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Legend

- State =
- Organization =

- Date =
- Utility A =
- Utility B =
- Subsidy A =

- Subsidy B =
- Program =

Dear :

This letter responds to a letter dated May 6, 2015, supplemented by subsequent correspondence, submitted by Organization’s representatives requesting private letter rulings regarding the proper federal tax treatment of certain payments made by Organization to subsidize the cost of installing residential solar photovoltaic (PV) systems under §§ 61, 136, and 6041 of the Internal Revenue Code (the Code). Specifically, Organization requested rulings that the subject payments (1) are not included in the gross income of residential system owners by reason of exclusion provided under § 136 of the Code, and (2) are not subject to information reporting to such system owners under § 6041 of the Code.

FACTS

The State Statutes established Organization on Date to support State environmental and economic development objectives through clean energy finance and investment. Organization oversees two subsidies, Subsidy A and Subsidy B under its Program. The subsidies are available to residential homeowners whose homes are

within the service territories of State's utilities, Utility A and Utility B. Pursuant to the State Statutes, Program is funded by a surcharge on State ratepayer's electricity bills; these surcharges are collected by Utility A and Utility B; and the utilities remit the collected surcharges to Organization which maintains the funds in a separate account. From the funds, Organization pays eligible contractors who install the residential PV systems for the residential system owners, and apply for the subsidies.

Organization screens and evaluates every application for eligible contractors and approves only ones meeting its criteria. Organization also screens residential PV system owners to qualify for the subsidies. All system owners under Program are required to use eligible contractors to install the residential PV systems. Organization enters into a contract with an eligible contractor to comply with all of the terms and conditions for receiving the subsidies. Upon the installation of a system that satisfies certain criteria, an eligible contractor receives a payment from Organization to be applied as a reduction in the total price of the system.

Under Program, Organization calculates the subsidy amount based on the PV system's specifications, size and efficiency, all of which have a direct impact on the cost of the system. The size of the system is intended to generate only the amount of energy to sufficiently service the electrical needs of the system owner to minimize excessive net metering and ensure that eligible contractors do not recommend a system that would be too large for a system owner.

Pursuant to the contract with Organization, eligible contractors must incorporate into their contracts with the system owners certain terms and conditions imposed by Organization. As a condition of receiving the subsidies, Organization is entitled to any renewable energy credits (RECs) and any other tradable energy or environmental related commodity produced or created by the PV systems. System owners are also required to install a revenue-grade electric meter monitoring system to monitor the production of RECs. Unlike Subsidy B, Subsidy A requires system owners to meet an energy production target for the first 30-day period to confirm that the system is in operation.

LAW & ANALYSIS

Gross Income Defined

Section 61 of the Code provides generally that, except 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, § 136(a) 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 § 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 § 136(c)(2)(B). The legislative history of § 136 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 above described subsidies made by Organization from the gross income of the residential PV system owners are satisfied in the instant circumstances. The payments are made for purposes, and within the limitations, described in § 136(c)(1). Under the legislative scheme enacted by State as administered through Organization, the described payments are made “directly or indirectly” by Utility A and Utility B satisfying the terms of § 136(c)(2)(B), through Organization, to the residential customers.

We conclude, therefore, that the above described subsidies made by Organization are excludable from the gross incomes of the residential PV system owners for federal income tax purposes, under § 136 of the Code.

Information Reporting Requirements

Section 6041 of the Code provides in relevant part 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 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 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 §§ 1.6041-3 (payments for which no return of information is required under § 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 § 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 §§ 401(a), 501(c), 501(d), and 521 and in paragraph (i) of this section.

The word “income” as used in § 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, § 6041 requires Organization to report only those payments in excess of \$600 includible in a recipient’s gross income.

In this case, Organization’s payments to promote the instillation and use of renewable energy resources are not income to the system owners under § 61. As a result, Organization does not have to report the payments under § 6041.

CONCLUSIONS

Based on the facts and information submitted and the representations made, the following rulings are issued respecting the described subsidy payments made by Organization to the residential PV system owners;

- (1) such payments are not income to the recipients under § 61 of the Code, but are “energy conservation subsidies” excluded under § 136; and
- (2) Organization is 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. 2015-1, 2015-1 I.R.B. 1.

However, when the criteria in section 11.06 of Rev. Proc. 2015-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

The rulings contained in this letter are based upon information and representations submitted by the representatives of Organization and accompanied by a penalty of perjury statement executed by Organization. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts or transactions described above under any other provision of the Code.

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

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

Sincerely,

Seoyeon Sharon Park
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)