



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

OFFICE OF THE CHIEF COUNSEL

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Dear _____ :

This letter responds to your email to the White House dated October 19, 2010, regarding the application of section 118 of the Internal Revenue Code.

Section 2.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 7, provides that the Internal Revenue Service may issue an "information letter," the purpose of which is to call attention to a well-established interpretation or principle of tax law, without applying it to a specific set of facts. Accordingly, the following discussion is provided for general information purposes only and does not constitute a ruling.

Rev. Proc. 2010-34, 2010-41 I.R.B. 426, provides, in part, that the Service will not challenge a corporation's treatment of a grant to the corporation from the National Telecommunications and Information Administration of the Department of Commerce under the Broadband Technology Opportunities Program for Broadband Infrastructure or Comprehensive Community Infrastructure as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder. Rev. Proc. 2010-34 also provides that it does not apply to noncorporate taxpayers. A copy of Rev. Proc. 2010-34 is enclosed.

Section 118(a) of the 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 section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities. Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

By their express statutory terms, sections 118(a) and 362(c) apply only to corporate taxpayers. There are no equivalent statutory provisions for limited liability companies treated as partnerships. Therefore, a limited liability company treated as a partnership is not allowed the exclusion under section 118(a), and the reduction in basis under section 362(c) is not applicable.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. If you have any additional questions, please contact our office at .

Sincerely,

/s/ Paul F. Handleman

Paul F. Handleman
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Office of Associate Chief Counsel
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Enclosure:
Copy of Rev. Proc. 2010-34