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Person To Contact:

, ID No.

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CC:ITA:04

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Date:

January 11, 2018

LEGEND:

Taxpayer =

Program =

State =

B =

C =

D =

E =

F =

G =

H =

\$x =

\$y =

Dear _____ :

This 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 H their homes to better withstand B because the grants are not gross income to the homeowners under § 61.

FACTS

Taxpayer, an integral part of State, was established following D to mitigate C in State. Taxpayer established Program to provide grants of up to \$x to or on behalf of eligible homeowners who wish to H their homes to protect against B. The total cost of an H ranges from approximately \$x to \$y. Homeowners bear costs in excess of \$x. Program involves securing a house to its foundation and preventing lateral movement in the event of F. The potential for significant harm reduction, in terms of avoiding both property damage and ensuring safety of occupants motivated Taxpayer to pursue Program.

Homes that undergo an H are more likely to withstand B, reduce the likelihood of E following F, and decrease G resulting from F. Specifically, Program provides grants to or on behalf of homeowners of owner-occupied residences whose houses meet requirements demonstrating a need for certain building-code-based structural reinforcements. Eligibility for Program's pilot phase is limited to certain Taxpayer policyholders whose persistency as Taxpayer policyholders, age of dwelling construction, and location of dwelling will allow Taxpayer to reduce its cost of insuring eligible dwellings and reduce the expense of transferring the insured risk to reinsurers, allowing Taxpayer to provide these homeowners with a substantial discount on Taxpayer premiums.

Taxpayer represents that Program is limited to homeowners and homes where it will (i) result in the greatest cost savings to Taxpayer, in terms of reinsurance, loss payments and other expenses, 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 an F.

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 H reduces the possibility of E in the event of an F, and minimizes the duration of any E. Thus, grants that Taxpayer provides to or on behalf of homeowners under Program to H their homes to better withstand B are accessions to wealth that are includible in the recipients’ taxable income under § 61, unless excluded from income under the general welfare exclusion or § 139(g).

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 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 a grant 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 United States and their unique social, cultural, and economic issues.

The grants provided by Taxpayer to or on behalf of homeowners under Program to H 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 F, the home's age and physical characteristics, and the grant recipient having an insurance policy with Taxpayer.

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 H 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 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 H 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 H their homes to better withstand B because they are includible in the homeowners’ gross income.

This 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)