

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 118, 362.)

Rev. Proc. 2010-34

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for the treatment of certain grants to corporations from the Rural Utilities Service (RUS) of the Department of Agriculture under the Broadband Initiatives Program (BIP) and from the National Telecommunications and Information Administration (NTIA) of the Department of Commerce under the Broadband Technology Opportunities Program (BTOP) as authorized by the American Recovery and Reinvestment Act of 2009 (ARRA).

SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

ARRA appropriated money for the expansion of broadband capabilities in the United States. Title I, Division A of ARRA appropriated \$2.5 billion to RUS for BIP. Title II, Division A of ARRA appropriated \$4.7 billion to NTIA for BTOP.

BIP provides grants for six purposes: (1) Last Mile Remote Projects (LMRP); (2) Last Mile Projects (LMP); (3) Middle Mile Projects (MMP); (4) Satellite Projects (SP); (5) Technical Assistance (TA); and (6) Rural Library Broadband (RLB). BTOP provides grants for four purposes: (1) Broadband Infrastructure (BI); (2) Comprehensive Community Infrastructure (CCI); (3) Public Computer Centers (PCC); and (4) Sustainable Broadband Adoption (SBA). See Notices of Funds Availability, 74 FR 33104 (BIP and BTOP), 75 FR 3792 (BTOP), and 75 FR 3820 (BIP).

SECTION 3. SCOPE

This revenue procedure generally applies to corporate taxpayers that receive a grant from RUS under BIP for LMRP, LMP, MMP, or RLB or from NTIA under BTOP for BI or CCI.

This revenue procedure does not apply to the portion of any grant paid to reimburse pre-application expenses. This revenue procedure also does not apply to grants from RUS under BIP for SP or TA.

In addition, this revenue procedure does not apply to: (1) noncorporate taxpayers; (2) loans from RUS under BIP; (3) grants from NTIA under BTOP for PCC or SBA; or (4) the National Broadband Plan or the Universal Service Fund of the Federal Communications Commission.

SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporation's treatment of a grant to the corporation from RUS under BIP for LMRP, LMP, MMP, or RLB or from NTIA under BTOP for BI or CCI within the scope of section 3 of this revenue procedure as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective September 23, 2010.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. McDonnell at (202) 622-3040 (not a toll free call).