**Internal Revenue Service**

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ECE:B02
PLR-112713-25

Date:
March 25, 2026

In Re:

**Legend**

| | |
|---|---|
| Taxpayer | = |
| Parent | = |
| State | = |
| Commission A | = |
| Commission B | = |
| Commission C | = |
| Plant | = |
| Date 1 | = |
| Date 2 | = |
| Date 3 | = |
| Date 4 | = |
| Date 5 | = |
| Date 6 | = |
| Date 7 | = |
| Year A | = |
| Year B | = |
| Year C | = |
| Year D | = |
| $A | = |

Dear :

This letter responds to a letter dated Date 1, and supplemented on Date 6 and Date 7, submitted on Taxpayer's behalf by its authorized representatives, requesting a ruling regarding the application of §§ 61 and 118[1] to the relevant facts that are represented in Taxpayer's submission and set forth below:

**Background**

Taxpayer is a State corporation and a regulated public utility that provides electricity generation, transmission, and distribution services throughout State. It is the primary operating subsidiary of Parent and joins Parent in the filing of a consolidated federal income tax return on a calendar year basis using the accrual method of accounting.

Commission A and Commission B regulate the rates Taxpayer may charge for the services it provides. Generally, both commissions set rates using the cost-of-service, rate-of-return method of ratemaking, which allows a utility to recover the costs of providing services and earn a reasonable return on invested capital (rate base). Commission A regulates Taxpayer's electricity transmission rates, which are reviewed and updated annually to reflect any changes in Taxpayer's costs of service. Commission B regulates the rates for Taxpayer's remaining utility services, determining rates in general rate case proceedings conducted every four years, with other proceedings conducted as necessary to address issues not addressed in those proceedings.

Taxpayer owns and operates Plant, a plant consisting of Unit 1 and Unit 2, which have been in operation since Year A and Year B, respectively. Unit 1 and Unit 2 are licensed by Commission C to operate until Date 2 and Date 3, respectively.

State provides a framework

[1] Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code (Title 26 U.S.C.) or the Income Tax Regulations (26 C.F.R. part 1).

to establish a cost-recovery and public-purpose funding framework. Among other provisions, created a fee mechanism (Fee) and related balancing and subaccounts administered under the oversight of Commission B through which specified amounts are recovered from Commission B-jurisdictional retail customers. Amounts collected pursuant to Fee are required to be used only for certain energy infrastructure purposes enumerated and, in certain circumstances, expenditures relating to operations of Plant.

Pursuant to its authority under the law of State , Commission B authorizes the amounts to be recovered through Fee, approves the design and implementation of Fee rates and related tariffs used to bill retail customers in Commission B's jurisdiction, and establishes the accounting and reporting requirements applicable to Fee balancing and subaccounts. Commission B also reviews and approves Taxpayer's annual Fee spending plans and oversees Taxpayer's use of Fee proceeds

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Fee rates are established in advance through Commission B's annual rate-setting process based on forecasted demand and forecasted revenue needs. As recorded demand deviates from forecast demand during a year, over- or under-collections may occur. Taxpayer represents that such deviations are addressed in setting rates for the subsequent year through prospective rate adjustments, and that Fee rates are also subject to annual adjustments pursuant to Commission B-approved escalation methodologies and adjustment factors.

Fee is billed to applicable retail customers through Taxpayer's regular customer billing processes pursuant to rate schedules and tariffs approved by Commission B. In Year C, Commission B authorized $A million of Fees to be recovered through Year D customer rates, and Taxpayer billed customers that amount during Year D. Commission B approved Taxpayer's Year D Fee spending plan in accordance with the enumerated purposes provided in State Law. During Year D, Taxpayer expended a majority of the Fees it collected that year, and all such expenditures were made pursuant to the plan.

For regulatory book purposes, when Fees are collected, Taxpayer characterizes the amounts as deferred revenue recorded in a liability account until Taxpayer incurs costs for authorized projects. When Taxpayer incurs costs for authorized projects, Taxpayer reduces its deferred revenue and recognizes revenue under applicable accounting guidance.

Taxpayer has treated Fee payments from customers as gross income under § 61 when billed to customers using its accrual method of accounting. Taxpayer has treated

costs for projects and programs funded with Fee proceeds consistent with federal income tax rules applicable to an accrual-method taxpayer, including the rules governing the timing and characterization of such costs as capital or currently deductible. Taxpayer has not yet taken these positions on a filed U.S. federal income tax return.

**Rulings Requested**

1. Fee is gross income to the Taxpayer under section 61 without regard to whether Fee proceeds are used by the Taxpayer to acquire capital items or for other purposes.
2. Fee is not excludible from Taxpayer's gross income under section 118 of the Internal Revenue Code.

**Law and Analysis**

Section 61(a) and (b) of the Code provide that, except as otherwise provided, gross income means all income from whatever source derived, including compensation for services, including fees, and gross income derived from business.

Section 1.61-1(a) of the Income Tax Regulations provides that gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services.

In Commissioner v. Glenshaw Glass Co., 348 U.S. 426,431 (1955), the Supreme Court held that gross income includes "instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."

In Commissioner v. Indianapolis Power & Light Co., 493 U.S. 203, 210 (1990), the Court said that the key to determining whether a taxpayer enjoys "complete dominion" over a given sum is whether, at the time the payment is made, the taxpayer "has some guarantee that he will be allowed to keep the money." Because the utility's customers controlled the ultimate disposition of the deposit and had not committed to purchasing any electricity at the time the deposit was made, the Court found that the utility had no guarantee that it would be allowed to keep the money and held that the deposit amount was not income. *See also* *Mutual Telephone Co. v. United States*, 204 F.2d 160 (9th Cir. 1953); *Illinois Power Co. v. Commissioner*, 792 F.2d 683 (7th Cir. 1986).

In Iowa Southern Utilities Co. v. United States, 841 F.2d 1108 (Fed. Cir. 1988), cert. denied, 488 U.S. 952 (1988), the court held that a utility's customer surcharges collected to finance construction were includible in gross income, notwithstanding a commission policy that the amounts would later be "refunded" through future rate decrements over an extended period. These amounts were income to the utility because (1) the court identified no "unequivocal contractual, statutory, or regulatory duty

to repay;" (2) the taxpayer had no duty to pay interest on the amounts collected; (3) the taxpayer was using the amounts to fund plant construction (and so was more than a mere custodian); and (4) the taxpayer benefitted from the transaction. Id. at 1112.

Section 118(a) provides a limited exclusion from gross income of a corporation for "any contribution to the capital of the taxpayer." Section 118(b)(1) narrows that exclusion by providing that the term "contribution to the capital of the taxpayer" does not include (i) any "contribution in aid of construction" or (ii) "any other contribution as a customer or potential customer."

In the cases cited above that relate to section 61, courts have held that when a utility receives funds with a clear statutory or regulatory duty to repay the funds, the funds are not includible in the utility's gross income at the time of receipt because it has no dominion and control over the funds at the time of receipt. Conversely, in Iowa Southern Utilities Co., amounts collected through a utility commission-approved surcharge from retail electricity customers to fund construction were includible in income when collected; the stipulation that rates would later be reduced through a 'negative surcharge' did not negate the utility's dominion over the collections.

In this case, the taxpayer has dominion and control over Fee collections when the taxpayer receives them because the taxpayer has entire discretion over whether to spend the funds at all and in what amounts on each of the specifically identified purposes , subject to approval by Commission B. The taxpayer has no obligation to return the funds unless they are not used for the specified costs. Therefore, the Fee is income under section 61.

No portion of the Fee is excludible from gross income as a contribution to capital under section 118(a) because section 118(b)(1) applies.

Accordingly, we rule that:

1. The Fee is gross income to the Taxpayer under section 61 without regard to whether Fee proceeds are used by the Taxpayer to acquire capital items or for other purposes.
2. Fee proceeds are not excludible from Taxpayer's gross income under section 118.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, either express or implied, regarding the timing of the Fee in gross income under section 451 or whether the taxpayer has adopted a method of accounting with regard to such Fee.

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

attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

Sincerely,

Maggie Stehn
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Energy, Credits, and Excise Tax)

Enclosure:
Copy for § 6110 purposes

cc: