



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

OFFICE OF
CHIEF COUNSEL

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CONEX-104742-10

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The Honorable Tim Johnson
United States Senate
Washington, DC 20510

Attention:

Dear Senator Johnson:

I am responding to your inquiry dated January 28, 2010, inquiring whether one of your constituents must report as income federal grant payments it receives under the Broadband Technology Opportunities Program (BTOP).

The BTOP was authorized by the American Recovery and Reinvestment Act (the Act) to provide grants for various purposes including deploying broadband infrastructure in unserved and underserved areas of the United States.

Generally, gross income includes all income from whatever source derived. Consequently, taxpayers must include governmental grants in gross income absent a specific statutory exclusion. The Act does not expressly exclude BTOP grants from gross income, and the Internal Revenue Code (the Code) does not contain any exclusion for BTOP grants.

Section 118(a) of the Code provides that gross income does not include a contribution to the capital of the corporation. Section 118(a) applies only to corporations, including LLCs treated as corporations for federal income tax purposes. However, section 118(a) does not apply to non-corporate entities such as partnerships and limited liability companies (LLCs) treated as partnerships for federal income tax purposes. Your constituent is an LLC treated as a partnership for federal income tax purposes.

Consequently, the LLC may not exclude its BTOP grant payments from income under section 118 of the Code.

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

Sincerely,

George J. Blaine
Associate Chief Counsel
(Income Tax and Accounting)