# IRS Announces Safe Harbor Exclusion for Smart Grid Investment Grants

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The IRS has just issued Revenue Procedure 2010-20, announcing a safe harbor that treats Smart Grid Investment Grants (SGIGs) that are made by the U.S. Department of Energy (DOE) to corporations as nontaxable contributions to capital. SGIGs are made under the DOE's Smart Grid Investment Matching Grant Program, which awards grants ranging from $500,000 to $20 million to provide a partial reimbursement for qualifying Smart Grid investments.

Under the safe harbor, the IRS will not challenge a corporation's treatment of an SGIG as a contribution to capital if the corporation properly reduces the basis of its property to account for the SGIG as required for contributions to capital made by a person other than a shareholder. As a contribution to capital, the SGIG would be excludible from the corporation's gross income.

Although the safe harbor announced by the IRS is applicable only to SGIGs made by the DOE, the analysis used by the IRS in reaching this decision may provide useful insight into the factors that the IRS could use to determine the taxable treatment of grants that are made by the DOE to third parties under different renewable energy and clean technology funding programs.

One factor that appears to be relevant to the analysis by the IRS is the fact that an SGIG may not be used for ongoing or routine operating and maintenance expenditures. In addition, the IRS explicitly states that the safe harbor does not apply to noncorporate taxpayers or to grants for Smart Grid technology research, development, and demonstration under 42 U.S.C. 17384.

The Revenue Procedure is effective March 10, 2010. A complete version of the Revenue Procedure can be found here.

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