

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 118, 362.)

Rev. Proc. 2011-30

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for the treatment of certain awards regarding clean coal technology made by the National Energy Technology Laboratory (NETL), United States Department of Energy (DOE) to corporate taxpayers.

SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

42 U.S.C. 15962 directs DOE to provide assistance for projects that advance efficiency, environmental performance, and cost competitiveness well beyond the level of technologies that are in commercial service or have been demonstrated on a scale that DOE determines is sufficient to demonstrate that commercial service is viable as of August 8, 2005. To implement this program, NETL issued a Financial Assistance Funding Opportunity Announcement for Clean Coal Power Initiative - Round 3 (DE-PS26-08NT43181 and DE-FOA-0000042, dated August 11, 2008, as amended by Amendment 005, dated June 9, 2009, and Amendment 006, dated July 16, 2009) (CCPI - Round 3). This guidance may be accessed electronically at:

<http://www.energy.gov/recovery/documents/vDE-FOA-0000042.pdf>.

42 U.S.C. 17251 directs DOE to carry out a program to demonstrate technologies for the large-scale capture of carbon dioxide from industrial sources. To implement this program, NETL issued a Financial Assistance Funding Opportunity Announcement for Carbon Capture and Sequestration from Industrial Sources and Innovative Concepts for Beneficial CO₂ Use (DE-FOA-0000015, dated June 8, 2009, as amended by Amendment 001, dated July 17, 2009) (ICCS). This guidance may be accessed electronically at: <http://www.energy.gov/recovery/documents/DE-FOA-0000015.pdf>.

On September 27, 2010, NETL awarded assistance for a commercial-scale, oxy-combustion power plant and carbon dioxide sequestration facility (FutureGen 2.0). A project summary may be accessed electronically at:

<http://www.recovery.gov/Transparency/RecipientReportedData/pages/RecipientProjectSummary508.aspx?AwardIdSur=115412&AwardType=Grants>.

Division A, Title IV of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (ARRA) appropriated \$3.4 billion for Fossil Energy Research and Development, of which DOE allocated approximately \$796 million to CCPI - Round 3, approximately \$703 million to ICCS, and approximately \$995 million to FutureGen 2.0.

SECTION 3. SCOPE

This revenue procedure applies to corporate taxpayers that receive an award from DOE funded in whole or in part by ARRA under CCPI - Round 3, ICCS, or FutureGen 2.0. This revenue procedure applies only if the corporate taxpayer has the right to retain ownership of its inventions made under an award, either by statute or under a waiver of patent rights from DOE.

This revenue procedure does not apply to noncorporate taxpayers. In addition, this revenue procedure does not apply to the portion of an award paid or incurred for non-capital expenditures (such as operating expenses) or for research and experimental expenditures under section 174 of the Code.

SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporate taxpayer's treatment of an award from DOE under CCPI - Round 3, ICCS, or FutureGen 2.0 as a

nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporate taxpayer properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective April 14, 2011.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. McDonnell at (202) 622-3040 (not a toll free call).