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IRS Updates Section 118 Safe Harbor For Transfers To Public Utilities: Grant Thornton

The IRS has issued guidance (Notice 2016-36) broadening and modifying the safe harbor election under Section 118(a) that provides that certain transfers of property from energy generators to public utilities are contributions to capital instead of income.

Section 61 generally states that gross income includes all income from all sources, but Section 118(a) provides an exception for contributions to the capital of a corporation. However, Section 118(b) excludes any contributions in aid of construction (CIAC), so CIAC is considered income under Section 61.

To encourage the development of the national power grid and markets for the generation, transmission and distribution of power, the IRS created a safe harbor so that qualified facilities and power generators could transfer property to a public utility to tie into the grid without the transfer's creating income for the public utility. The original guidance and its subsequent modifications (Notices 88-129, 90-60 and 2001-82) focused on traditional energy sources.

Notice 2016-36 broadens the scope of the prior notices to be more accessible for wind and solar generators to tie into the grid without transfers of property creating gross income for the public utility.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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