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Revenue Ruling 76-374

Advance payment toward informant's award.

A payment received by a cash basis taxpayer from the U.S. Government as an advance on an informant's award of an undetermined amount is includible in gross income in the year received. The subsequent repayment of a portion of the advance in excess of the award is deductible in the year repaid as an itemized deduction under section 165(a) of the Code.

Advice has been requested concerning the treatment for Federal income tax purposes of a payment received by a taxpayer as an advance toward an award for information furnished by the taxpayer under the circumstances described below.

The taxpayer, who uses the cash receipts and disbursements method of accounting, received an advance payment toward an award during the taxable year from the United States Government for supplying information relating to violations of certain United States laws. At the time the advance payment was made no firm amount was established for the award. The amount of the award will be established in a subsequent year. In the event the award is established in an amount in excess of the advance, the taxpayer will receive such excess amount. If the award is established in an amount less than the advance, the taxpayer will be required to refund such difference to the United States Government.

Section 61 of the Internal Revenue Code of 1954 defines gross income as all income, from whatever source derived, except as otherwise provided by law.

Section 1.61-2 of the Income Tax Regulations includes in gross income compensation for services such as fees, <Page 20> commissions, and similar items including rewards.

Section 165(a) of the Code provides that there shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 165(c) of the Code provides that in the case of an individual, the deduction under subsection 165(a) shall be limited to certain types of losses, including losses incurred in any transaction entered into for profit, though not connected with a trade or business.

In *North American Oil Consolidated v. Burnet*, 286 U.S. 417 (1932), XI-1 C.B. 293, the Supreme Court of the United States stated that if a taxpayer received earnings under a claim of right and without restriction as to its disposition, the taxpayer has received income that the taxpayer is required to report, even though it may still be claimed that the taxpayer is not entitled to retain the money, and even though the taxpayer may still be adjudged liable to restore its equivalent. Accordingly, in the instant case, the payment received by the taxpayer as an advance toward an award to be made for information furnished by the taxpayer is includible in the taxpayer's gross income in the year received.

Further, in the event the taxpayer is required to repay any part of the advance to the United States Government in a subsequent year, the amount of such repayment is deductible in the year repaid pursuant to section 165(a) of the Code provided the taxpayer itemizes deductions.