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From:
Sent: Tuesday, June 23, 2009 9:52 AM
To:
Cc:
Subject: RE: ITC AND Grants

Briefly, the grant under act § 1603 is not a tax credit, and the receipt of the grant is not taxable income to the recipient. Recovery by Treasury of any overpayment made to the recipients (or recapture of the grant because the property ceases to be qualified within the 5-year recapture period) will not be through the income tax system, but will be handled as a debt owed to the government—and Justice will have to sue to recover if the payments are not voluntarily paid to Treasury.

The office of the Fiscal Assistant Secretary in Treasury is administering this program and will make the payments. That office is developing the application form and the addition description of the program for the applicants. My office and the office of the Tax Legislative Counsel in Treasury are consulting with them as they develop the program.

The Fiscal Assistant Secretary has contracted with the Department of Energy to review the applications initially, before the payments are made, and to provide additional assistance in Treasury's compliance review after the payments are made.

The major income tax effects of the grant are:

1. Recipients may not take either the ITC (§ 48 Energy Investment Tax Credit) or the PTC (§ 45 production tax credit) on the property for which they receive a grant,
2. Recipients must reduce their basis in property for which they receive the grants by half of the grant.

[redacted]

This all being said: Treasury has directly contacted with questions about how the ITC and PTC are currently handled on a tax exam. At the suggestion of , the contact persons are-- , , and

, . Recently, requested that I be included in any future contact between and Treasury. Both Treasury and I agreed to follow this approach.

If you need any additional information, please call me.