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March 07, 2006

In Re:

LEGEND:

City =

State =

Program =

Dear :

This letter responds to your ruling request submitted on behalf of City by a letter dated November 26, 2003, as supplemented on January 30, 2004. Your request relates to whether City is required to file information returns for payments made under the Program, described below. The reporting requirement for these payments depends in part upon whether the payments are taxable income to the recipients; consequently, the necessary analysis of the taxable nature of the payments to the recipients is herein included.

BACKGROUND

City is a municipal government incorporated under the laws of State. In order to restore and preserve older neighborhoods, City operates the Program. The objective of the Program generally is to convert properties currently with multiple dwelling units that were originally developed as either single-family residences or duplexes back to their original use. Under the Program, owners qualifying for benefits receive amounts that are intended to compensate for the costs of conversion and lost rental income.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided in subtitle A, gross income means all income from whatever source derived. See also section 1.61-1(a) of the Income Tax Regulations.

Under the general welfare exclusion, payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not included in a recipient's gross income. See, e.g., Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840. 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 (i.e., generally based on individual or family needs), and (iii) not represent compensation for services. Rev. Rul. 75-246, 1975-1 C.B. 24; Rev. Rul. 82-106, 1982-1 C.B. 16. Payments to businesses generally do not qualify under the general welfare exclusion because the payments are not based on individual or family needs. See Bailey v. Commissioner, 88 T.C. 1293, 1300-1301 (1987), acq., 1989-2 C.B. 1; Rev. Rul. 76-131, 1976-1 C.B. 16; Notice 2003-18, 2003-1 C.B. 699.

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.

In Rev. Rul. 2005-46, 2005-30 I.R.B. 120, the Service concluded that payments made by a state in order to reimburse businesses for uncompensated losses from a natural disaster were not excluded under the general welfare doctrine.

Section 6041 of the Code requires all persons engaged in a trade or business and making payment in the course of the trade or business to another person of fixed or determinable gains, profits, and income of \$ 600 or more in a tax year to make an information return. Sections 1.6041-1(b)(1) and (i) of the Income Tax Regulations provide that payments made by a state or a political subdivision are subject to this reporting requirement.

Section 1.6041-1(c) of the regulations provides that income is "fixed" when it is to be paid in amounts definitely predetermined. Income is "determinable" when there is a basis of calculation by which the amount to be paid may be ascertained.

As used in section 6041, the term "gains, profits, and income" means gross income and not the gross amount paid. A payor generally is not required to make a return under section 6041 for payments that are not includible in the recipient's income, nor is a payor required to make a return if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's gross income.

The Program here differs materially from the home rehabilitation program described in Rev. Rul. 76-395. There are no income restrictions for eligibility, and the improvements

subsidized by the program are not intended to address primarily building code violations necessary to make housing safe and decent. Further, because the properties involved contain multiple dwelling units, most if not all represent at least in part rental property. Thus, the Program provides benefits to an investment or business activity rather than addressing individual or family needs. See Rev. Rul. 2005-46.

CONCLUSION

For these reasons, we conclude that payments under the Program will represent gross income to the recipients and that City is subject to the information reporting requirements of section 6041, unless the recipient is a corporation or other specified entity payment to which is exempt under section 1.6041-3(p) of the Income Tax Regulations.

This document may not be used or cited as precedent. Section 6110(k)(3) of the Internal Revenue Code.

Sincerely,

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