

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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to: Ronald D. Pinsky
Assistant Division Counsel (TL)
SB/SE Division

from: Jeffrey T. Rodrick /s/ Jeffrey T. Rodrick
Senior Technician Reviewer, Branch 5, CC:ITA:B5
(Income Tax & Accounting)

subject: Treatment of TCAP Grants and Allocations

This is in response to your communication of February 4, 2010, in which you forwarded an enquiry from the Program Manager, Examination Specialization & Technical Guidance (SB/SE), concerning the proper federal income tax treatment of certain Tax Credit Assistance Program (TCAP) grants. This memorandum addresses the first of your two general questions.

QUESTION PRESENTED

Are TCAP grants includable in the gross income of taxpayers awarded these funds by a State housing authority, and if so, are the grant funds includible in the taxable year awarded or the taxable year received?

FACTS

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (the Recovery Act). Title XII of the Recovery Act allocated funds for the Tax Credit Assistance Program (TCAP) to provide funds for capital investments in Low Income Housing Tax Credits (LIHTC) projects. The Department of Housing and Urban Development (HUD) will award TCAP grants by formula to state housing credit agencies to facilitate development of projects that received or will receive LIHTC awards between October 1, 2006 and September 30,

POSTS-105693-10

2009. The funds are distributed to each state based on the percentage of FY 2008 housing appropriations received by the state and local participating jurisdictions in the state.

A state housing credit agency interested in receiving TCAP funds must submit an application to HUD. The state agency is the administrator of the program and supervises the individual projects to make sure they meet federal standards. By statute, projects eligible to receive TCAP assistance are rental housing projects that receive or will receive an award of LIHTCs under § 42(h) of the Internal Revenue Code, during FY 2007, 2008, or 2009, and require additional funding to be completed and placed into service in accordance with the requirements of § 42. TCAP funds may be used for capital investments in eligible LIHTC projects. Capital investment means costs that are included in the eligible basis of a project under § 42. Grant funds not expended by the end of the three-year performance period will be recaptured by HUD.

State agencies must execute a legally binding written agreement with each project owner (the "TCAP written agreement"). The TCAP written agreement must set forth all of the TCAP program and other federal requirements, and must make these requirements enforceable through the recordation of a restriction that is binding on all owners and successors. The TCAP written agreement for a project cannot be executed until environmental clearance for the project is completed and a Request for Release of Funds is approved. A TCAP Funding Commitment is recorded on the date the TCAP written agreement is executed. The TCAP written agreement must be signed and dated by the state agency and the project owner before any TCAP funds are disbursed. Federal funds cannot be drawn from the U.S. Treasury in advance of the need to pay an eligible cost. Once funds are drawn by the state agency from the U.S. Treasury account, they must be disbursed to a project owner for an eligible TCAP cost within 3 days.

LAW/ANALYSIS

Under § 61(a), gross income includes all income from whatever source derived unless specifically excluded by law. Consequently, taxpayers other than nonprofit or governmental entities generally include governmental grants in gross income absent a specific exclusion.

In the instant case, the Recovery Act does not specifically exclude TCAP grants from gross income, and the Code does not contain any specific exclusion for such grants. Additionally, the grants do not qualify for exclusion under 'general welfare' principles, because that exclusion is limited to governmental grants to low and moderate-income individuals to assist them in their individuals needs; the instant grants are made to business entities, e.g., partnerships and possibly corporations. See Rev. Rul. 76-75, 1976-1 C.B. 14.

POSTS-105693-10

Accordingly, we conclude that the TCAP grants are includible in a recipient's gross income for federal income tax purposes.

Section 451 provides the general rule that the amount of any gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless such amount is to be properly accounted for as of a different period.

Under the cash receipts and disbursement method of accounting, income is includible in gross income for the taxable year in which it is actually or constructively received by the taxpayer. See § 1.451-1(a) of the Income Tax Regulations. A taxpayer may constructively receive income if, during the taxable year, it is credited to his account so that it may be drawn upon at any time or so that the taxpayer could have drawn upon it if notice had been given. However, income is not constructively received if its receipt is subject to substantial limitations or restrictions. See § 1.451-2(a).

For taxpayers that utilize the cash receipts and disbursement method of accounting, TCAP grants are not includible in gross income until the taxpayer may draw upon the funds in the account set up by the state agency. Consequently, they are includible in gross income when the project owner has access to the funds in the state agency account to pay for eligible costs.

Section 1.451-1(a) of the Regulations provides that, under an accrual method of accounting, income generally is includible in gross income when all the events have occurred which fix the right to receive such income and the amount thereof can be determined with reasonable accuracy. In general, all events that fix the right to receive income occur upon the earliest of when (1) required performance takes place, (2) payment is due or (3) payment is made. See *Schlude v. Commissioner*, 372 U.S. 128 (1963), 1963-1 C.B. 99; Rev. Rul. 80-308, 1980-2 C.B. 162.

In this situation, the income is fixed, and the amount is reasonably determinable, when the project owner and the state agency execute the TCAP written agreement, unless the written agreement provides that the TCAP grant is due at another time.

Thank you for soliciting our views in this matter. Please call M. Schmit at (202)-622-4960, if you have any further questions.