



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

OFFICE OF THE CHIEF COUNSEL

August 22, 2013

Number: **2013-0027**
Release Date: 9/27/2013

CONEX-135778-13

UIL: 9999.98-00

The Honorable Steny H. Hoyer
Member, U.S. House of Representatives
U.S. District Courthouse
6500 Cherrywood Lane, Suite 310
Greenbelt, MD 20770

Dear Congressman Hoyer:

I am responding to your letter dated July 16, 2013, on behalf of _____, _____ asked whether recipients of grants under the _____ may exclude the grant proceeds from income for federal income tax purposes.

The program makes grants of _____ to owners of historic structures throughout _____, regardless of family or individual need. However, before _____ disburses any grant proceeds, the grant recipient must enter into a perpetual historic easement for the entire property. In addition, _____ retains control over future proposed changes to the property, including land alterations, public-entry uses, and inspection rights.

Gross income includes all accessions to wealth, clearly realized over which a taxpayer has complete dominion. Governmental grants and cost sharing benefits generally are 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).

Whether the program grants are substantially similar to those in *Bailey* depends on all of the facts and circumstances, including the terms of the grant agreement and the

easement. Therefore, we cannot definitively address the federal income tax treatment of the program grants in this letter.

, however, may request a private-letter ruling on the federal income tax treatment of the program grants by asking whether it must issue Forms 1099-MISC, Miscellaneous Income, to grant recipients. If we conclude that the program grants did not constitute gross income to the recipients, then would not have to issue Forms 1099-MISC to the recipients. Rev. Proc. 2013-1, 2013-1 I.R.B. 1, which is available on www.irs.gov, provides the procedures for requesting a private-letter ruling. The law requires us to charge fees for private letter rulings. In this case, the fee would be \$18,000.

If decides to request a private-letter ruling, it may also request a conference with us before submitting the request to discuss the program and views of whether the program grants are substantially similar to the grants in *Bailey*. These pre-submission conferences are often helpful because they provide a better understanding of the facts of the transaction and the legal issues the taxpayers must address for us to process the ruling request.

Furthermore, we may ultimately decline to issue a letter ruling in a particular case even if a taxpayer submitted the requested information, for example, because of the factual nature of the matter. In such a case, we would refund the fee.

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

Sincerely,

Michael J. Montemurro
Chief, Branch 4,
Office of Associate Chief Counsel,
Income Tax & Accounting