Part IV – Items of General Interest

Replacement of Lead Service Lines under Certain Governmental Programs

Announcement 2024-10

This announcement addresses the Federal income tax treatment of certain lead service line replacement programs for residential property owners.

The Environmental Protection Agency (EPA) has determined that lead has no safe exposure level. In drinking water, it causes serious and long-term health problems. Lead enters the drinking water when lead pipes and plumbing fixtures corrode. Given the health risks, many governmental entities have adopted programs for replacing lead service lines. The 2021 Infrastructure Investment and Jobs Act appropriated approximately \$15 billion to governmental entities, as administered by the EPA, for the identification and replacement of lead service lines, almost half of which will be provided to disadvantaged communities as grants or principal forgiveness. See Pub. L. No. 117-58, 135 Stat. 429, div. J, tit. VI.

A lead service line is defined in 40 CFR 141.2 as a pipe and its fittings, which are not lead free, that connect a drinking water main to a building inlet. A lead service line can

be owned by a public water system, owned by a property owner, or jointly owned.

Typically, a lead service line is part-owned by the public water system and part-owned by the property owner. The portion of the lead service line on public property (public portion) runs from the water main to the boundary of the residential property. The portion on the residential property (privately-owned portion) runs from the residential property's boundary to the house or building.

The Federal government and many state governments require that the privatelyowned portion of the lead service line be replaced simultaneously with the other
relevant parts of the water system that contain lead. Digging and cutting during partial
replacement is known to release more lead into the drinking water. New materials from
partial lead service line replacement activities can also increase corrosion.

Generally, governmental entities replace lead service lines at no cost to property owners in two ways. In many cases, the public water system, using its own workers and contractors, replaces the public portion and private portion simultaneously and controls the timing and scope of the work performed by its employees and its approved contractors. The public water system typically obtains the owner's explicit consent to enter the residential property to replace the privately-owned portion. In some municipalities, however, consent is deemed granted under local laws. *See, for example*, N.J.S.A. C.58:12A-39 (2020).

In other cases, the public water system reimburses residential property owners, or directly pays contractors on the residential property owners' behalf, to replace the privately owned portions of lead service lines. For jurisdictions that choose this method, replacement of the private and public portions typically occurs simultaneously in order to

prevent further lead contamination in the system. In these cases, the public water system generally controls the quality and reliability of the contractors either by providing a pre-approved list for the local area or by individually approving a contractor before work may be started.

The Department of the Treasury (Treasury Department) and Internal Revenue Service (IRS) have considered the Federal income tax treatment of the lead service line replacement programs described above. In both scenarios, the public water system controls all or virtually all aspects of the replacement work. While there are factual variations, the Treasury Department and the IRS have determined that these variations do not warrant a different outcome under the Federal tax laws. Accordingly, the replacement of lead service lines under the programs described above does not result in income to the residential property owners under § 61 of the Internal Revenue Code.1 See Bailey v. Commissioner, 88 T.C. 1293 (1987), acq. 1989-1 C.B. 1 (recipient of a rehabilitation grant from municipality lacked dominion and control where city controlled the rehabilitation work). The rules under § 6041 and § 1.6041–1(a) and (f)(1) requiring information reporting (such as on a Form 1099-Misc., Miscellaneous Information or Form 1099-G, Certain Government Payments) do not apply to the cost or value of replacing lead service lines under the programs described above, based on the determination that such replacement does not give rise to gross income to the property owner under § 61. Accordingly, water systems and state governments are not required to file information returns or furnish payee statements with respect to the replacement of lead service lines under these programs.

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¹ Unless otherwise specified, all "§" references are to sections of the Internal Revenue Code or to the Income Tax Regulations (26 CFR part 1).

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