INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

April 13, 2005

Third Party Communication: None
Date of Communication: Not Applicable

Index (UIL) No.: 61.09-01
CASE-MIS No.: TAM-165634-04
Number: **200632015**
Release Date: 8/11/2006

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Year(s) Involved:
Date of Conference:

LEGEND:

Parent =
Taxpayer =

Sub 1 =
B =
Utility 1 =
Utility 2 =
Utility 3 =
Utility 4 = .
Agency =
State X =
State Y =
City Z =
W =
R Account =

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
b	=
c	=
d	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Product	=

ISSUE:

Whether the public utility subsidiaries of Parent must recognize income on revenues collected from proposed rate increases, while an appeal of those increases was pending, under § 61 of the Internal Revenue Code and the claim of right doctrine.

CONCLUSION:

Revenues collected by the public utility subsidiaries of Parent from their proposed rate increases, while an appeal of those increases was pending, must be included as gross income in the years of receipt under § 61(a) and the claim of right doctrine.

FACTS:

Sub 1, a subsidiary of Parent, produced and sold Product to Utility 1, Utility 2, Utility 3, and Utility 4 (the four public utility subsidiaries), from Year 2 through Year 3. The four public utilities are also subsidiaries of Parent. B applied to Agency, on behalf of Sub 1, for a rate increase on Date 1. Agency issued an order on Date 2 that stated:

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Thus, the rate increase became effective on Date 4, subject to refund, and Sub 1 billed the four public utility subsidiaries accordingly. Utility 1 billed its customers based on the billings received from Sub 1 pursuant to an order of the State X public service commission. Utility 2 billed customers based on the Date 7 decision of the Agency through adjustment of annual formula plan filings. Utility 3 deferred most of the recovery of the Sub 1's rate increase pursuant to an order to the State Y public service commission. Utility 3, however, commenced billing pursuant to the Agency's Date 7 decision, discussed below. Utility 4 billed 50 percent of Sub 1's rate increase pursuant to an order of City Z .

Agency hearings pertaining to Sub 1's requested rate increase began on Date 5 and ended on Date 6. On Date 7, the Agency rejected Sub 1's proposed increase in the return on common equity and reduced the rate of return to b percent. The Agency's decision permitted an increase in the rates charged by Sub 1 that was approximately c percent of the increase requested. Because the Agency's decision was subject to change on rehearing, Sub 1 continued to bill the subsidiaries based on the original amount requested by B on Date 1. On Date 8, Sub 1 appealed the Agency's decision and requested a rehearing.

During the pendency of the case, Sub 1 recorded a reserve for potential refunds, a contingent liability, and established the R Account, a contra-revenue account, on its books for potential rate refunds in accordance with regulatory accounting principles. The reserve represented the difference between the amount it was billing and the amount allowed by the Agency's Date 7 decision. Sub 1 neither funded a discrete reserve account nor segregated any funds from operating funds. None of the four public utility subsidiaries recorded a contingent liability provision for rate refunds on their books.

On rehearing, the Agency issued an order on Date 9 approving a rate increase equal to about d percent of the requested increase. Sub 1 filed a request for rehearing on Date 10, which the Agency denied on Date 11. Thus, the Agency order issued on Date 9 became final on Date 11. Prior to the end of Year 3, Sub 1 made the required compliance tariff filing that the Agency accepted, paid refunds to the four public utility subsidiaries, and filed the requisite refund report with Agency.

When the Agency order became final in Year 3, the four public utility subsidiaries recorded entries on their books to spread the impact of the order to the various revenue, expense, asset, and liability accounts affected as if the order had been in place since the beginning of the rate case in Year 1. This enabled these subsidiaries to account for the costs billed to them by Sub 1 in excess of the amounts they passed on to their customers through increased rates. In addition, these subsidiaries made the appropriate filings with their respective regulatory commissions relative to the amount of the refunds to be made to customers and the procedure for handling those refunds.

The four public utility subsidiaries passed on to their retail customers the refunds they received from Sub 1 in different ways. Utility 1 disbursed checks, with interest, to its retail customers in Year 4. Utility 2 credited the amounts, with interest, to its retail customers' bills in Year 4. Utility 3 credited the amounts, with interest, to its retail customers' bills in Years 3 through Year 5. Utility 4 disbursed the refund received from Sub 1, with interest, in Year 3 by credits on customers' bills and by grants to programs to aid needy individuals, and in Year 4 by checks to its customers.

On its original tax returns for Year 2 through Year 3, Taxpayer reported the increased rates it received from customers as income. After the refunds were paid to customers, Taxpayer filed amended returns for Year 2 through Year 3 to address the rate refund item.

LAW AND ANALYSIS:

Section 61(a) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under § 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955), 1955-1 C.B. 207.

The Supreme Court of the United States established the "claim of right" doctrine in *North American Oil Consolidated Co. v. Burnet*, 286 U.S. 417, 424 (1932), XI-1 C.B. 293, 295 (1932), stating:

> If a taxpayer receives earnings under a claim of right and without restriction as to its disposition, he has received income which he is required to return, even though it may still be claimed that he is not entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.

The Supreme Court also addressed the "claim of right" doctrine in *James v. United States*, 366 U.S. 213, 219 (1961) 1961-2 C.B. 9, 12-13, stating:

> When a taxpayer acquires earnings, lawfully or unlawfully, without the consensual recognition, express or implied, of an obligation to repay and without restriction as to their disposition, 'he has received income which he is required to return, even though it may still be claimed that he is not

> entitled to retain the money, and even though he may still be adjudged liable to restore its equivalent.' ... In such case the taxpayer has 'actual command over the property taxed – the actual benefit for which the tax is paid,' [citation omitted].

The United States Tax Court explained the claim of right doctrine in *Nordberg v. Commissioner*, 79 T.C. 655, 664-665 (1982), *aff'd without opinion*, 720 F.2d 658 (1st Cir. 1983). The court stated:

> Although this doctrine has been applied in a 'variety of contexts' the situations have shared 'a common factual element: the receipt of money or other property with an imperfect right to retain it.' Wooton, 'The Claim of Right Doctrine and Section 1341,' 34 Tax Law. 297 (1981). ...
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> Proceeding from the indisputable premise that 'One of the basic aspects of the federal income tax is that there be an annual accounting of income', ... the receipt of funds without restriction as to use or disposition must trigger the incidence of taxation, unless 'in the year of receipt a taxpayer recognizes his liability under an existing and fixed obligation to repay the amount received and makes provisions for repayment.' *Hope v. Commissioner*, 55 T.C. 1020, 1030 (1971) ... . As we have stated, 'The mere fact that income received by a taxpayer may have to be returned at some later time does not deprive it of its character as taxable income when received' (*Woolard v. Commissioner,* 47 T.C. 274, 279 (1966) ...), and the claim of right doctrine will apply 'notwithstanding that the taxpayer may be under a contingent obligation to restore the funds at some future point' (*Professional Insurance Agents of Michigan v. Commissioner*, 78 T.C. 246, 270 (1982) ...). Where the taxpayer is required to repay some or all of the money in a later year, a deduction may then be available to him in the later year to the extent permitted by law ... , but the amounts are income nonetheless in the year of receipt.

Based on the foregoing principles, the Tax Court in *Nordberg* held that the taxpayer was required to include in income amounts received as partial payment of a subordinated note, where such amounts were subject to repayment contingent on the future assertion of prior adverse claims. The taxpayer received the funds and used them to pay for various expenses. The court found that the taxpayer's obligation to repay the amounts was contingent and that the taxpayer received income under a claim of right without any restriction on disposition. *See also Whitaker v. Commissioner*, 259 F.2d 379 (5th Cir. 1958)(breeding fees received in the year of breeding were income even though the breeder had a contingent liability to refund the fees if the foal was not born alive).

A taxpayer is required to include receipts in income even if the possibility that the taxpayer will be required to repay the contingent obligation is substantial. For example, in *Continental Illinois Corporation v. Commissioner,* 998 F.2d 513 (7th Cir. 1993), the taxpayer made loans to borrowers at a floating rate of interest. The taxpayer was required to refund to borrowers interest in excess of a fixed “capped” rate if the borrowers neither defaulted on nor prepaid the loans. Because of unexpectedly steep inflation, the floating rate usually exceeded the capped rate of interest. The court concluded that the taxpayer was required to include in income interest received in excess of the capped rate because the taxpayer’s obligation to repay the interest, although substantial, was contingent.

The longstanding position of the Internal Revenue Service has been that proceeds received from contingent utility rate increases are included in income under the claim of right doctrine. In Rev. Rul. 55-137, 1955-1 C.B. 215, a state regulatory authority denied a utility’s request to increase its power rates, but approved a rate increase that was less than the utility requested. The utility went to court and obtained a stay of the authority’s order that permitted the utility to collect proceeds pursuant to the higher rate, subject to refund in the event that the court found that the regulatory authority’s rate was valid. The Service concluded that the possible excess revenues collected by the utility pending a final decision by the court were includible in gross income under the claim of right doctrine for the taxable years in which such excess revenues were received. The fact that the utility had filed a bond as security for the contingent liability to return excess revenues did not restrict its use of the revenues collected. Moreover, the utility’s establishment of a separate bank account, subject to the joint control of the utility and the bonding company, to hold funds equal to the amount of the excess did not preclude the Service from applying the claim of right doctrine. In so concluding, the Service cited to *Commissioner v. Alamitos Land Company,* 112 F.2d 648 (9th Cir. 1940), which holds that a corporation is required to include in income funds received subject to refund, notwithstanding an indication in its account books of an intention not to exercise its absolute dominion over those funds.

The Second Circuit has similarly treated utility proceeds received during an ongoing rate dispute as currently taxable, notwithstanding a utility’s contingent obligation to return the proceeds. In *Commissioner v. Brooklyn Union Gas Co.*, 62 F.2d 505 (2nd Cir. 1933), which involved a rate dispute that began in 1916, proceeds collected in excess of the lower rates were set aside in an impounded bank account. Pursuant to a court order in 1919, the utilities were able to withdraw the proceeds upon posting an indemnification bond. No restrictions were placed on the utility’s use of the withdrawn funds, despite their being subject to return in the future. In 1922, the commission abrogated its orders reducing the rates, and the utilities gained an absolute right to the disputed funds. The utility argued that it had not received income until 1922, when the contingencies were lifted. The court concluded that the income was taxable to the utility in 1919, the year that the funds could be withdrawn. The court reasoned that the posting of a bond in order to obtain possession of income was not a sufficient restriction to prevent application of the claim of right doctrine.

Likewise, if a utility uses temporary charges to pay financing costs, the speculative prospect of subsequent commission action to compensate for the temporary charges does not preclude the utility from realizing gross income. In *Iowa Southern Utilities Co. v. United States*, 841 F.2d 1108 (Fed. Cir. 1988), the court required a utility to include surcharges in gross income because regulatory policy requiring the utility to refund the surcharges via rate decrements over a 30-year period did not constitute a repayment obligation. The state utility commission allowed the utility to assess a surcharge specifically for funding construction of a power plant to be owned by the utility. The surcharge was not separately identified on customers' bills. Although the commission required the utility to account for the surcharge receipts on its books, the amounts were commingled with the utility's general funds and available for its general use. The court noted that although the surcharges were to be "unconditionally refunded", the documents neither established an obligation to pay nor any liability; rather, they were merely a declaration of regulatory policy. In applying the claim of right doctrine, the court also noted that the utility was not merely a custodian of the money because it entered into the transaction to cover its construction financing costs, thereby benefiting from the transaction.

In the subject case, the Agency allowed Sub 1 to implement a rate increase subject to review and refund of the additional rate to the extent it was not allowed. The four public utility subsidiaries that purchase Sub 1's Product, implemented their own rate increases through their respective regulatory bodies. Those rates essentially remained in effect, though pending review and appeal, until Year 3. During the intervening years, Sub 1 and the four public utility subsidiaries collected and deposited the additional funds in their accounts with unlimited control over their use and disposition and without segregation from other funds. They treated the funds as their own. That nonrestricted receipt triggers taxation unless, in the year such funds were received, the subsidiaries recognized a liability under an existing and fixed obligation to repay the proceeds received and made provision for such repayment. *Nordberg v. Commissioner, supra*; *Hope v. Commissioner*, 471 F.2d 738 (3rd Cir. 1973). Here, Sub 1 and the four public utility subsidiaries neither recognized an existing and fixed obligation to repay nor made any provision for repayment.

Though Sub 1 and the four public utility subsidiaries were required to refund the excess revenues over the approved rate increase with interest, the obligation to do so was contingent until Sub 1's rate case was resolved in Year 3. That income may have to be returned at some later time does not deprive it of its character as taxable income when received. *Woolard,* 47 T.C. at 279. This is true even if the likelihood of repayment is substantial. *Continental Illinois Corp.,* 998 F.2d at 521.

In addition, the fact that Sub 1 appealed the decisions of the Agency denying the request for the rate increase indicates that prior to Year 3, Sub 1 and the four public utility subsidiaries did not recognize an existing fixed obligation to repay the higher rates to its customers. Further, establishment of the R Account, like the establishment of the joint bank account in Rev. Rul. 55-137 and the intent not to exercise control over certain funds in *Alamitos Land Co.,* neither results in a recognition of a fixed liability nor establishes a restriction on the use of funds that precludes application of the claim of right doctrine.

We believe that the situation in this case is strikingly similar to that of the taxpayers in Rev. Rul. 55-137 and *Brooklyn Union Gas*. In all three situations, the taxpayers received funds from customers pursuant to rate charges that were subject to refund upon resolution of a dispute concerning whether the rates were proper. In all three situations, the taxpayers had use of the funds for their business operations during the period that the dispute was unresolved. In Rev. Rul. 55-137 and *Brooklyn Union Gas Co.,* the taxpayers received the funds, but had to post a bond in the event they were required to repay the funds received, while Sub 1 established the R Account. In Rev. Rul. 55-137 and *Brooklyn Union Gas Co*, the taxpayers were required to include in income the amounts received under the rates that were in effect during the period of the rate dispute. Likewise, the four public utility subsidiaries must include in income the amounts collected from their customers prior to resolution of the rate case with the Agency. That the taxpayer in *Brooklyn Union Gas Co.* ultimately prevailed in its dispute and that in both Rev. Rul. 55-137 and *Brooklyn Union Gas Co.* appeals were taken to courts rather than to an administrative agency does not provide a basis for a different conclusion.

Taxpayer asserts that the claim of right doctrine does not apply because the contingencies in this case are substantially similar to those in *Houston Industries Incorporated and Subsidiaries v. United States*, 32 Fed. Cl. 202 (1994), *appeal on other grounds dismissed*, 78 F.3d 564 (Fed. Cir. 1996), *aff'd*, 125 F.3d, 1442 (Fed. Cir. 1997), and *Florida Progress Corporation & Subsidiaries v. Commissioner*, 114 T.C. 587 (2000). In Rev. Rul. 2003-39, 2003-1 C.B. 811, the Service accepted the holdings in *Houston Industries*, *Florida Progress* and *Cinergy Corp. v. United States*, 55 Fed. Cl. 489 (2003), and concluded that the utilities may exclude fuel cost and energy conservation cost overrecoveries from gross income in cases involving facts substantially similar to those cases.

In *Houston Industries*, the taxpayer billed its customers for electricity according to rates prescribed by the state public utility commission. The rates included a fuel-cost component designed to recover the taxpayer's fuel costs. The rates generally were effective for a rate period of at least 12 months, as determined by the public utility commission. Under state law, the utility could retain only its actual fuel costs. The taxpayer determined monthly whether it had an overrecovery or underrecovery of its fuel costs, and netted those against each other to determine its net fuel cost recovery for a rate period. Under state law, the utility was required to return a net fuel cost overrecovery for a rate period, with interest, by direct payments or credits to the accounts of customers during a subsequent rate period.

The fuel-cost components of the taxpayer's rates in effect during the years in issue resulted in a net overpayment of fuel costs by the utility's customers. The utility did not include the fuel-cost overrecoveries in gross income and deducted the interest accrued on the overrecoveries. The Court of Federal Claims concluded that, because the utility had an unconditional obligation to repay its customers all overrecoveries received, the overrecoveries could not be characterized as income. The Court of Appeals for the Federal Circuit affirmed, noting that the overrecoveries were similar in several respects to the deposits in *Commissioner v. Indianapolis Power and Light Co.*, 493 U.S. 203 (1990), discussed below. First, the utility derived no benefit from the overrecoveries because the regulatory purpose that caused the overrecoveries was to benefit the customers, not the taxpayer. Moreover, the taxpayer was required to pay interest on the overrecoveries. Finally, the utility had a statutory obligation to repay the overrecoveries when it collected its customers' payments. Although an overrecovery could be offset by a later underrecovery, this alternative method of repayment did not affect the utility's obligation to repay.

Similarly, *Florida Progress Corporation v. Commissioner*, involved whether overcollections by a utility of estimated fuel and energy conservation costs are income under § 61. In that case, the utility was required to return those funds by setoff on customers' bills in later months to create level pricing and reduce the volatility of customers' bills. The Tax Court held that the utility never had complete dominion over the overcollections and was not required to recognize them as income when received. The regulatory recovery method was designed to spread the costs of the expenditures over the 6-month recovery period for the sole benefit of customers. Further, the return of overcollections of fuel and energy conservation costs was controlled by government agencies, not the utility. In addition, at the end of each month Florida Power had a fixed and certain liability to return the amount then held as an overrecovery, as mandated by government regulations either by setoff during the remainder of the recovery period or by a true-up adjustment. In addition, Florida Power was required to return overrecoveries with interest. Thus, like the taxpayer in *Houston Industries*, Florida Power derived no benefit from the regulatory imposed recovery system and had at the end of each taxable year a fixed obligation to refund the overrecoveries. Therefore, court held that Florida Power was not required to include the overrecoveries in income.

Taxpayer has also cited *Mutual Telephone Company v. United States*, 204 F.2d 160 (9th Cir. 1953) in support of its position. In that case, the taxpayer was authorized by its regulatory commission to collect additional funds from customers through increased rates in order to curtail demand. In addition, definite limitations and as to use and custody of the receipts were imposed. For example, the regulatory commission's order provided that that "said charges should be but temporary, and that withdrawal of said charges should be made at the time the commission deemed appropriate." Under these facts, the court found that the commission possessed and exercised authority to direct the taxpayer to retain custody of the monies received from the increased rates until the commission directed the disposition of the monies. The court held that charges held in reserve at the direction of the public utilities commission were not received 'without restrictions' and, therefore, were not income because "it cannot be said that the receipts came into the possession of [the utility] subject to its 'unfettered command' and that it was free to enjoy the receipts at its option."

We believe that the subject case is distinguishable from *Houston Industries* and *Florida Progress* because unlike those cases, Sub 1 and the four public utility subsidiaries were not required by the Agency to increase rates for conservation purposes, to create stable billing rates, or perform any other measures that benefited the general public. Instead, the rate increases benefited the subsidiaries themselves by allowing them to pass on cost increases to their customers. Second, until the Agency's decision became final, the Taxpayer did not have a fixed obligation to repay or knowledge of the amount, if any, that would be required to be repaid. That is, prior to Year 3, Sub 1 and the four public utility subsidiaries did not know whether they would be required to refund all, part, or none of the amounts they had collected pursuant to the Date 2 order because the Agency proceedings concerning Sub 1's requested rate increase had not concluded. By contrast, at the end of each taxable year the taxpayers in *Houston Industries* and *Florida Progress* had a fixed and precise "overrecovery" liability that they owed to their customers; only the method of repaying that liability — by offset against underrecoveries before the end of a recovery period or by credit to customers' bills — had to be determined. In addition, prior to Year 3, Sub 1 had contested Agency determinations denying the requested rate increase. This fact alone is inconsistent with a conclusion that prior to Year 3, Sub 1 and the four public utility subsidiaries "recognize[d] ... liability under an existing and fixed obligation to repay the amount received... ." *Hope*, 55 T.C. at 1030 (1971).

Taxpayer's situation is also distinguishable from that of *Mutual Telephone*. By contrast, with *Mutual Telephone*, Sub 1 and the four public utility subsidiaries did not increase rates as a conservation measure. In addition, Sub 1's requested rate increase was unlike the rate increase in *Mutual Telephone*, which was intended at the outset as a temporary measure to discourage telephone use, for which reason the public utility commission directed the telephone company merely to "retain custody of the moneys or its equivalent funds until further disposition is directed." *Mutual Telephone*, 204 F.2d at 161. The reason the amounts collected in *Mutual Telephone* were not income was that "they were not originally intended to benefit the telephone company." *Iowa Southern Utilities*, 841 F.2d at 1113. As noted above, in this case, the rate increase was requested and collected for Taxpayer's benefit.

Taxpayer further analogizes its situation to *Indianapolis Power*. In that case, the issue was whether deposits required of certain utility customers to assure payment of future bills were taxable upon receipt as advance payments to the utility. Customers had the option of having the deposit refunded in full or applied to outstanding charges for electricity; a customer made no commitment to purchase electricity. The Supreme Court held that the customer deposits were not advance payments. The court stated, "Rather, these deposits were acquired subject to an express 'obligation to repay," either at the time service was terminated or at the time a customer established good credit." *Indianapolis Power*, 493 U.S. at 209. Thus, the utility's right to retain the money was contingent on events outside its control. Therefore, because the utility lacked sufficient dominion and control over the customer deposits, they did not constitute taxable income.

Indianapolis Power is also distinguishable from the subject case. Here, the utilities' customers' payments were made for Product rather than to ensure future payments of bills. Thus, the customers had no right to insist upon repayment. In addition, as discussed above, prior to Year 3, neither Sub 1 nor the four public utility subsidiaries had an "express obligation to repay" any of their customers. Instead, prior to Year 3, neither Taxpayer nor the customers knew whether any of the payments would be required to be refunded. Although a contingent obligation to restore the funds existed depending on the outcome of the Agency's determination, the claim of right doctrine nevertheless applies even when the contingency is significant. *See Continental Illinois Corp., supra.*

Taxpayer also submitted a letter from W, addressing when under the Agency's regulatory scheme, a utility has an unqualified right to retain funds. In the letter, W concludes, "[A] fixed or unqualified right to collect increased rates not subject to refund only attaches following [the Agency's] final decision setting the rate. Under the [B] facts, this would be in [Year 3]." W's statement and our conclusion are not inconsistent. The claim of right doctrine applies when a taxpayer has "the receipt of money or other property with an *imperfect* right to retain it," (*Nordberg*, 79 T.C. at 664) and even though "it may still be claimed that [the taxpayer] is not entitled to retain the money, and even though [the taxpayer] may still be adjudged liable to restore its equivalent. In such case the taxpayer has 'actual command over the property taxed – the actual benefit for which the tax is paid,'". *James,* 366 U.S. at 219. [Emphasis added.] Thus, whether the Agency has rendered a final rate-setting decision is irrelevant to whether the claim of right doctrine applies.

Taxpayer also asserts that it is not required to include in income the amounts it received subject to refund under Rev. Rul. 63-182, 1963-2 C.B. 194 and *Jamaica Water Supply v. Commissioner*, 125 F.2d 512 (2nd Cir. 1942), each of which involved taxpayers that, like Taxpayer, used the accrual method of accounting. In Rev. Rul. 63-182, a taxpayer that distributed natural gas and its supplier entered into a settlement agreement in 1960 under which the supplier agreed to refund part of the amounts the taxpayer had paid for natural gas. The effectiveness of the settlement agreement was expressly conditioned upon the approval of the Federal Power Commission (FPC), which approved it in 1961. The ruling concludes that because there was a real possibility that the FPC would not approve the agreement, the "all events test" of § 1.451-1 of the Income Tax Regulations was not satisfied and the taxpayer was not required to include the refund in income, until 1961, when the FPC approved the agreement.

In *Jamaica Water Supply,* the court held that the taxpayer was not required to include in income increased charges it billed New York City for water, which charges the city disputed and did not pay, until the dispute was settled. Neither Rev. Rul. 63-182 nor *Jamaica Water Supply* is helpful to Taxpayer. In both Rev. Rul. 63-182 and *Jamaica Water Supply* the taxpayers had not actually received the income in dispute. Thus, neither taxpayer was required to include the amounts in income until the dispute was resolved, thereby satisfying the all-events test. By contrast, Sub 1 and the four public utility subsidiaries actually received the disputed income prior to the time the rate case was resolved and used it in their businesses during that time. Thus, the situation in this case is resolved by application of the claim of right doctrine, without regard to the “all events test” under § 1.451-1.

CAVEAT(S):

A copy of this technical advice memorandum is to be given to the taxpayer. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.