

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:BR05
PLR-132464-06

Date:
January 19, 2007

In Re:

Att'n:

LEGEND:

- State A =
- State Agency A =
- Utilities:
- Electric:
- L =
- M =
- Gas:
- O =
- P =

Dear

This letter responds to your authorized representatives' letter and submissions of June 20, 2006, and other correspondence and submissions, in which they requested on your (the Taxpayer's) behalf rulings regarding the proper federal tax treatment under sections 61, 136, and 6041 of the Internal Revenue Code (the Code) of certain energy conservation payments you make, as more fully described below. Specifically, you requested rulings that the subject payments (1) are not includable in the gross incomes of the recipients by reason of the exclusion provided under section 136 of the Code, and therefore (2) are not subject to information reporting to such recipients under section 6041 of the Code. We are pleased to address your concerns.

FACTS

State A recently enacted comprehensive legislation regulating the distribution and consumption of certain public utility services in State A. The legislation established public-purpose funding to be used for new cost-effective local energy conservation, new market transformation efforts, and the fostering of new renewable energy resources. The legislation authorized State Agency A to direct the manner in which public-purpose funds authorized under the statute would be collected and spent, and, cognizant of the inherent tension in encouraging State A utilities to make efforts to attempt to reduce consumer electric demands, provided State Agency A authority to direct that funds collected by State A regulated electric utilities under the statute be paid to a nongovernmental entity to carry out the purposes of the legislation.

The information submitted indicated that you were created by State Agency A and other interested parties to act as the nongovernmental entity described in the enabling legislation, and to direct the expenditure of funds for the energy conservation and other purposes described in the statute. You have been recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Code, and classified as a publicly supported organization described in section 170(b)(1)(A)(vi).

The manner in which you receive and expend funds in accordance with statutory purposes is subject to regulation by State Agency A, with whom you have entered into a comprehensive agreement. Under terms of the plan, State A regulated electric utilities (Utilities L and M) are required to collect a small monthly public purpose charge (PPC) from electricity consumers, and to remit to you for expenditure in furtherance of energy conservation and related statutory purposes, all or portions of such receipts. You are required to expend such receipts for educational purposes, for new cost-effective energy conservation measures, new market transformations, for the above-market costs of new renewable energy resources, for low-income weatherization programs, and for certain other public welfare purposes.

Pursuant to recent agreements with State Agency A, two State A regulated natural gas utilities (Utilities Q and P) are required to collect a PPC from natural gas customers to be expended for energy conservation measures. As permitted under State A law, you have entered into agreements with State Agency A and Utilities Q and P, under which you are required to expend natural gas PPC receipts in a manner similar to the manner in which you are required to expend electric PPC receipts.

You have enquired about the proper federal income tax and reporting consequences attendant payments made under your “Residential Payments” program, consisting of “Residential Efficiency Payments,” and “Residential Renewable Energy Payments.” Under these programs, payments from amounts received from Utilities L,

M, O, and P (Utilities), are made to or on behalf of their State A residential customers for energy conservation measures in the homes or apartments owned or occupied by such residential customers. Payments made to residential customers of a utility do not exceed funds collected from the particular utility serving those customers, and are limited for energy efficiency and renewable energy measures in the homes or apartments of such residential customers.

“Residential Efficiency” payments (in the form of cash or equipment) are subsidies for installations or modifications primarily designed to reduce the consumption of electricity or natural gas at such residences. “Residential Renewable Energy Payments” are payments primarily designed to improve the management of energy demand with respect to residential dwelling units, by reducing the power and load demands placed on a utility’s transmission and distribution facilities through the generation of alternative renewable energy sources for on-site consumption, e.g., solar, windpower and photovoltaic measures designed to generate power for on-site consumption in residential dwelling units.

Submitted information indicates that you have been reporting amounts paid to or for the benefit of State A commercial and industrial customers on Form 1099-MISC, to the extent such payments to or for the benefit of any such customer exceeded \$600 during the calendar year; you have not reported payments made to State A residential customers.

LAW & ANALYSIS

Gross Income Defined

Section 61 of the Code provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived. The concept of gross income encompasses accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955); 1955-1 C.B. 207.

Relevant to the inquiry at hand, section 136 of the Code provides that gross income does not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure.

Section 136(c) provides that, for this purpose, the term “energy conservation measure” means any installation or modification primarily designed (1) to reduce consumption of electricity or natural gas, or (2) to improve the management of energy demand, with respect to a dwelling unit (as defined in section 280A(f)(1), describing, generally, a house, apartment, condominium, mobile home, boat, or similar property, and all structures or other property appurtenant to such dwelling unit). A “public utility” is described in section 136(c)(2)(B). The legislative history of the section clarifies that

the subsidy need not be provided directly by the public utility to the customer, and that the exclusion applies to the customer to whom a subsidy may be indirectly provided by the utility.

The statutory requirements for the exclusion of the described “Residential Payments” made by you, the Taxpayer, from the gross incomes of the Utilities’ residential customers are satisfied in the instant circumstances. The payments are made for purposes, and within the limitations, described in section 136(c)(1). Under the legislative scheme enacted by State A and under agreements with Utilities, as administered through State Agency A and you (the Taxpayer), the described payments are made “directly or indirectly” by State A public utilities satisfying the terms of section 136(c)(2)(B), through you to the Utilities’ State A residential customers.

We conclude therefore that the described “Residential Payments” made by you are excludable from the Utilities’ residential customers’ gross incomes, for federal income tax purposes, under section 136 of the Code. Because these payments have been determined to be excludable from recipients’ gross incomes under section 136 of the Code, it is unnecessary for us to determine whether or not, or to what extent, such amounts might also be excludable from the gross incomes of low-income individuals under general welfare or other (rebate) principles.

Information Reporting Requirements

Section 6041 of the Code provides that all persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e)[d], 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make such returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Section 1.6041-1(a)(1)(i) of the Treasury Regulations (regulations) provides that, except as otherwise provided in sections 1.6041-3 (payments for which no return of information is required under section 6041) and 1.6041-4 (foreign-related items and other exceptions), every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i)(A) (salaries, wages, commissions,

fees, and other forms of compensation for services rendered aggregating \$600 or more) or (B) (interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more) of this section.

Section 1.6041-1(a)(2) of the regulations provides, in pertinent part, that the return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099.

Section 1.6041-1(b) of the regulations provides, in pertinent part, that the term “all persons engaged in a trade or business”, as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in sections 401(a), 501(c), 501(d), and 521 and in paragraph (i) of this section.

The word “income” as used in section 6041 is not defined by statute or regulation; however, its appearance in the phrase “fixed or determinable gains, profits, and income” indicates that what is referred to is “gross income,” and not the gross amount paid. Thus, section 6041 requires you to report only those payments in excess of \$600 includible in a recipient’s gross income.

In this case, your payments to the residential customers to promote energy efficiency and the use of renewable energy resources are not income to the customers under section 61. As a result, you do not have to report the payments under section 6041.

CONCLUSIONS

Based on the facts and information submitted and the representations made, the following rulings are issued respecting the described “Residential Payments” made by you to the Utilities’ residential customers:

- (1) such payments are not income to the recipients under section 61 of the Code, but are “energy conservation subsidies” excluded under section 136; and
- (2) you are not required to report such payments on Forms 1096 or 1099.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 11.04 of Rev. Proc. 2006-1, 2006-1 I.R.B. 1. However, when the criteria in section 11.06 of Rev. Proc. 2006-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This letter ruling is based on facts and representations provided by the Company and its authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with the Company's permanent records.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

/s/ William A. Jackson

William A. Jackson
Chief, Branch 5
Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purposes