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Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

Date:
SEP - 1 1999

W =

H =

Date 1 =

Date 2 =

State =

a =

b =

c =

Dear :

This letter responds to your letter dated , , as modified by your letters dated , , and , , submitted on behalf of W, requesting a ruling under section 197 of the Internal Revenue Code.

FACTS:

W represents the facts are as follows.

H died on Date 1, a date after August 10, 1993. At the time of H's death, H and W were husband and wife living in State, a community property state. During the

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period from Date 2 to H's death, H and W owned a business proprietorship as community property. As determined for federal estate tax purposes, the fair market value of both H and W's community property interests in this business proprietorship at the time of H's death is $a. Of this amount, $b is attributable to tangible assets and $c to intangible assets. The intangible assets are goodwill, going concern value, workforce in place, information base, knowhow, customer-based intangibles, supplier-based intangibles, and licenses, permits, and other rights granted by governmental units. On H's death, H's one-half interest in the community property, including the business proprietorship, was passed to W, H's surviving spouse, and was includible in H's gross estate for federal estate tax purposes. W will continue to own and operate the business proprietorship.

RULING REQUESTED:

W is entitled to an amortization deduction under section 197 of the Code with respect to the intangibles attributable to both H and W's community property interests in the business proprietorship.

LAW AND ANALYSIS:

Section 197(a) of the Code provides that a taxpayer is entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over the 15-year period beginning with the month in which the intangible was acquired.

Section 197(c)(1) of the Code provides that the term "amortizable section 197 intangible" generally means any section 197 intangible that is acquired by the taxpayer after August 10, 1993, and that is held in connection with the conduct of a trade or business or an activity described in section 212.

Section 197(d)(1)(A) and (B) of the Code provides that the term "section 197 intangible" includes goodwill and going concern value.

Section 197(d)(1)(C) and (D) of the Code provides that the term "section 197 intangible" also includes workforce in place, information base, knowhow, customer-based intangibles, supplier-based intangibles, and licenses, permits, and other rights granted by governmental units.

Section 197(f)(9)(A) of the Code provides that the term "amortizable section 197 intangible" shall not include any section 197 intangible that is described in section 197(d)(1)(A) or (B) (or for which depreciation or amortization would not have been

allowable but for section 197) and that is acquired by the taxpayer after August 10, 1993, if the intangible was held or used at any time on or after July 25, 1991, and on or before August 10, 1993, by the taxpayer or a related person.

Under sections 197(f)(9)(C), 267(b)(1), and 267(c)(4) of the Code, a spouse of an individual is a related person.

Section 197(f)(9)(D) of the Code provides that section 197(f)(9)(A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

Section 1014(a)(1) of the Code provides that except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death.

Section 1014(b)(6) of the Code provides that for purposes of section 1014(a), the following property shall be considered to have been acquired from or to have passed from the decedent: In the case of decedents dying after December 31, 1947, property that represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any state, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the 1939 Code.

Section 167(a) of the Code provides that there shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence) of property used in the trade or business or held for the production of income.

Section 1.167(a)-3 of the Income Tax Regulations provides that if an intangible asset is known from experience or other factors to be of use in the business or in the production of income for only a limited period, the length of which can be estimated with reasonable accuracy, such an intangible asset may be the subject of a depreciation allowance. Examples are patents and copyrights. An intangible asset, the useful life of which is not limited, is not subject to the allowance for depreciation. No allowance will be permitted merely because, in the unsupported opinion of the taxpayer, the intangible asset has a limited useful life. No deduction for depreciation is allowable with respect to goodwill.

In Newark Morning Ledger Co. v. U.S., 507 U.S. 546, 570 (1993), the Supreme Court held that the taxpayer had borne successfully its substantial burden of proving that "paid subscribers" constitutes an intangible asset with an ascertainable value and a limited useful life, the duration of which can be ascertained with reasonable accuracy. The taxpayer had proved that the asset is not self-regenerating but rather wastes as the finite number of component subscriptions are canceled over a reasonably predictable period of time.

In the present case, W acquired the intangibles attributable to H's one-half interest in the community property by reason of H's death, which was after August 10, 1993. Further, W represents that she will continue to own and operate the business proprietorship. Accordingly, these intangibles are amortizable section 197 intangibles.

However, W had an interest in the intangibles attributable to her one-half interest in the community property on August 10, 1993, and at the time of H's death. Consequently, W neither acquired these intangibles after August 10, 1993, nor by reason of H's death. Thus the intangibles are not amortizable section 197 intangibles.

CONCLUSIONS:

Accordingly, based solely on the representations and relevant law and analysis as set forth above, we conclude that:

1. W is entitled to an amortization deduction under section 197 of the Code with respect to the intangibles attributable to H's one-half interest in the community property that was passed to W.

2. With respect to the intangibles attributable to W's one-half interest in the community property, W is not entitled to an amortization deduction under section 197 of the Code. However, W may be able to amortize these intangibles, other than goodwill and going concern value, under section 167 if W can establish that the intangibles have an ascertainable value and a limited useful life, the duration of which can be ascertained with reasonable accuracy.

Except as specifically ruled upon above, no opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on the fair market value, useful life, or basis of the intangibles.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet

been adopted. Therefore, this ruling may be modified or revoked by the adoption of temporary or final regulations to the extent the regulations are inconsistent with any conclusion in this ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter ruling to W.

Sincerely,

KATHLEEN REED
Senior Technician Reviewer,
Branch 6
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

enclosure:
copy for section 6110 purposes