

## SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for certain grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital projects under 49 U.S.C. 24105, 24401 et seq., and 26106, as enacted by sections 301, 302, and 501, Division B of the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432), and as amended by Title XII, Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (ARRA).

Also, this revenue procedure provides a safe harbor under section 118(a) of the Code for certain grant amounts received by corporate taxpayers engaged in a transportation trade or business for capital investments in surface transportation infrastructure under (1) the Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure (TIGER Discretionary Grants) program as authorized by Title XII, Division A of ARRA; or (2) the National Infrastructure Investments (TIGER II Discretionary Grants) program as authorized by the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Title I, Division A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117)).

## SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

The Congestion Grant program under 49 U.S.C. 24105(a) provides that the Secretary of Transportation (the Secretary) may make grants for financing the capital costs of facilities, infrastructure, and equipment for high priority rail corridor projects necessary to reduce congestion or facilitate ridership growth in intercity rail passenger transportation.

The Intercity Passenger Rail Service Corridor Capital Assistance program under 49 U.S.C. 24402(a)(1) provides that the Secretary may make grants to assist in financing the capital costs of facilities, infrastructure, and equipment necessary to provide or improve intercity passenger rail transportation.

The High-Speed Rail Corridor Development program under 49 U.S.C. 26106(a) provides that the Secretary shall establish and implement a high-speed rail corridor

development program. 49 U.S.C. 26106(c) provides that the Secretary may make grants to finance capital projects in high-speed rail corridors.

The Federal Railway Administration of the Department of Transportation (DOT) issued a Notice of Funding Availability (NOFA), 74 FR 29900, that provides guidance on the High-Speed Intercity Passenger Rail Program, which includes the Congestion Grant program, the Intercity Passenger Rail Service Corridor Capital Assistance program, and the High-Speed Rail Corridor Development program. If Congress makes additional appropriations for these programs, the DOT may issue future NOFAs.

The Office of the Secretary of the DOT issued a NOFA, 74 FR 28755, that provides guidance on TIGER Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. If Congress makes additional appropriations for this program, the DOT may issue future NOFAs.

The Office of the Secretary of the DOT issued a NOFA, 75 FR 30460, that provides guidance on TIGER II Discretionary Grants. The grants must be for capital investments in surface transportation infrastructure. The NOFA contemplates that some funds may be used to fund the planning, preparation, or design of projects (Tiger II Planning Grants). If Congress makes additional appropriations for this program, the DOT may issue future NOFAs.

### SECTION 3. SCOPE

This revenue procedure applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for capital projects under 49 U.S.C. 24105, 24401 et seq., and 26106. However, in no case will this revenue

procedure apply to amounts received for the following: (1) the cost of National Environmental Policy Act Documentation, Preliminary Engineering costs that are not capitalized for tax purposes, or the cost of a Service Development Plan as described in 74 FR 29906, section 2.2; (2) the cost of developing a State Rail Plan under 49 U.S.C. 24402(b)(1); or (3) the first-dollar liability cost for insurance related to the provision of intercity passenger rail service under 49 U.S.C. 24404.

Also, this revenue procedure applies to corporate taxpayers engaged in a transportation trade or business that receive grant amounts for the costs of capital investments in surface transportation infrastructure under TIGER Discretionary Grants or under TIGER II Discretionary Grants. In no case will this revenue procedure apply to amounts received to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 or to amounts received for TIGER II Planning Grants.

Further, this revenue procedure does not apply to noncorporate taxpayers.

#### SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation for capital projects under 49 U.S.C. 24105, 24401 et seq., or 26106 as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

Also, the Service will not challenge a corporate taxpayer's treatment of grant amounts received by the corporation under TIGER Discretionary Grants for capital

investments in surface transportation infrastructure or under TIGER II Discretionary Grants for capital investments in surface transportation infrastructure as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 12, 2010.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. McDonnell at (202) 622-3040 (not a toll free call).