

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 1, §§ 61, 451, 1001.)

Rev. Proc. 2024-15

SECTION 1. PURPOSE

This revenue procedure sets forth the manner in which a public utility may treat certain legislatively authorized transactions entered into by the public utility to recover specified costs through a non-bypassable surcharge to customers within the utility's historic service area. Specifically, this revenue procedure addresses a securitization that involves the issuance of debt instruments by a qualifying State financing entity, as defined below. This revenue procedure also modifies Rev. Proc. 2005-62, 2005-2 C.B. 507, to expand the definition of "public utility" to include all public utilities, not just investor-owned utilities, and to change the definition of a "qualifying securitization" to

allow payments to be provided at least annually.

SECTION 2. BACKGROUND

.01 Rev. Proc. 2005-62 provides that if a public utility company is authorized by State legislation to enter into a transaction to recover certain costs through a “qualifying securitization” (as defined in section 5.04 of that revenue procedure), the public utility will be treated as not recognizing gross income upon (1) the receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization; (2) the receipt of cash or other valuable consideration in exchange for the transfer of that property right to the financing entity that is wholly owned, directly or indirectly, by the utility; or (3) the receipt of cash or other valuable consideration in exchange for securitized instruments issued by the financing entity that is wholly owned, directly or indirectly, by the utility. Rev. Proc. 2005-62 further provides that the securitized instruments issued under such a qualifying securitization will be treated as obligations of the public utility and the non-bypassable charges are gross income to the utility recognized under the utility’s usual method of accounting.

.02 For purposes of Rev. Proc. 2005-62, a “qualified securitization” is defined as an issuance of any bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interest that (1) is secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of the financing entity that is wholly owned, directly or indirectly, by the utility; (2) is issued by a financing entity that is wholly owned, directly or indirectly, by the utility that is initially capitalized by the utility in such a way that equity interests in the financing entity are at least 0.5 percent of the aggregate principal amount of the non-equity interests issued;

and (3) provides for payments on a quarterly or semi-annual basis. Accordingly, the tax treatment permitted in Rev. Proc. 2005-62 applies only if the financing entity is wholly owned, directly or indirectly, by the utility. For a wholly owned entity that is disregarded as an entity separate from the public utility, the activities of the entity are treated in the same manner as a sole proprietorship, branch, or division of the public utility under §§301.7701-2 and 301.7701-3 of the Procedure and Administration Regulations.

.03 Some States have enacted legislation to allow a public utility to engage in transactions similar to those described in Rev. Proc. 2005-62. However, in these transactions, a qualifying State financing entity serves as a financing vehicle to securitize the rights of the public utility created by the financing order. The treatment provided in Rev. Proc. 2005-62 would not apply to such a securitization transaction because the qualifying State financing entity is not wholly owned, directly or indirectly, by the public utility, but instead is a separate entity unrelated to the public utility.

SECTION 3. SCOPE

Section 5 of this revenue procedure applies to public utilities that, pursuant to qualifying securitization financing legislation, receive an irrevocable financing order from an appropriate State agency that determines the amount of certain specified costs the utility will be permitted to recover through a qualifying State securitization of an intangible property right created by the special legislation. Section 6 of this revenue procedure modifies the definitions of public utility and qualifying securitization in Rev. Proc. 2005-62.

SECTION 4. DEFINITIONS

.01 PUBLIC UTILITY

For purposes of this revenue procedure, the terms “public utility” or “utility” refer to any utility company (electric or non-electric) that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

.02 QUALIFYING STATE FINANCING ENTITY

For purposes of this revenue procedure, the term “qualifying State financing entity” means an entity that is designated pursuant to a qualifying securitization financing legislation as a financing entity and that is a State, political subdivision thereof, or other organization authorized to issue debt on behalf of a State or political subdivision thereof.

.03 QUALIFYING SECURITIZATION FINANCING LEGISLATION

For purposes of this revenue procedure, the term “qualifying securitization financing legislation” means legislation that--

(1) Is enacted by a State to facilitate the recovery of certain specified costs incurred by a public utility;

(2) Authorizes the public utility to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the public utility will be allowed to recover;

(3) Provides that pursuant to the financing order, the public utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are non-bypassable and will be paid by customers within the public utility's historic service territory who receive utility goods or services through the public utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party;

(4) Guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by such legislation;

(5) Provides procedures assuring that the sale, assignment, or other transfer of the intangible property right from the public utility to a qualifying State financing entity will be perfected under State law as an absolute transfer of the public utility's right, title, and interest in the property; and

(6) Authorizes the securitization of the intangible property right to recover the fixed amount of specified costs through the issuance of debt instruments by a qualifying State financing entity pursuant to an indenture, contract, or other agreement.

.04 SPECIFIED COSTS

For purposes of this revenue procedure, the term "specified costs" means those costs identified by the State legislature as appropriate for recovery through the securitization mechanism of the qualifying securitization financing legislation.

.05 QUALIFYING STATE SECURITIZATION

For purposes of this revenue procedure, the term "qualifying State securitization" means an issuance of debt instruments that--

(1) Is secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of a public utility;

(2) Is issued by a qualifying State financing entity; and

(3) Provides for payments on at least an annual basis.

SECTION 5. APPLICATION

.01 The public utility will be treated as not recognizing gross income upon--

- (1) The receipt of a financing order that creates an intangible property right in the amount of the specified costs that may be recovered through securitization;
- (2) The receipt of cash or other valuable consideration in exchange for the transfer of that property right to a qualifying State financing entity;
- (3) The receipt by the qualifying State financing entity of cash or other valuable consideration in exchange for the debt issued by the qualifying State financing entity; or
- (4) The receipt by the public utility of the proceeds of the debt issued by the qualifying State financing entity.

.02 The payments of the public utility to the qualifying State financing entity pursuant to the securitized debt instruments described in section 4.05 of this revenue procedure will be treated as payments on obligations of the public utility.

.03 The non-bypassable charges will be treated as gross income of the public utility recognized under the public utility's usual method of accounting.

SECTION 6. MODIFICATIONS TO REV. PROC. 2005-62

.01 Modification to the definition of public utility. Section 5.01 of Rev. Proc. 2005-62 is modified to read as follows:

.01 PUBLIC UTILITY

For purposes of this revenue procedure, the terms "public utility" or "utility" refer to any utility company (electric or non-electric) that is subject to the regulatory authority of a State public utility commission or other appropriate State agency.

.02 Modification to the definition of qualifying securitization. Section 5.04(3) of Rev. Proc. 2005-62 is modified to read as follows:

(3) Provides for payments on at least an annual basis.

SECTION 7. EFFECT ON OTHER DOCUMENTS

This document modifies Rev. Proc. 2005-62.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective on or after February 29, 2024. Taxpayers may apply this revenue procedure to securitizations issued before February 29, 2024.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Brian Choi of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Mr. Choi at 202-317-3154 (not a toll-free number).