Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Technical Advisor, Media and Entertainment
(Pre-Filing &Technical Guidance, Technical Advisors, Group 5)

from: Industry Counsel For Media
(Large & Mid-Size Business)

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subject: Accrual of Telecast License Fees

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

LEGEND

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Sports Leagues	=
Teams	=
Sport 1	=
Sport 2	=
Sport 3	=
Operating	=

We respond to your request for advice on the accrual and amortization of the liabilities of Taxpayer for fees for rights to telecast sporting events under three license agreements. This advice is subject to 15-day post-review by the National Office. CCDM 33.1.2.3.2. In accordance with IRC §6110(k)(3), this advice should not be cited as precedent.

ISSUE

Whether Taxpayer properly accrued its liability for annual license fees under an agreement for rights to telecast sporting events as they occurred over a multi-year term even though the fees were payable in installments, some of which were due in the following tax year?

CONCLUSIONS

After reviewing the agreements and applicable authorities, we conclude that Taxpayer properly accrued its annual license fee liabilities as the sporting events occurred and it was entitled to telecast the games, that is, when the liabilities were fixed, and economic performance occurred.

FACTS

Taxpayer, an accrual-basis taxpayer, is a television network and cable/satellite programming provider, which transmits television programming to local television stations for broadcast to television viewers and to cable and satellite operators for distribution to subscribers. Taxpayer uses a fiscal year ending Date 1. Taxpayer entered into three contracts ("telecast contracts") with Sports Associations, unincorporated, non-profit associations of Teams that oversee and produce interscholastic sporting events for their members.

The telecast contracts each grant exclusive rights to telecast, on a live or delayed basis, a specified number of Sport 1 or Sport 2 games per Operating year (beginning on Date 2) as well as rights to telecast additional sporting events (for example, Sport 3). Taxpayer agrees to telecast the Sport 1 or Sport 2 games on a national or regional basis and to pay annual fees in installments due over the Operating year before, during and following the respective sports season. Two of the contracts provide for final annual fee installments to be paid in the fiscal year following the season, on Date 3 and Date 4, respectively. None of the telecast contracts call for installments to be made in fiscal years prior to a respective sports season. A season's games are played entirely within a single fiscal year since the Sport 1 season runs from September through January and the Sport 2 season runs from November through March of an Operating year. The telecast contracts are for terms from seven to ten years in length.

For tax purposes, Taxpayer accrues the entire annual fee for rights to telecast a season's games in the year the games are played and most of the installments are due, even though some installments are not due until the subsequent year.

LAW

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 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. Therefore, 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, 243-4 (1987).

Generally, 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 therefore is due, whichever happens earliest. Rev. Rul. 80-230, 1980-2 C.B. 169; Rev. Rul. 79- 410, 1979-2 C.B. 231, amplified by Rev Rul. 2003-90, 2003-2 C.B. 353. The terms of a contract are relevant in determining the events that establish the fact of a taxpayer's liability. See, e.g., Decision, Inc. v. Commissioner, 47 T.C. 58 (1966), acq., 1967-2 C.B. 2.

Section 461(h) and § 1.461-4 provide that, for purposes of determining whether an accrual basis taxpayer can treat the amount of any liability as incurred, the all events test is not treated as met any earlier than the taxable year in which economic performance occurs with respect to the liability.

Section 1.461-4(d)(2) provides that if a liability of a taxpayer arises out of the providing of services or property to the taxpayer by another person, economic performance occurs as the services or property is provided.

Section 1.461-4(d)(3) provides that if a liability of a taxpayer arises out of the use of property by the taxpayer, economic performance occurs ratably over the period of time the taxpayer is entitled to the use of the property.

ANALYSIS

The all-events test is met, with respect to Taxpayer's liability for an annual fee for rights to telecast Sport 1 or Sport 2 games, in the year the games are played and the initial installment payments are due. The fact that final installment payments may be due in a subsequent year does not prevent accrual in the year the games are played since

Taxpayer's liability is fixed by the earlier of performance or payment being due. See Rev. Rul. 80-230; Rev. Rul. 79-410. The amount of the liability can be determined with reasonable accuracy in the year the games are played. Economic performance with respect to the annual fee liability also occurs in the year the games are played, ratably on a game-by-game basis as Taxpayer is entitled to broadcast games. *See* § 1.461-4(d)(3).

The fact of the liability for the annual license fees was not established when Taxpayer executed the telecast contracts. It is well established that an accrual basis obligor is not permitted to deduct an expense stemming from a bilateral contractual arrangement, that is, mutual promises, prior to the performance by the obligee, whether performance of services, delivery of goods or, as in this case, the availability of property for use by the obligor. Rev. Rul. 2007-3, 2007-1 C.B. 350 (holding that the mere execution of a contract, without more, does not establish the fact of a taxpayer's liability) and Rev. Rul. 80-182, 1980-2 C.B. 167, citing Levin v. Commissioner, 21 T.C. 996 (1954), aff'd, 219 F.2d 588 (3d Cir. 1955) (an agreement for subway advertising to be performed in the next year did not establish the fact of the taxpayer's liability but was simply an agreement under which a liability would be incurred in the future) and Amalgamated Housing Corp. v. Commissioner, 37 B.T.A. 817 (1938), aff'd per curium, 108 F.2d 1010 (2d Cir. 1940) (an agreement to renovate property in the future did not establish the fact of the taxpayer's liability; the accrual was for services in renovating, not the duty to renovate). See also, Consolidated Foods Corp. v. Commissioner, 66 T.C. 436, 442-443 (1976), (the signing of a 25-year lease agreement did not fix the lessee's liability for all 25 years of lease payments). Thus, the mere execution of the telecast contracts by Taxpayer was not sufficient, by itself, to establish the fact of Taxpayer's liabilities for annual fees payable for rights to telecast games to be played in subsequent years.

CONCLUSION

Taxpayer's liabilities under the telecast contracts for annual license fees are incurred season-by-season because the fact of liability is established as games are played and the initial installments become due and economic performance occurs as Taxpayer is entitled to telecast the games.