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Person To Contact:
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PLR-115844-12
Date:
September 24, 2012

In Re:

LEGEND

Taxpayer =

State =

Agency =

Board =

Statute =

Program =

B =

C =

D =

E =

x =

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 property

owners for rehabilitations of B located on their property under the Program because the rehabilitations will not result in gross income to the owners under § 61.

FACTS

Taxpayer, a political subdivision of State, owns and operates a C. Taxpayer was created by State to abate D. During major storms with significant or intense rainfall, periods of elevated tidal flooding, or periods of unusually high groundwater elevation, Taxpayer occasionally experiences E, which violates Statute and subjects Taxpayer to potential monetary penalties.

Taxpayer has negotiated a consent order with the Agency to address past and future E. In addition, Taxpayer is a party to a special order by consent with the Board that requires Taxpayer to implement the Program, which is intended to alleviate the consequences of E. Under the Program, Taxpayer will rehabilitate B located on certain owners' property.

Rehabilitation of B is typically the most economical way for Taxpayer to address E because it minimizes Taxpayer's future capital expenditures and reduces ongoing operation and maintenance costs because there will be less inflow into Taxpayer's C. Under the Program, privately-owned B that contribute significantly to E will be rehabilitated if the process would be cost effective, subject to the consent of the property owners where the B are located. Areas selected for rehabilitation will be based solely on providing Taxpayer with the greatest return on its financial investment.

Taxpayer does not have the legal authority to compel a property owner to participate in the Program. Thus, a property owner's participation in the Program is voluntary. However, a property owner is eligible to participate in the Program only if the owner lives in an area selected by Taxpayer based on areas that provide the greatest benefit to Taxpayer and only if Taxpayer determines that the B significantly infiltrate Taxpayer's system. Taxpayer will direct and control all work related to the rehabilitation of B located on an owner's property. The contracts for the work will be between Taxpayer and the contractors, which Taxpayer will select, hire, and compensate. Taxpayer represents that property owners will not have any dominion and control over the type and extent of the rehabilitation of B on their property. In addition, the property owners will not be told of the cost of the rehabilitation of their B.

In certain cases, the rehabilitation of B may have incidental beneficial or adverse effects on an owner's property. For example, it may eliminate x backup on a property and may cause another property to drain less effectively. Taxpayer, however, does not consider these effects in deciding whether to rehabilitate B. Taxpayer represents that all benefits of the Program are intended for Taxpayer and other governmental entities. The Program will help Taxpayer and other local governments to avoid straining existing system capacity, avoid investment in additional capacity, better manage operating and

maintenance expenses of Taxpayer's C, and avoid future state and federal government enforcement actions and penalties.

LAW AND ANALYSIS

Section 6041 requires all persons engaged in a trade or business who, in the course of that trade or business, pay another person "fixed and determinable gains, profits, and income" aggregating $600 or more in any taxable year to (1) file an information return for each calendar year in which they make such payments and (2) furnish a copy of the information return to that person. *See* § 6041(a) and (d) and § 1.6041-1(a)(1) and (b) of the Income Tax Regulations. Although the word "income" as used in § 6041 is not defined by statute or regulation, its appearance in the phrase "fixed or determinable gains, profits, and income" indicates that it refers to "gross Income," not the gross amount paid. Thus, § 6041 requires a payor to report only those payments aggregating $600 or more that are includible in the recipient's gross income.

Under § 61(a), gross income means all income from whatever source derived. Gross income extends to undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955).

Taxpayer's Program is for its benefit. For example, the Program will enable Taxpayer to avoid monetary penalties under state and federal law, and will reduce Taxpayer's current costs as well as its future capital expenditures. Taxpayer bases its decisions on whether to rehabilitate B located on an owner's property based on providing Taxpayer with the greatest return on *its* financial investment. Moreover, Taxpayer controls the rehabilitation process; it hires and pays the contractors performing the work and determines the extent of each rehabilitation project. In addition, the rehabilitation of B located on an owner's property is being undertaken to abate D, a public purpose, without regard to whether the rehabilitation is requested by property owners or beneficially or adversely affects their property. Under these facts, the rehabilitation of B does not give rise to income to the property owners under § 61. Because there is no income under § 61, Taxpayer does not have an information reporting obligation under § 6041 with respect to property owners whose B are rehabilitated in the Program.

CONCLUSION

Based strictly on the information submitted and representations made, we conclude that Taxpayer does not have an information reporting obligation under § 6041 with respect to property owners for the rehabilitation of B located on their property under the Program because the rehabilitation will not result in gross income to the property owners under § 61.

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 a power of attorney on file on this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

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