

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200529005**  
Release Date: 7/22/2005  
Index Number: 173.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B07  
PLR-153844-02

Date:  
March 30, 2005

Legend

Taxpayer =

a =

X =

Publication 1 =

Publication 2 =

Publication 3 =

b =

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 an independent provider of research and analysis related to a. X, a business segment of Taxpayer, provides subscriptions to three publications, Publication 1, Publication 2, and Publication 3, related to a. With the advent of the internet, X's method of distributing its publications has evolved from a print media and CD-ROM based distribution to a web based distribution. The publications are provided on a continuing basis and are updated daily, weekly, or monthly. Each publication contains original articles by various authors on numerous topics germane to a. No publication is complete of itself, but is related to prior and subsequent publications. Subscribers may access indexes to prior publications, thereby enabling the subscribers to select issues from the previous twelve months. Taxpayer is obligated to provide its subscribers with current information on a. The articles appearing in the publications maintain that subject matter.

Taxpayer's sales executives (executives) market and sell all products and services offered by Taxpayer, including the subscription-based publications sold on behalf of X. Taxpayer provides incentives to its executives through a combination of fixed and variable compensation, including commissions. The executives are paid a variable commission (in addition to a fixed amount salary) that is based on an annually agreed upon sales goal for the sales of subscriptions to the publications. This ruling request relates only to the commissions earned by executives for achieving and/ or exceeding their previous sales goals.

For both financial statement and federal income tax purposes, Taxpayer records the amount of the commissions as a debit to prepaid commissions and a credit to commissions payable upon the submittal by the sales representative of a sales order form, signed master client agreement, signed contract, and purchase order form (if applicable). Taxpayer records the payment of the commissions as a debit to commissions payable and a credit to cash. Taxpayer amortizes the prepaid commissions account 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)(1) 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.

In order for Taxpayer's commission expenditures to qualify as circulation expenditures, the publications must qualify as "other periodicals" within the meaning of § 173(a). Neither § 173 nor the regulations thereunder define the term "periodical." However, in Houghton v. Payne, 194 U.S. 88, 97 (1904), the Supreme Court stated that a periodical generally is understood as having the following characteristics:

- (1) It appears at stated intervals;
- (2) Each number contains a variety of original articles by different authors;
- (3) Each number is devoted to some special branch of learning or a special class of subjects;

(4) Each number is incomplete in itself; and

(5) Each number indicates a relationship with prior or subsequent numbers of the same series (continuity of literary character).

Based on the information submitted and the representations made, we conclude that Taxpayer's publications qualify as "other periodicals" within the meaning of § 173(a). Therefore, Taxpayer's commission expenses are circulation expenses that are deductible under § 173. We further conclude that Taxpayer may deduct its circulation expenses for the taxable year ending on b 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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,

Brenda M. Stewart  
Senior Counsel, Branch 7  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)