



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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The Honorable John J. Hall  
Member, U.S. House of Representatives  
40 Gleneida Avenue, 3<sup>rd</sup> Floor  
Carmel, NY 10512

Attention:

Dear Congressman Hall:

I am responding to your letter dated June 15, 2009, on behalf of \_\_\_\_\_ asks whether \_\_\_\_\_ must issue Forms 1099 to homeowners who participate in the \_\_\_\_\_ (Program).

\_\_\_\_\_ states that, under the Program, \_\_\_\_\_ will repair or replace a homeowner's failing \_\_\_\_\_ (system) at no cost to the homeowner. The purpose of the Program is \_\_\_\_\_; thus, homeowners located \_\_\_\_\_ are eligible to participate. Participating homeowners must grant \_\_\_\_\_ an irrevocable license to enter their property to inspect the existing system, and to repair or replace it. All repair or replacement work is performed by a contractor that is selected by \_\_\_\_\_. \_\_\_\_\_ inspects and approves the contractor's work and pays the contractor directly. Upon completion of the work, participating homeowners must maintain the newly installed system in accordance with \_\_\_\_\_ recommendations and guidelines. Participating homeowners also must grant \_\_\_\_\_ a permanent easement (running with the land) so that \_\_\_\_\_ may enter the property to repair or maintain the new system if the homeowner fails to do so.

Participation in the Program is voluntary. However, any homeowner (eligible for the Program or not) who is cited by \_\_\_\_\_ for a failing system must repair or replace it. \_\_\_\_\_ may assess severe penalties on a homeowner who does not repair or replace a

failing system. Under certain circumstances, a judge may order the homeowner evicted from his or her home.

Gross income includes all accessions to wealth, clearly realized, and over which the taxpayer has complete dominion. Government grants and cost sharing benefits generally constitute gross income for federal income tax purposes. Courts, however, have held that taxpayers do not have gross income where the recipient of the grant lacks complete dominion and control over the grant. See *Bailey v. Commissioner*, 88 T.C. 1293 (1987), *acq.* 1989-1 C.B. 1, (recipient of a façade grant lacked complete dominion and control where recipient was required to grant an easement to the city to rehabilitate the façade and, subsequently, to repair the façade at the recipient's expense if the recipient did not maintain it, and where city controlled the rehabilitation work).

The terms of the Program indicate that \_\_\_\_\_ retains significant dominion and control over the system improvements of participating homeowners. Thus, the value of the repair or replacement of system is not gross income to any homeowner participating in the Program, and is excluded from the home's basis. Consequently, \_\_\_\_\_ is not required to file or furnish Forms 1099 with respect to homeowners for the value of repairs or replacements made under the Program.

I hope this information is helpful. If you have any questions, please call me or  
at \_\_\_\_\_ .

Sincerely,

Michael J. Montemurro  
Branch Chief  
Office of Associate Chief Counsel  
(Income Tax & Accounting)