

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

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CASE MIS No.: TAM-148083-01/CC:ITA:B4

District Director
Upstate New York District

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No.:
Years Involved:
Date of Conference:

November 29, 2001

LEGEND:

Taxpayer

X

Y

Z

Date 1

Date 2

A

B

C

D

City P

City Q

City R

City S

\$h

\$i

\$j

\$k

\$l

ISSUE:

Is the assigned frequency of the electromagnetic spectrum referred to in a Federal Communications Commission (FCC) television broadcast station license (television license) acquired by Taxpayer on Date 2 the sole underlying property to which the television license relates for purposes of the nonrecognition rules under § 1031 of the Internal Revenue Code?

CONCLUSION:

The assigned frequency of the electromagnetic spectrum referred to in the television license is the sole underlying property to which the television license relates.

FACTS:

Taxpayer is the parent company of an affiliated group that files a consolidated return on a 52-53 week taxable year. X, a subsidiary that was a member of Taxpayer's consolidated group, entered into an asset exchange agreement on Date 1, with Y. Y was subsequently acquired by a consolidated group with Z as the parent company. Pursuant to the agreement, on Date 2, X transferred to Y radio station A in City P, radio station B in City Q, and radio station C in City R, and acquired from Y television station D in City S.

Taxpayer reported for financial reporting purposes that the television station acquired in the exchange had a fair market value of \$h, while the radio stations surrendered in the exchange had a basis of \$i. Taxpayer, therefore, reported a pre-tax, non-cash, non-operating gain of \$j for financial reporting purposes. The FCC licenses represented the largest portion of the exchange with the FCC radio licenses valued at \$k and the FCC television license valued at \$l.¹ For federal income tax purposes, Taxpayer treated the exchange of FCC radio licenses for the FCC television license as an exchange of like kind property under § 1031(a).

As part of the asset exchange agreement, X transferred tangible property to Y and received tangible property from Y. The bulk of such property was radio and television broadcasting equipment that was in the same product class as set forth in the 1987 Standard Industrial Classification ("SIC") Manual. That product class is SIC code number 3663, which is entitled "Radio and Television Broadcasting and Communications Equipment." Certain other equipment transferred by X and Y pursuant to the asset exchange agreement, including towers used to hold radio and television broadcast equipment, was in the same product class as set forth in the SIC Manual. For federal income tax purposes, Taxpayer treated the exchange of this tangible property as qualifying under § 1031(a).²

The Communication Act of 1934 (the "Communication Act") grants the FCC the power to license "radio stations." 47 U.S.C. § 303(a) (1995 & 1999 Supp.). Under this grant of authority, the FCC licenses both radio and television

¹ The questions of valuation and/or allocation of value of the FCC licenses are not at issue in this technical advice memorandum.

² The treatment of the exchange of tangible personal property is not at issue in this technical advice memorandum.

broadcasting. FCC regulations define “radio station” as “[a] separate transmitter or group of transmitters under simultaneous common control, including the necessary equipment required for carrying on a radio communications service.” 47 C.F.R. § 1.907. FCC regulations define “radio communication” to mean “[t]elecommunication by means of radio waves,” which applies to both radio and television broadcasting. 47 C.F.R. § 2.1. Thus, both radio and television are transmitted over the electromagnetic spectrum by radio transmitting equipment. The Communications Act further grants the FCC the power to “assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate.” 47 U.S.C. § 303(c) (1995 & 1999 Supp.).

The usable radio frequencies of the electromagnetic spectrum range from about 30,000 hertz to 30 gigahertz. Radio broadcasts can be transmitted over frequencies as low as 30 - 3,000 kilohertz (low frequency) to 300 - 3,000 megahertz (ultra high frequency, “UHF”). Television broadcasts can be transmitted over frequencies as low as 30 - 3,000 megahertz (very high frequency, “VHF”) to 300 - 3,000 megahertz (UHF). There are 12 VHF channels and 56 UHF channels.

The bandwidth of a radio frequency dictates the amount of information that the frequency can carry. Due to the complexity of a television signal, a much larger bandwidth is needed in comparison to an audio only signal. In the United States, a television channel occupies a width of six megacycles in the radio spectrum. This is 600 times as wide as the channel used by each standard sound broadcasting station.

The rights conferred upon holders of FCC licenses (both radio and television) are described in the FCC licenses themselves. Each of the licenses involved in the exchange expressly states that “the licensee is hereby authorized to use and operate the radio transmitting apparatus herein described.” More specifically, each of the FCC licenses confers a right to use the radio transmitting apparatus to broadcast on a designated channel and frequency range, at designated hours of operation, at designated geographic locations, at a maximum effective radiated power, and using antenna with certain antenna system specifications.

Section 301 of the Communication Act confirms that the licenses themselves confer the rights held by licensees. Section 301 provides:

It is the purpose of this chapter, among other things, to maintain control of the United States over all the channels of radio transmission, and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and *no such licenses shall be construed to create any right,*

beyond the terms, conditions, and periods of the license. 47 U.S.C. § 301 (1995 & 1999 Supp.) (emphasis added).

The FCC licenses (both radio and television licenses) involved reflect the mandate of § 301 in the following language:

This license shall not vest in the licensee any right to operate the station nor any right in the use of the frequency designated in the license beyond the term hereof, nor in any other manner than authorized herein.

Thus, the FCC licenses themselves contain the rights to use radio transmitting apparatus to broadcast programming (whether radio or television) over a portion of the electromagnetic spectrum at a certain power in a designated geographic area.

LAW AND ANALYSIS:

Section 1031(a)(1) provides generally that no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment. See also § 1.1031(a)-1(a) of the Income Tax Regulations.

Section 1.1031(a)-1(b) provides that “like kind” refers to the nature or character of the property and not to its grade or quality. One kind or class of property may not, under § 1031, be exchanged for property of a different kind or class. See also § 1.1031(a)-2(a).

Section 1.1031(a)-2(c)(1) provides generally that an exchange of intangible personal property or non-depreciable personal property qualifies for nonrecognition of gain or loss under § 1031 only if the exchanged properties are of a like kind. No like classes are provided for these properties. Whether intangible personal property is of a like kind to other intangible personal property generally depends on the nature or character of the rights involved (e.g., a patent or a copyright) and also on the nature or character of the underlying property to which the intangible personal property relates. For example, an exchange of a copyright on a novel for a copyright on a different novel is a like kind exchange, but an exchange of a copyright on a novel for a copyright on a song is not a like kind exchange. Section 1.1031(a)-2(c)(3).

Taxpayer argues that the assigned frequency of the electromagnetic spectrum referred to in the television license is not the only underlying property to which

the television license relates.³ Taxpayer asserts that the ability to affiliate with a major television network should also be included as part of the underlying property to which the license relates. Taxpayer contends that the ability to affiliate with a major television network is not attributable to its existence as a separate and identifiable asset but derives from the fact that it inheres in the television license itself.

We reject Taxpayer's argument that the ability to affiliate with a major television network should also be included as part of the underlying property to which the television license relates. The appropriate manner of identifying the underlying property to which the license relates is to look to the license itself. Although the license specifically authorizes Taxpayer to "use and operate the radio transmitting apparatus herein described," the license principally relates to the use of the radio transmitting apparatus. Thus, for purposes of § 1031, the assigned frequency of the electromagnetic spectrum referred to in the television license is the sole underlying property to which the license relates.

CAVEAT:

A copy of this technical advice memorandum is to be given to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

³ On May 11, 2000, we issued technical advice regarding whether the exchange of the FCC radio licenses for an FCC television broadcast station license qualified as a like kind exchange subject to the nonrecognition rules under § 1031. The technical advice memorandum concluded that Taxpayer's exchange of FCC radio licenses for an FCC television license qualified as a like kind exchange under § 1031.