Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DEN:POSTF-147836-01
AMHarbutte

date: 10-18-2001

to: Internal Revenue Service
Denver Appeals, attn: Mike Drury

from: ALICE M. HARBUTTE
Attorney (LMSB)

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subject: [redacted]
Forms 870-AD and 907

This memorandum is in response to your request made on September 10, 2001, for this office to review Forms 870-AD and 907, relating to [redacted]. On October 15, 2001, you advised us that the Form 870 was going to be used to reflect the agreed upon adjustments and that our office no longer needed to review the Form 870-AD. Our office has reviewed the Form 907, Agreement to Extend the Time to Bring Suit. Our suggested changes are set forth below.

A Form 907 is an agreement to extend the time for the taxpayer to bring a suit for refund with respect to timely claims that have already been filed. See I.R.C. § 6532(a)(2). In the Form 907 for the above-referenced matter, the Appeals Division wishes to limit the issues that may be raised in any refund suit that might be brought by the taxpayer to certain "intangible issues." In order to accomplish this, you added the following language to the Form 907:

> The claims for refund on this Form 907 involve the loss deductions for subscriber base intangible assets. Loss deductions under Section 165 have been claimed when a subscriber or group contracts terminate or are abandoned using values determined under the special rules of Section 1012(c)(3)(A)(ii) of the Tax Reform Act of 1986. Formal claims for these loss deductions have been filed for the years [redacted] through [redacted]. Additionally, the amounts on these intangibles claims may be impacted by related carryback and carryover adjustments

> including, but not limited to the following item: net operating losses, AMT credits, general business credits, charitable contributions, capital losses, and AMT. Additionally, these refunds may involve the interest computations including those using the principles of interest netting under Section 6621(d).

As presently worded, the Form 907 does not clearly state that the parties are agreeing to limit the issues the taxpayer may raise in any future refund suit. At a minimum, we recommend that the **bolded** language shown below, be added to the Form 907 in order to attempt to restrict the taxpayer to only raising the issues listed in this paragraph. It is unclear whether such restrictions contained in a Form 907 would be binding on the taxpayer since a Form 907 is an agreement to extend the date for which the taxpayer may bring a suit for refund. If you need more certainty as to whether the taxpayer will be bound by the restrictions contained in the Form 907 you may want to use a Form 906, Closing Agreement.

> The claims for refund on this Form 907 involve the loss deductions for subscriber base intangible assets. Loss deductions under Section 165 have been claimed when a subscriber or group contracts terminate or are abandoned using values determined under the special rules of Section 1012(c)(3)(A)(ii) of the Tax Reform Act of 1986, **(the "intangible issue")**. Formal claims for these loss deductions have been filed for the years [redacted] through [redacted]. **The parties agree that any refund suit that may be filed by the taxpayer will be limited to the intangible issue with the following exceptions:** The amounts on these intangibles claims may be impacted by related carryback and carryover adjustments including, but not limited to the following item: net operating losses, AMT credits, general business credits, charitable contributions, capital losses, and AMT. Additionally, these refunds may involve the interest computations including those using the principles of interest netting under Section 6621(d).

Last, we would like to point out that the language as presently worded permits the taxpayer to raise additional issues such as general business credits, charitable contributions, capital losses and AMT credits. As a result, the Form 907 does not act to limit the taxpayer to raising solely the "intangible issues" in any future refund suit.

If you have any questions concerning this matter please call Attorney Alice M. Harbutte at (303) 844-2214, ext. 224.

/s/
ALICE M. HARBUTTE
Attorney (LMSB)