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Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:BR05 – PLR-118603-10

Date:

August 10, 2010

In Re:

Attn:

LEGEND :

A =
B =
States C and D =
M Program =

Dear

This letter responds to your authorized representative's letter and submissions of April 28, 2010, and other correspondence and submissions, in which he requested on your (the Taxpayer's) behalf rulings regarding the proper federal tax treatment under sections 61, 136, and 6041 of the Internal Revenue Code (the Code) of the value of property and materials provided to your customers who implement and test a certain "smart grid's" effectiveness in energy conservation, as more fully described below. Specifically, you requested rulings that the value of the subject property and materials (1) is not includable in the gross incomes of the recipients by reason of the exclusion provided under section 136 of the Code, and therefore (2) is not subject to information reporting to such recipients under section 6041 of the Code. We are pleased to address your concerns.

FACTS

You, A, are a publicly traded utility holding company, distributing electricity and gas over a multistate area. In your own estimation, you distribute electricity to over 5 million customers in States C and D. Your wholly-owned subsidiary, B, a regulated electric public utility, distributes electricity in State C. You, through B, plan to install “smart grid” technology in a sampling of your customer’s homes, as a test of how effective such technology is as an energy conservation measure within the existing distribution system (“The “M” Program”).

The M Program, a pilot program, is an attempt by you to implement a smart grid solar photovoltaic (PV) system for your customers (together, the PV systems and related property when combined with the “traditional electricity distribution grid,” form what is called a “smart grid”). The basic plan is to take a sampling of qualified participants and divide them into 4 groups. The first group will be the control group. They will have fixed rate electricity pricing and receive information from monthly electricity bills only. The second group will receive an Advanced Metering Infrastructure (“AMI”) meter. The AMI meter will give hourly electricity pricing and will provide web-based electricity consumption and pricing information. The third group will receive an AMI meter and a PV system. The PV system will allow the home to use electricity that it produces, not through the traditional electricity distribution grid. The fourth group will have the AMI meter, the PV system, and a battery back-up energy storage for critical load panel. The panel will allow the home to produce energy with the PV system and store it for use at other times. The PV system and related property provided to customers will be owned wholly by them, and may give rise to increased value to customer’s homes.

You have requested a ruling that the solar PV systems and related property provided by B, a regulated electric utility wholly owned by you, to its customers under the M Program, constitute energy conservation measures under section 136 of the Code and thus, the value of the property is not includable in the gross incomes of B’s customers. You also request a ruling that the value of the PV systems and related property provided by B to its customers is not subject to information reporting under section 6041 of the Code.

LAW & ANALYSIS

Gross Income Defined

Section 61 of the Code provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived. The concept of gross income encompasses 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.

Relevant to the inquiry at hand, section 136 of the Code provides that gross income does not include the value of any subsidy provided (directly or indirectly) by a public utility to a customer for the purchase or installation of any energy conservation measure. Section 136(b) provides, in relevant part, that a taxpayer may not take a tax credit (such as under section 25D) for an expenditure to the extent of the amount excluded as a subsidy under section 136(a) with respect to the expenditure.

Section 136(c) provides that, for this purpose, the term “energy conservation measure” means any installation or modification primarily designed (1) to reduce consumption of electricity or natural gas, or (2) to improve the management of energy demand, with respect to a dwelling unit (as defined in section 280A(f)(1), describing, generally, a house, apartment, condominium, mobile home, boat, or similar property, and all structures or other property appurtenant to such dwelling unit). A “public utility” is described in section 136(c)(2)(B). The legislative history of the section clarifies that the subsidy need not be provided directly by the public utility to the customer, and that the exclusion applies to the customer to whom a subsidy may be indirectly provided by the utility.

The PV systems and related property at issue will be attached to dwelling units and owned by your customers. The M Program targets participants who are residential customers residing in owner occupied single family dwelling units. You will be testing 3 technologies. First is the Advanced Metering Infrastructure (“AMI”). This will allow consumers to determine when to use energy by providing them with a real-time pricing function to encourage off peak usage. (Peak is the time in the day when energy is in highest demand, thus most expensive.) Next are the PV systems. These systems are designed to produce energy from sunlight. This energy will be directly useable by the customer, thus lessening the need to use power from the traditional electricity distribution grid. Third is a storage system. This will store the energy produced by the PV system allowing for use at a time electricity would be more expensive if taken from the traditional electricity distribution grid.

The PV systems and related property you plan to install in your customers’ residences under the M Program constitute energy conservation measures within the meaning of section 136(c) of the Code, since they are primarily designed to reduce consumption or improve the management of energy demands with respect to dwelling units.

We conclude that the value of the PV systems and related property you and B provide your customers will be excluded from your customers’ gross incomes under

section 136(a) as subsidies provided by a public utility for energy conservation measures.

Information Reporting Requirements

Section 6041 of the Code provides 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 (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e)[d], 6049(a), or 6050N(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of \$600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make such returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Section 1.6041-1(a)(1)(i) of the Treasury Regulations (regulations) provides that, except as otherwise provided in sections 1.6041-3 (payments for which no return of information is required under section 6041) and 1.6041-4 (foreign-related items and other exceptions), every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i)(A) (salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more) or (B) (interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more) of this section.

Section 1.6041-1(a)(2) of the regulations provides, in pertinent part, that the return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099.

Section 1.6041-1(b) of the regulations provides, in pertinent part, that the term “all persons engaged in a trade or business”, as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in sections 401(a), 501(c), 501(d), and 521 and in paragraph (i) of this section.

The word “income” as used in section 6041 is not defined by statute or regulation; however, its appearance in the phrase “fixed or determinable gains, profits, and income” indicates that what is referred to is “gross income,” and not the gross amount paid. Thus, section 6041 requires you to report only those payments in excess of \$600 includible in a recipient’s gross income.

In this case, the PV systems and related property you and B provide to residential customers to promote energy efficiency and the use of renewable energy resources is not gross income to the customers under section 61. As a result, you do not have to report the payments under section 6041.

CONCLUSIONS

Based on the facts and information submitted and the representations made, the following rulings are issued respecting the PV systems and related property provided by you and B to residential customers under the M Program:

- (1) the value of the PV systems and related property provided under the M program is not income to the recipients under section 61 of the Code, but constitute “energy conservation subsidies” excluded from gross income under section 136; and
- (2) neither you nor B is required to report the value of such PV systems and related property on Forms 1096 or 1099.

Final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling may be modified or revoked by adoption of final regulations, to the extent the regulations are inconsistent with any conclusions in this ruling. See section 11.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1. However, when the criteria in section 11.06 of Rev. Proc. 2010-1 are satisfied, a ruling is not revoked or modified retroactively, except in rare or unusual circumstances.

This letter ruling is based on facts and representations provided by the Taxpayer and its authorized representatives, and is limited to the matters specifically addressed. No opinion is expressed as to the tax treatment of the transactions considered herein under the provisions of any other sections of the Code or regulations which may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, such transactions which are not specifically addressed herein.

Because it could help resolve federal tax issues, a copy of this letter should be maintained with the Taxpayer's permanent records.

Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely yours,

/s/ William A. Jackson

William A. Jackson
Chief, Branch 5
Associate Chief Counsel
(Income Tax & Accounting)

Enclosures:

Copy of this letter

Copy for section 6110 purposes