



March 11, 2010

## IRS PROVIDES SAFE HARBOR ON TAX TREATMENT OF SMART GRID INVESTMENT GRANTS TO CORPORATIONS

### ENERGY AND TAX CLIENT ALERT

When Congress enacted the Smart Grid Investment Grant Matching Program in 2007 and amended it in 2009, it did not address how the federal grants would be treated for federal income tax purposes. In [Revenue Procedure 2010-20](#), the Internal Revenue Service announced that it would not challenge a corporate grant recipient if the grant recipient excluded the grant from income under section 118 of the Internal Revenue Code and adjusted its tax basis in accordance with section 362(c) of the Code.

Section 118(a) of the Code permits corporations to exclude from income nonshareholder contributions to capital. Section 362(c)(2) requires a corporation to reduce its basis in property when the corporation receives money from a nonshareholder as a contribution to capital. A corporate taxpayer should be able to comply with these requirements if it reduces its tax basis in its smart grid investment by the amount funded with the Smart Grid Investment Matching Grant.

The Revenue Procedure applies only to corporations because section 118(a) does not apply to partnerships or proprietorships.

The Revenue Procedure follows by several days a ruling by the Maryland Attorney General, [95 Op Att'y 56](#), that Smart Grid Investment Matching Grants are included in the Maryland taxable income of recipients because, under the analysis taken by the author of the ruling, the grants are not excluded from federal taxable income. The Revenue Procedure may effectively overrule the Maryland ruling for corporations that exclude the grants from income in accordance with the Revenue Procedure because federal taxable income is the starting point for determining Maryland taxable income.

For more information about our Energy and Tax practices, please visit [www.pattonboggs.com](http://www.pattonboggs.com).

*This Client Alert provides only general information and should not be relied upon as legal advice. For more information, contact your Patton Boggs LLP attorney or the authors listed below.*

George Schutzer  
202-457-5273  
[gschutzer@pattonboggs.com](mailto:gschutzer@pattonboggs.com)

Debbie Swanstrom  
202-457-6565  
[dswanstrom@pattonboggs.com](mailto:dswanstrom@pattonboggs.com)

[WWW.PATTONBOGGS.COM](http://WWW.PATTONBOGGS.COM)

WASHINGTON DC | NORTHERN VIRGINIA | NEW JERSEY | NEW YORK | DALLAS | DENVER | ANCHORAGE  
DOHA, QATAR | ABU DHABI, U.A.E.