



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

# Memorandum

Subject: ACTION: Program Guidance Letter 93-6

Date: JUN 2 1993

From: Manager, Airports Financial Assistance  
Division, APP-500

Reply to  
Attn. of:

To: PGL Distribution List

93-6.1 Index of Program Guidance Letters (Jim Borsari (202) 267-8822). Attachment A contains a list of the Program Guidance Letters which are current as of the date of this PGL.

93-6.2 IRS Ruling Affecting Relationship Between AIP Grants And "Contribution To Capital" for Corporate Owners of Privately-owned Airports (Jim Borsari (202) 267-8822). On February 22, 1993, the Internal Revenue Service issued a ruling in which it defined AIP grants as "non-shareholder contribution to capital" and as such are not taxable if the airport is owned by a corporation. Please advise corporate owners of privately-owned airports that qualify for AIP grants of this IRS ruling. A copy of the ruling is Attachment B.

93-6.3 Intermodal Planning - (Larry Kiernan (202) 267-8784 and Mark Beisse (202) 267-8826). The notice of proposed rulemaking (NPRM) for a metropolitan planning organization (MPO) to implement provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was published on March 2 (Attachment C). An NPRM on State-wide planning for ISTEA, and another NPRM on management of surface transportation, were published simultaneously.

A focus on international and intermodal issues was also included in the Airport and Airway Safety, Capacity, Noise Improvement and Intermodal Transportation Act of 1992 (1992 Act). For the first time, statements on the importance of aviation in the international economy, as well as interconnections between modes, were added to the declaration of airport and airway policy.

The ISTEA provides for development of a National Intermodal Transportation System with improved airport surface access to ensure the efficient movement of people and goods. Airport access has been cited as a weak link in metropolitan

transportation systems. The ISTEA strongly supports enhanced comprehensive transportation planning for Statewide and metropolitan areas to "provide improved access to ports and airports, the Nation's link to world commerce."

The ISTEA also allows new flexibility in selected Federal Transit Administration, and Federal Highway Administration, grant programs. Under the ISTEA, there is greater opportunity for the use of highway trust funding for airport access projects through the MPO. To this end, airport sponsors should be encouraged to work closely with MPOs to ensure consideration of airport access needs.

Section 450.112(a) of the metropolitan planning NPRM would require coordination of airport access programs, including AIP multimodal projects. We recommend sponsors carefully coordinate AIP multimodal projects with the MPO even before the NPRM is made final. In light of the Clean Air Act amendments of 1990, AIP funded access planning or facilities should be consistent with metropolitan transportation plans and programs.

Section 450.124(f)(4) is another key provision of the NPRM which would require the transportation improvement program prepared by the MPO to include AIP projects for informational purposes. We anticipate that the MPO will contact airport sponsors to obtain available data, although the proposed rule provides no indication how the information will be used. Other airport issues addressed by the metropolitan planning NPRM have been highlighted in the attachment.

Airport sponsors would have a greater level of involvement with the MPO under the NPRM than in the past. However, inasmuch as the Department of Transportation is engaged in formal rulemaking, you should avoid substantial discussions at this time with sponsors or MPOs. Any such comments should be submitted to the docket as provided in each NPRM.

None of the NPRM provisions would change AIP eligibility described in PGL 90-6. Eligibility has been limited to preparation of airport plans based on other surface access studies, and we have not regularly participated with highway, rail, or related transit planning projects. As we gain more experience with the MPO process, we will reassess access planning eligibility as part of master plan projects in metropolitan areas.

Current coordination procedures between Federal modal transportation agencies are under review by the Department. Until such time as new departmental guidance is provided,

please direct overall questions about intermodal planning for airport surface access to APP-400. Specific questions about managing AIP projects or eligibility of unified planning work programs and intermodal facilities should be directed to APP-510.

93-6.4 Acceptability of the ASII DME for Purchase Under AIP (Jim Borsari (202) 267-8822). We have been advised by the Associate Administrator for Airway Facilities, AAF-1, that the Distance Measuring Equipment as manufactured by ASII is acceptable for turnover as part of a full ILS purchased with AIP funds. Consequently, this equipment is acceptable for purchase under AIP.

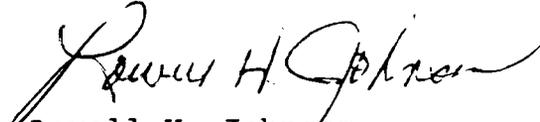
93-6.5 State Block Grant Program Cost Petitions (Mark Beisse (202) 267-8826).

Several block grant States have asked about AIP funding of State program administration costs for the follow-on pilot program during Federal fiscal years 1993 through 1996. Program administrative costs were ineligible during fiscal years 1990, 1991, and 1992 under the initial program to test the block grant concept. Last year, we recommended limited eligibility as part of our legislative proposal but the provision was not enacted into law. Consequently, such administrative costs remain ineligible.

Until we decide about proposing amendments to the law or regulation, any block grant State which seeks program administrative costs may petition for exemption from current requirements in FAR Part 156.5(b). If a State intends to petition for the current year or for additional years through program expiration in fiscal year 1996, the State should provide documentation for each applicable fiscal year. A multi-year exemption for the State could be granted starting with the fiscal year a petition is received.

The petition and grant of exemption which were in effect for Missouri during fiscal year 1992 are attached as an example of the documentation. FAR Part 11 on general rule-making procedures is also attached with portions of Parts 11.25, 11.27, 11.43, and 11.53 highlighted to identify some regulatory requirements that applied to Missouri's petition.

Please advise participating States about the above information, and let us know if a State intends to originate a petition.

  
Lowell H. Johnson

Attachments

Canceled

A makes and distributes audio tele-conferencing equipment commonly referred to as an audio bridge. An audio bridge is a computer used to join multiple telephone calls at single connection point.

A also offers tele-conferencing services. Conference participants may call in from anywhere in the world and are joined together by a conference administrator using an audio bridge.

A offers two types of tele-conferencing service. In the first type, conference participants call A's office at a prearranged time. Each participant uses their own phone to reach the office. Each participant incurs their own phone usage costs throughout the duration of the call.

In the second type, conference administrators call participants are a prearranged time and join them together through the audio bridge. A accesses its local exchange carrier which connects A to the designated interexchange carrier which in turn connects A to the participant's local exchange carrier. The participant's local exchange carrier then connects A to the participant's phone.

The national office concluded that amounts paid to A for the use of its tele-conferencing bridge system are subject to the tax imposed by Section 4251 when such service is provided by A in connection with local telephone service.

Pursuant to Sections 4251(a)(2) and 4291, in those cases where the taxpayer on local telephone service applies, the subscriber to the tele-conferencing service is liable for the tax and A has the duty to collect and remit the tax.

#### SEC. 301.9100—PROCEDURE AND ADMINISTRATION REGULATIONS

- Requirements have been satisfied so that extension of time is granted for making a QTIP election under Section 2056(b)(7). DOC. 9307001.

Decedent D died testate survived by a spouse. When the executor filed the Form 706, the executor claimed a marital deduction on Schedule M of Form 706 for trust property that qualified for a qualified terminable interest property election under Section 2056(b)(7).

In claiming the deduction, the executor identified and deducted the value of the property. However, the estate tax return as filed does not evidence or otherwise unequivocally manifest an affirmative intent to make the QTIP election with respect to the trust. On Jan. 28, 1992, the executor filed an amended Schedule M that properly signified the QTIP election was being made under Section 2056(b)(7).

The national office concluded that the requirements of Section 301.9100-1 of the regulations have been satisfied so that extension of time is granted for making a QTIP election under Section 2056(b)(7) for the trust property.

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## INTERNAL REVENUE BULLETIN

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The following items are from Internal Revenue Bulletin No. 1993-8, dated Feb. 22, 1993. The summaries of revenue rulings, revenue procedures, notices, and other announcements are followed by their full texts, except for items that because of their unusual length can only be run in partial

The full texts of these items can be purchased from A PLUS toll-free (800) 452-7773 nationwide; (202) 452-4343 in Washington, D.C.

Revenue rulings represent the conclusions of the Internal Revenue Service on the application of the law to the stated

facts. They apply retroactively unless otherwise indicated. Revenue procedures are published in the Bulletin if they affect the rights and duties of taxpayers, but not if they relate solely to matters of internal management. Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents.

#### SEC. 118—CONTRIBUTIONS TO CAPITAL OF CORPORATION

- FAA project grant to corporate owner of public-use airport under the Airport Improvement Program is a non-shareholder contribution to capital and basis in corporation's property must be reduced. REV. RUL. 93-16.

**Facts:** The Federal Aviation Administration made a project grant to the corporate owner of a public-use airport under the Airport Improvement Program (AIP). The AIP was established by the Airport and Airway Improvement Act of 1982 to improve public safety and efficiency at public-use airports. Project grants are made under the AIP for airport planning and airport development. Although AIP funds are primarily used to improve public airports, the term "public-use airport" encompasses privately owned reliever airports and privately owned airports that enplane annually 2,500 or more passengers and receive scheduled aircraft passenger service.

**Holding:** The FAA project grant is a non-shareholder contribution to the capital of the corporation under Section 118(a), and the basis in the corporation's property is reduced under the rules provided by Section 362(c)(2).

The FAA's intent in making AIP project grants is to benefit the public at large pursuant to a government program to foster the development, safety, and efficiency of public-use airports. The FAA's motivation in making the AIP project grants is similar to the public-benefit motivation of the contributors in *Brown Shoe Co. v. Commissioner*, 339 U.S. 583 (1950), and is distinguishable from the motivation of the prospective customers in *Detroit Edison Co. v. Commissioner*, 319 U.S. 98 (1943), which was to obtain services.

Furthermore, the AIP project grants satisfy the five characteristics of a non-shareholder contribution to capital set forth in *U.S. v. Chicago, Burlington & Quincy R.R.*, 412 U.S. 401 (1973).

**Full Text:**

#### ISSUE

Is a project grant made by the Federal Aviation Administration (FAA) to a corporate owner of a public-use airport under the Airport Improvement Program (AIP) a non-shareholder contribution to capital under section 118(a) of the Internal Revenue Code and is the basis in the corporation's property reduced under section 362(c)(2) because of receipt of the grant?

#### FACTS

The AIP was established by the Airport and Airway Improvement Act of 1982 (AAIA), 49 U.S.C. 2201, and is administered by the FAA. To improve public safety and efficiency at public-use airports, section 505(a) of the AAIA authorizes the Secretary of Transportation to make project grants under the AIP for airport planning and airport development. Airport development includes construction, hazard removal, acquisition or installation of air navigation aids and safety or security equipment, and land acquisition.

AIP grants are also available to prepare and implement noise compatibility programs under section 508 of the AAIA.

AIP funds are primarily used to improve public airports, that is, airports under the control of a public agency, used for public purposes, and publicly owned. The definition of a "public-use airport" under section 503(a)(18)(B) and (C) of the AAIA includes, in addition to a public airport, any privately owned reliever airport and any privately owned airport that enplanes annually 2,500 or more passengers and receives scheduled aircraft passenger service, that is used or will be used for public purposes. AIP project grants are made from the Airport and Airway Trust Fund, which is funded by revenues from several aviation-user taxes on airline fares, air freight, and aviation fuel.

Under section 511(a)(6) of the AAIA, the recipient of an AIP project grant must provide free landing rights to government aircraft under certain defined circumstances. The FAA rarely requests landing rights at a privately owned public-use airport, however, so that any benefit to the government is incidental in the context of the overall public purpose of the grant program. Under section 511(a)(7) of the AAIA, the recipient of an AIP project grant must, upon request, provide a portion of its land or water area for government use in constructing, at federal expense, facilities for air traffic control or navigation activities. FAA experience to date is that no request for land or water use has ever been made to a privately owned public-use airport. If the government ever does request land or water use from a privately owned public-use airport for air traffic control or navigation, the benefit will be to the general flying public and not the government.

#### LAW AND ANALYSIS

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer. The committee reports accompanying the enactment of what is now section 118(a) indicate that the provision was intended to codify the existing law that had developed through administrative and court decisions on the subject. H.R. Rep. No. 1337, 83d Cong., 2d Sess. 17 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 18 (1954).

Section 1.118-1 of the Income Tax Regulations includes within the meaning of a contribution to capital, a contribution by a nonshareholder and cites as examples of nonshareholder contributions to capital:

the value of land and other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities.

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

In *Detroit Edison Co. v. Commissioner*, 319 U.S. 98 (1943), 1943 C.B. 1019, the Supreme Court held that payments by prospective customers to an electric power company that were used by the company to construct the facilities necessary to deliver electricity to the customers were not nonshareholder contributions to capital. The Court found that the motivation for the prospective customers' contributions was to obtain electric services from the power company and, therefore, the contributions were payment for services. 319 U.S. at 102; 1943 C.B. at 1021.

In contrast, *Brown Shoe Co. v. Commissioner*, 339 U.S. 33 (1950), 1950-1 C.B. 38, held that money and property

contributions by community groups to induce a shoe company to locate or expand its factory operations in the contributing communities were nonshareholder contributions to capital. The Court reasoned that when the motivation of the contributors is to benefit the community at large and the contributors do not anticipate any direct benefit from their contributions, the contributions are nonshareholder contributions to capital. 339 U.S. at 591, 1950-1 C.D. at 41.

The Court again considered this issue in *United States v. Chicago, Burlington & Quincy R.R.*, 412 U.S. 401 (1973), 1973-2 C.B. 428. In that case, the Court set forth the following five characteristics of a nonshareholder contribution to capital: (1) the contribution must become a permanent part of working capital; (2) the contribution must not be compensation for specific quantifiable services; (3) the contribution must be bargained for; (4) the contribution must foreseeably benefit the corporation in an amount commensurate with its value; and (5) the contribution must ordinarily be employed to generate additional income. 412 U.S. at 413, 1973-2 C.B. at 432.

Section 505(a) of the AAIA demonstrates that the FAA's intent in making the AIP project grants is to benefit the public at large pursuant to a government program to foster the development, safety, and efficiency of public-use airports. The FAA's motivation in making the AIP project grants is similar to the public-benefit motivation of the contributors in *Brown Shoe* and is distinguishable from the motivation of the prospective customers in *Detroit Edison*, which was to obtain services.

In addition, the AIP project grants satisfy the five characteristics of a nonshareholder contribution to capital set forth in *Chicago, Burlington & Quincy R.R.*, because the AIP grants: (1) become a part of the public-use airport's working capital used for development, planning, and the purchase of navigation and other equipment; (2) are not made for specific, quantifiable services received by the government since the purpose of the grants is to benefit public aviation and any services to the government under section 511(a)(6) and (7) of the AAIA are incidental to this purpose; (3) are bargained for because the grants are highly sought after with certain meaningful conditions for the grants being negotiated between the airports and the FAA; (4) benefit the airport commensurate with their value by helping avoid functional obsolescence of facilities and improve safety and operations, a definite economic value to the airport; and (5) generate additional income for the airport through increased public use of facilities and services.

#### HOLDING

A project grant made by the FAA to a corporate owner of a public-use airport under the AIP is a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code and the basis in the corporation's property is reduced under the rules provided by section 362(c)(2).

#### DRAFTING INFORMATION

The principal author of this revenue ruling is Paul F. Handleman of the Office of Assistant Chief Counsel (Pass-throughs and Special Industries). For further information regarding this revenue ruling contact Jeffrey A. Erickson on (202) 622-3040 (not a toll-free call).

End of Text