

## Internal Revenue Service

Number: **201815005**

Release Date: 4/13/2018

Index Numbers: 6041.00-00; 61.40-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:4

PLR-122083-17

Date:

January 11, 2018

### LEGEND:

Taxpayer =

Program =

State =

Fund =

Agency 1 =

Agency 2 =

Agency 3 =

year 1 =

B =

C =

D =

E =

F =

G=

H =

J =

\$x =

\$y =

\$z =

Dear

This is in reply to Taxpayer's request for a ruling that it is not subject to an information reporting obligation under § 6041 of the Internal Revenue Code with respect to homeowners for grants that it provides to homeowners under Program to F their homes to better withstand B because the grants are not gross income to the homeowners under § 61.

#### FACTS

Following D, State undertook efforts to mitigate C. Taxpayer was established in year 1 pursuant to an agreement between Agency 1 and Agency 2, a public instrumentality of State. The agreement authorizes Taxpayer to provide grants to certain qualified homeowners in State, regardless of income, who wish to F their homes to protect against B.

Under Program, homeowners may receive grants up to \$x to F their dwellings to better withstand B if their dwelling is within certain Program-defined geographical areas and meets certain structural and age specifications, regardless of household income or whether the homeowner's dwelling is insured by Agency 2. Although the total cost of an F ranges from approximately \$z to \$y, homeowners bear costs in excess of \$x. If the total cost of an F is less than \$x, the grant amount is reduced to cover only actual F costs of labor and materials.

Program involves securing a house to its foundation and preventing lateral movement in the event of G. The potential for significant harm reduction, in terms of avoiding both property damage and ensuring safety of occupants, motivated Agency 2's governing board to pursue Program. Homes that undergo F are more likely to withstand B, reduce the likelihood of H following G, and decrease J resulting from G.

Taxpayer represents that Program is limited to homeowners and homes where it will (i) result in the greatest cost savings to State, in terms of reinsurance, loss payments and other expenses by Agency 2 and (ii) save State resources by preventing catastrophic damage to communities. Program is not available to all State homeowners, but is limited to individuals and families whose residences are particularly vulnerable to structural damage caused by G.

Program has received funds from contributions from Agency 2's Fund, grants from Agency 3, and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).<sup>1</sup>

## LAW AND ANALYSIS

### *Income Taxation*

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains and undeniable 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.

Governmental grants are includible in gross income under § 61 unless excluded from gross income by law. See Rev. Rul. 85-39, 1985-1 C.B. 21 (dividend payments Alaska makes to all adult residents to encourage them to remain in the state and thereby reduce social, economic, and political instability are gross income under § 61). "The corollary to § 61(a)'s broad construction, namely [is], the 'default rule of statutory interpretation that exclusions from income must be narrowly construed.'" *Commissioner v. Schleier*, 515 U.S. 323, 328 (1995).

Program results in a structural and substantial improvement to the home that is more than just an incidental benefit to homeowners. Homeowners obtain the tangible benefits of a safer and more desirable home better able to withstand B. An F reduces the possibility of H in the event of G, and minimizes the duration of any H. Thus, grants that Taxpayer provides to or on behalf of homeowners under Program to F their homes to better withstand B are accessions to wealth that are includible in their gross income under § 61, unless excluded from income under the general welfare exclusion or § 139.

### *General Welfare Exclusion*

Although § 61 provides for broad includability in gross income, the Service has consistently held that payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of general welfare are not includible in a recipient's gross income (general welfare exclusion). To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (that is, based on individual or family need), and (iii) not represent compensation for services. See Rev. Rul. 2005-46, 2005-2 C.B. 120. In *Bailey v. Commissioner*, 88 T.C. 1293, 1300 (1987), *acq. on another issue*, 1989-2 C.B. 1, the court noted that the general welfare exclusion

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<sup>1</sup> The only Stafford Act funds are going to the E Program, for which Taxpayer has not requested a private letter ruling. Stafford Act funds are not involved in Program grants for which Taxpayer is requesting the private letter ruling.

has been applied when “the grant was received under a program requiring the individual recipient to establish need” and that the exclusion did not apply to “[g]rants received under social welfare programs that did not require recipients to establish individual need ....”

Rev. Rul. 76-144, 1976-1 C.B. 17, holds that grants received by individuals under the Disaster Relief Act of 1974 to alleviate the suffering and damage *resulting from* a disaster is in the interest of general welfare and not includible in gross income. Rev. Rul. 2003-12, 2003-1 C.B. 283 (*Situation 1*), holds that payments individuals receive under a state’s program to pay or reimburse unreimbursed reasonable and necessary medical, temporary housing, or transportation expenses they incur *as a result of a flood* are excluded from gross income under the general welfare exclusion.

Although, in general, payments to businesses do not qualify under the general welfare exclusion because the payments are not based on individual or family need, Rev. Rul. 77-77, 1977-1 C.B. 11, provides that nonreimbursable grants made under the Indian Financing Act of 1974 to Indians to expand profit-making Indian-owned economic enterprises on or near reservations are excludable from gross income under the general welfare exclusion. In addition, Rev. Proc. 2014-35, 2014-26 I.R.B. 1110, conclusively presumes that the individual need criterion of the general welfare exclusion is met for payments under certain programs of Indian tribal governments in recognition of the unique circumstances of Indian tribes and tribal governments, including their inherent sovereignty and government-to-government relationship with the United States and their unique social, cultural, and economic issues.

The grants provided by Taxpayer to or on behalf of homeowners under Program to F their homes to better withstand B are not based on individual or family need. Instead, Taxpayer’s grants up to \$x are based on the location of the home in State in areas susceptible to G, the home’s age, and physical characteristics.

In addition, by contrast with the grants described in Rev. Rul. 76-144 and Rev. Rul. 2003-12 (*Situation 1*), the grants provided by Taxpayer to or on behalf of homeowners under Program are not paid *as a result of* a disaster. Rather, they are paid to eligible homeowners regardless of income to mitigate the effects of future disasters, not to alleviate suffering and damage resulting from a disaster.

The conclusions applying the general welfare exclusion in Rev. Rul. 77-77 and Rev. Proc. 2014-35 are based on the “unique social, cultural, and economic issues” of Indian tribes and their members. See section 2.03 of Rev. Proc. 2014-35. Program, however, is neither a program of an Indian tribal government nor designed to help members of Indian tribes. Thus, Program does not meet the general welfare exclusion as applied under Rev. Rul. 77-77 or Rev. Proc. 2014-35.

Accordingly, Program grants are not excludable from gross income under the general welfare exclusion.

#### *Qualified Disaster Mitigation Payments*

Section 139(g)(1) provides that gross income shall not include any amount received as a qualified disaster mitigation payment. Section 139(g)(2) defines qualified disaster mitigation payment as meaning any amount which is paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of this subsection) or the National Flood Insurance Act (as in effect on such date) to or for the benefit of the owner of any property for hazard mitigation with respect to such property.

The grants provided by Taxpayer to homeowners under Program to F their homes to better withstand B are not paid pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the National Flood Insurance Act. Thus, consistent with the principle that the Supreme Court stated in *Schleier*, that “exclusions from income must be narrowly construed”, the grants are not excludable from gross income under § 139(g)(1).

#### *Information Reporting*

Section 6041(a) and § 1.6041-1(a)(1)(i) of the Income Tax Regulations provide, with exceptions not applicable here, 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, aggregating \$600 or more in the taxable year must file an information return with the Internal Revenue Service. Under § 6041(d), the payor is required to furnish an information statement to the payee. Forms 1096 and 1099 are used for this reporting. Section 1.6041-1(a)(2).

The § 6041 information reporting requirement applies to payments made during the calendar year to another person of “fixed or determinable income.” Section 1.6041-1(a). Section 1.6041-1(c) provides that income is fixed when paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. As used in § 6041, “income” means “gross income”.

The information reporting requirements of § 6041 may also apply to payments made by the United States or a state. Section 1.6041-1(b)(1) clarifies that the term “persons engaged in a trade or business” in § 6041 includes not only organizations engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit, for example, the organizations referred to in paragraph (i) of section 1.6041-1. Section 1.6041-1(i) provides, in part, that information returns on Forms 1096

and 1099 of payments made by a state, or political subdivision, agency or instrumentality thereof, shall be made by the officer or employee of such state or political subdivision, agency or instrumentality thereof, having control of such payments or by the officer or employee appropriately designated to make such returns.

Each grant of \$600 or more that Taxpayer, which is described in § 1.6041-1(i), provides to homeowners under Program to F their homes to better withstand B is gross income to homeowners that is fixed in amount under § 1.6041-1(c).

### CONCLUSION

Based strictly on the information submitted and the representations made, we conclude that Taxpayer is subject to the information reporting requirements of § 6041(a) and (d) with respect to homeowners for the grants Taxpayer provides to homeowners under Program to F their homes to better withstand B because they are includible in the homeowners' gross income.

The letter ruling is directed only to the taxpayer requesting it, and does not express or imply an opinion on the federal tax consequences of any aspect of this transaction other than that expressed in the preceding sentence. Section 6110(k)(3) provides that this letter ruling may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations that Taxpayer submitted under penalties of perjury. 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.

Taxpayer must attach to any income tax return to which it is relevant a copy of this letter or, if it files its returns electronically, include a statement providing the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, we are sending copies of this letter to your authorized representatives.

Sincerely,

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