and federal income tax purposes, Taxpayer capitalizes the amount of commissions relating to the sale of each new and renewal magazine subscription and amortizes the commissions on a monthly basis over the term of the subscription period.

Section 173(a) provides that notwithstanding § 263, all expenditures (other than expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical) to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical shall be allowed as a deduction; except that the deduction shall not be allowed with respect to the portion of such expenditures as, under regulations prescribed by the Secretary, is chargeable to capital account if the taxpayer elects, in accordance with such regulations, to treat such portion as so chargeable. Such election, if made, must be for the total amount of such portion of the expenditures which is so chargeable to capital account, and shall be binding for all subsequent taxable years unless, upon application by the taxpayer, the Secretary permits a revocation of such election subject to such conditions as he deems necessary.

Section 1.173-1(a) states that § 173 provides for the deduction from gross income of all expenditures to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical, subject to the following limitations:

(1) No deduction shall be allowed for expenditures for the purchase of land or depreciable property or for the acquisition of circulation through the purchase of any part of the business of another publisher of a newspaper, magazine, or other periodical;

(2) The deduction shall be allowed only to the publisher making the circulation expenditures; and

(3) The deduction shall be allowed only for the taxable year in which such expenditures are paid or incurred.

Subject to the provisions of § 1.173-1(c), the deduction permitted under § 173 and § 1.173-1(a), shall be allowed without regard to the method of accounting used by the taxpayer and notwithstanding the provisions of § 263 and the regulations thereunder, relating to capital expenditures.

Section 1.173-1(c)(1) provides that a taxpayer entitled to the deduction for circulation expenditures provided in § 173 and § 1.173-1(a) may, in lieu of taking such deduction, elect to capitalize the portion of such circulation expenditures which is properly chargeable to capital account. As a general rule, expenditures normally made from year to year in an effort to maintain circulation are not properly chargeable to capital account; conversely, expenditures made in an effort to establish or to increase circulation are properly chargeable to capital account. For example, if a newspaper normally employs five persons to obtain renewals of subscriptions by telephone, the expenditures in connection therewith would not be properly chargeable to capital account. However, if such newspaper, in a special effort to increase its circulation, hires for a limited period 20 additional employees to obtain new subscriptions by means of telephone calls to the general public, the expenditures in connection therewith would be

properly chargeable to capital account. If an election is made by a taxpayer to treat any portion of the taxpayer's circulation expenditures as chargeable to capital account, the election must apply to all such expenditures which are properly so chargeable. In such case, no deduction shall be allowed under § 173 for any such expenditures. In particular cases, the extent to which any deductions attributable to the amortization of capital expenditures are allowed may be determined under §§ 162, 263, and 461.

Section 1.173-1(c)(2) provides that a taxpayer may make the election referred to in § 1.173-1(c) by attaching a statement to the taxpayer's return for the first taxable year to which the election is applicable. Once an election is made, the taxpayer must continue in subsequent taxable years to charge to capital account all circulation expenditures properly so chargeable, unless the Commissioner, on application made to the Commissioner in writing by the taxpayer, permits a revocation of such election for any subsequent taxable year or years. Permission to revoke such election may be granted subject to such conditions as the Commissioner deems necessary.

Based on the information submitted and the representations made, we conclude that Taxpayer's commission expenses are circulation expenses. We further conclude that Taxpayer may deduct its circulation expenses for the taxable year ending on x and all subsequent taxable years, provided that Taxpayer does not elect in a later year to capitalize circulation expenses that are properly chargeable to capital account.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, we express or imply no opinion whether Taxpayer's circulation expenditures are properly chargeable to capital account.

This ruling is directed only to the taxpayer(s) 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 is being sent to the taxpayer.

A copy of this letter must be attached to any income tax return to which it is relevant.

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.

Sincerely,

/s/
Brenda M. Stewart
Senior Counsel, Branch 7
(Passthroughs & Special Industries)

cc: