Internal Revenue Service

Index Number: 61.40-00, 6041.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: Congressional
Date of Communication: May 16, 2019

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-108847-19

Date:
January 15, 2020

LEGEND:

Taxpayer =

State =

A =

B =

C =

D =

E =

Department =

Program =

$x =

$y =

$z =

System F =

System G =

H =

%a =

$b =

Dear :

This is in reply to your request for rulings on behalf of Taxpayer that it is not subject to an information reporting obligation under § 6041 of the Internal Revenue Code (Code) with respect to grants it provides to homeowners under Program to assist with the costs of installing new Systems and that the grants are not includible in the gross income of the homeowners under § 61.

FACTS

Taxpayer is a duly formed municipal corporation formed under the laws of State. Taxpayer has been experiencing A, although B. Taxpayer has determined that C and D are the largest contributors to A. Taxpayer established Program under E with the intent of reducing A. Department administers Program.

Program provides grants up to $x or $y on or behalf of eligible homeowners with combined Federal adjusted gross income less than $z[1] who install a System F. Under E, homeowners residing in H that have Cs or Ds are not required to install new System Fs or System Gs.[2]

Under Program, homeowners who have C or D and meet certain requirements can apply for grants to assist with the costs of installing a new System F. The homeowner and residence must meet a number of requirements to be eligible for a grant, including the following:

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[1] Grant applicants with combined Federal adjusted gross income less than $z are eligible for grant awards up to $x. Grant applicants with combined gross household income less than or equal to %a of the most current area median income as established by the United States Department of Housing and Urban Development (HUD) are eligible to receive grant awards up to $y; for 2018, %a of the current area median income of E as established by HUD is $b.

[2] Homeowners who replace a C or D are not allowed to install another C or D, but are not required to install a System F. Instead, they are allowed to install a System G (at minimum), although Program does not provide grants for the purchase or installation of a System G.

i. the homeowner's residence is located in H;
ii. the residence is not a rental property;
iii. the residence is single-family, owner-occupied year round, and the homeowner's primary residence;
iv. the homeowner is current on payment of property taxes on the residence; and
v. the homeowner does not use the property as a place of business, other than a home office that does not require additional kitchen use or customer access.

A homeowner applying for a grant must complete a grant application and select an approved System F and approved contractors to design and manufacture/install the System from lists approved by Department. Taxpayer represents that the list of approved Systems F and G and the list of approved contractors are the same whether or not a homeowner applies for a grant under Program. In other words, any homeowner who decides to replace a C or D must select an approved System F or G and use an approved contractor. As part of the grant application process, homeowners must submit to Department for review and approval their choice of contractor(s) and plans for the new System F. The on-site construction of a System F is designed and supervised by the contractors (various design professionals, installers, and manufacturers) in coordination with the homeowner. Taxpayer has the right to inspect all System Fs (and System Gs) installed by homeowners under its jurisdiction, regardless of whether the homeowner receives a grant award under Program.

Under the terms of Program, Taxpayer inspects the new System after installation is complete. Once the installed System F is inspected and approved by Taxpayer and the grant agreement is executed, the grant award is paid to the homeowner or the contractors. Some grants are paid to homeowners and some homeowners exercise the option to have their grants paid directly to the contractors who design and/or manufacture/install the System Fs. Some homeowners have also received additional grants funded by the State and administered by Taxpayer. In addition to the cap on grant amounts ($x or $y), the grant amount awarded to each homeowner is limited to reimbursement of specified costs actually incurred by the homeowner in connection with the design, purchase, and installation of a System F.

Under the terms of the grant, the homeowners agree that they are responsible to maintain, at their own expense, the System F once installed on their properties. The executed grant documents include property descriptions so that the same can be recorded in the County Clerk's office (to achieve public notice of the representations of the grant recipient regarding the use of funds), acceptance of the obligations associated with enhanced System F maintenance, and the right for Taxpayer to access the property for the purposes of inspecting the System F and related testing. Homeowners who agree to the terms of the grant do not grant an easement or other property right to Taxpayer. Any homeowner grant recipient under Program that is found to have made a material misrepresentation in the grant application, negligently or intentionally failed to operate a maintain a System F to the point that it is damaged beyond repair, or has

removed a System F without prior written approval of Department, is obligated to repay the entire grant amount.

Taxpayer has requested rulings that the proceeds of the grants paid by Taxpayer under Program are not includible in the homeowners' gross income pursuant to § 61 of the Code, and therefore Taxpayer is not required to file Forms 1099-G, Certain Government Payments, reporting the grants paid to the homeowners, or furnish payee statements to the homeowners. Taxpayer's ruling request relates to two situations:

a. The grant is paid directly to third party contractors, and not directly to the homeowner
b. The grant is paid directly to the homeowner

LAW AND ANALYSIS

Income Taxation

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived. The term "income" is broadly defined as "instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 429-433 (1955). It is well-established that the payment of the expenses of a taxpayer by another is includible in the taxpayer's gross income. See, e.g., Old Colony Trust v. Commissioner, 279 U.S. 716, 729-730 (1929).

In Bailey v. Commissioner, 88 T.C. 1293 (1987), acq. on another issue, 1989-2 C.B. 1, the court held that the recipient of a façade grant lacked complete dominion and control over the façade because (i) the recipient was required to grant an easement to the city's urban renewal agency, and (ii) the city's urban renewal agency maintained substantial control over the rehabilitation work performed on the façade by selecting the contractor, negotiating the terms of the contract, and paying for the work that was performed on the façade. Further, the recipient did not know the amount of the façade grant when he signed the agreement and did not receive any of the grant payments. Accordingly, the cost of the rehabilitation work performed was not included in the recipient's gross income and was excluded from the recipient's basis in the property. Id. at 1301.

These grants of up to $y that Taxpayer provides to or on behalf of homeowners under Program to assist with the costs of installing System Fs are accessions to wealth that are includible in their gross income under § 61, unless an exclusion applies. Commissioner v. Glenshaw Glass Co., 348 U.S. at 429-433.

Here, the terms of Program indicate that the homeowners retain significant dominion and control over selecting and constructing their System Fs and negotiating the terms of contracts with contractors. The homeowners also do not grant an easement to Taxpayer. Additionally, the homeowner grant recipients have dominion and control over

the payments; they can choose to receive the funds directly or to have the funds paid on their behalf to their contractors. Therefore, the grant payments are includible in the gross income of the homeowners, unless an exclusion applies. Our analysis is the same whether the grant payments are made to the homeowners or to the contractors. See Old Colony Trust v. Commissioner, 279 U.S. at 729.

General Welfare Exclusion

Although § 61 provides for broad includability in gross income, the Internal Revenue Service (Service) has consistently held that payments made to or on behalf of individuals by governmental units under legislatively provided social benefit programs for the promotion of general welfare are not includible in a recipient's gross income (general welfare exclusion). To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (that is, based on individual or family need), and (iii) not represent compensation for services. See Rev. Rul. 2005-46, 2005-2 C.B. 120.

In Bailey v. Commissioner, 88 T.C. at 1300, the court noted that the general welfare exclusion has been applied when "the grant was received under a program requiring the individual recipient to establish need" and that the exclusion did not apply to "[g]rants received under social welfare programs that did not require recipients to establish individual need".

In Rev. Rul. 76-395, 1976-2 C.B. 16, the Service ruled that payments made to low-income individuals primarily in order to subsidize home improvements necessary to correct building code violations and thereby provide safe and decent housing were excluded from the recipients' income under the general welfare exclusion. Payments based on disability also have qualified for exclusion under the general welfare doctrine. Rev. Rul. 57-102, 1957-1 C.B. 26 (state grants to the blind). Additionally, Rev. Rul. 76-144, 1976-1 C.B. 17, holds that grants received by individuals under the Disaster Relief Act of 1974 to alleviate the suffering and damage resulting from a disaster is in the interest of general welfare and not includible in gross income.

Conversely, in Rev. Rul. Rev. Rul. 76-131, 1971-1 C.B. 16, the Service ruled that the general welfare exclusion does not apply to bonuses paid by state to long-time residents because the bonuses were payable to any State resident that met the age and residency requirements and were not based on need.

Based on the facts submitted, we conclude the grants provided and administered by Taxpayer to or on behalf of homeowners under Program are not based on individual or family need. Instead, the grant awards of up to $y are based on the location of the home in H and meeting other eligibility requirements. Additionally, by contrast with the grants described in Rev. Rul. 76-144, the grants provided and administered by Taxpayer to or on behalf of the homeowners under Program are not paid as a result of a

disaster. Rather, they are paid to eligible homeowners to encourage construction of new System Fs to help reduce A.

Accordingly, the grants issued to homeowners under Program are not excludable from gross income under the general welfare exclusion.

Information Reporting

Section 6041(a) and Treas. Reg. § 1.6041-1(a)(1)(i) of the Income Tax Regulations provide, with exceptions not applicable here, 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, aggregating $600 or more in the taxable year must file an information return with the Service. Under § 6041(d), the payor is required to furnish an information statement to the payee. Forms 1096 and 1099 are used for this reporting. Treas. Reg. § 1.6041-1(a)(2).

The section 6041 information reporting requirement applies to payments made during the calendar year to another person of "fixed or determinable income." Treas. Reg. § 1.6041-1(a). Treas. Reg. § 1.6041-1(c) provides that income is fixed when paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. As used in section 6041, "income" means "gross income".

The information reporting requirements of section 6041 may also apply to payments made by the United States or a state. Treas. Reg. § 1.6041-1(b)(1) clarifies that the term "persons engaged in a trade or business" in § 6041 includes not only organizations engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit, for example, the organizations referred to in paragraph (i) of Treas. Reg. § 1.6041-1. Treas. Reg. § 1.6041-1(i) provides, in part, that information returns on Forms 1096, Annual Summary and Transmittal of U.S. Information Returns, and 1099 of payments made by a state, or political subdivision, agency or instrumentality thereof, shall be made by the officer or employee of such state or political subdivision, agency or instrumentality thereof, having control of such payments or by the officer or employee appropriately designated to make such returns.

As determined above, each grant of $600 or more that Taxpayer, which is described in Treas. Reg. § 1.6041-1(i), provides to homeowners under Program is gross income to homeowners that is fixed in amount under Treas. Reg. § 1.6041-1(c). Therefore, the amount of the grant is reportable pursuant to section 6041. Form 1099-G is used to report taxable grants from local governments.

The information returns must be filed with respect to the payment of the grant to the homeowner, regardless of whether the payment is made to the homeowners or to third party contractors. The homeowner is the recipient of the income. Treas. Reg. §

1.6041-1(f) provides that the amount to be reported as paid to a payee is the amount includible in the gross income of the payee (which in many cases will be the gross amount of the payment before fees, commissions, expenses or other amounts owed by the payee to another person have been deducted), whether the payment is made jointly or separately to the payee and another person. See Treas. Reg. § 1.6041-1(f)(2), Example (2). Also see Treas. Reg. § 1.6045-5(f), Example (3).

Taxpayer has also requested a ruling as to whether information reporting under section 6041 is required with respect to amounts paid directly to contractors for work under Program. Such amounts are paid on behalf of the homeowners and are proceeds of the homeowners' grants.

Treas. Reg. § 1.6041-1(e)(1) provides that a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information with respect to that payment if under all the facts and circumstances, that person:

(1) performs management or oversight functions in connection with the payment (this excludes a person who performs mere administrative or ministerial functions such as writing checks at another's direction), or

(2) has a significant economic interest in the payment that would be compromised if the payment were not made (such as a lien on property to which the payment relates, or loss of collateral).

Whether a person performs management or oversight functions with respect to a payment is a factual determination. The examples under this regulation indicate that a person performs management or oversight functions when the person exercises some or all of the following functions: selecting the contractor, negotiating the amount of the payments, monitoring the progress of the project, approving payments, and conducting inspections to determine whether work is completed. See Treas. Reg. §1.6041-1(e)(2), Examples (1), (4) and (7).

Taxpayer represents that grant recipients select design professionals and manufacturer/installers from a pre-approved list provided by Taxpayer. E provides that the work performed under the program must comply with conditions in the Taxpayer's approval document and that Taxpayer inspects the work of the contractors prior to disbursement of the grant proceeds. E further provides that Taxpayer, with the consent of the grant recipients, may make direct payment of the grant proceeds to contractors, allocated in such a manner as determined by Department. Under the facts contained in these representations, Taxpayer performs management or oversight over the payments made to contractors on behalf of the homeowners, and thus is the payor for purposes of information reporting.

Accordingly, Taxpayer must file information returns reporting payments to contractors for work performed for homeowners, and furnish payee statements to the contractors.

Such payments are reportable under section 6041(a) as nonemployee compensation. Reporting is not required if the payment is to an exempt recipient described in Treas. Reg. §1.6041-3(p), such as a corporation. Forms 1096 and 1099 are used for this reporting. Nonemployee compensation is reported on Form 1099-NEC, Nonemployee Compensation.[3]

CONCLUSION

Based strictly on the information submitted and the representations made, we conclude that Taxpayer is subject to the information reporting requirements of § 6041(a) and (d) with respect to homeowners for the grants Taxpayer provides to homeowners under Program (whether paid directly to homeowners or to third party contractors on their behalf) because the grants are includible in the homeowners' gross income under § 61. If Taxpayer pays third party contractors on behalf of the homeowners, Taxpayer is also subject to the information reporting requirements of § 6041(a) and (d) with respect to the third-party contractors because Taxpayer exercises management or oversight functions over the payments.

The 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.

Sincerely,

Angella L. Warren
Branch Chief, Branch 4
(Income Tax & Accounting)

[3] Payments for nonemployee compensation made in 2019 should be reported on Form 1099-MISC, Miscellaneous Income.