

Rev. Proc. 2017-22

SECTION 1. PURPOSE

This revenue procedure clarifies that the safe harbor provided in Rev. Proc. 2010-46, 2010-49 I.R.B. 814, applies to any Transportation Investment Generating Economic Recovery grants (TIGER Discretionary Grants) for capital investments in surface transportation infrastructure made by the Department of Transportation (DOT) pursuant to legislative authorizations of these grants made after the publication of Rev. Proc. 2010-46.

SECTION 2. BACKGROUND

Section 118(a) of the Internal Revenue 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 § 118 applies to contributions to capital made by a person other than a shareholder, for example, contributions of property to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

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

Rev. Proc. 2010-46, in part, provides a safe harbor under § 118(a) for certain grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital investments in surface transportation infrastructure under (1) the Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure (TIGER I Discretionary Grants) program as authorized by Title XII,

Division A of ARRA; or (2) the National Infrastructure Investments (TIGER II Discretionary Grants) program as authorized by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Title I, Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117)).

In 2009, the Office of the Secretary of Transportation issued a Notice of Funding Availability (NOFA), 74 FR 28755, that provides guidance on TIGER I Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. In 2010, the Office of the Secretary of Transportation issued a NOFA, 75 FR 30460, that provides guidance on TIGER II Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. The 2010 NOFA contemplates that some funds may be used to fund the planning, preparation, or design of projects (TIGER II Planning Grants). DOT has issued additional NOFAs and Notices of Funding Opportunity (NOFOs) as legislation enacted subsequent to the publication of Rev. Proc. 2010-46 has provided further appropriations for TIGER Discretionary Grants awarded by DOT.

SECTION 3. SCOPE

This revenue procedure clarifies that the safe harbor of Rev. Proc. 2010-46 applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for the costs of capital investments in surface transportation infrastructure under any TIGER Discretionary Grants, including those authorized in each year following those described in Rev. Proc. 2010-46 as well as any to be authorized in the future. In no case will this revenue procedure apply to amounts received to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and

Innovation Act of 1998 or to amounts received for any TIGER planning grants.

Further, this revenue procedure does not apply to noncorporate taxpayers.

SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation under any TIGER Discretionary Grants for capital investments in surface transportation infrastructure as a nonshareholder contribution to the capital of the corporation under § 118(a) if the corporation properly reduces the basis of its property under § 362(c)(2) and the regulations thereunder. For purposes of this revenue procedure, TIGER Discretionary Grants include those TIGER Discretionary Grants authorized in each year following those described in Rev. Proc. 2010-46 as well as any to be authorized in the future.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2010-46, 2010-49 I.R.B. 814, is clarified.

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) 317-4137 (not a toll free call).