

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

The Hon. Paul E. Tsongas
United States Senate
Washington, DC 20510

Person to Contact:

N. J. Sheehan

Telephone Number:

(202) 566-6302

Refer Reply to:

T:C:E:I:3

Date: DEC 22 1980

Dear Senator Tsongas:

Your letter of November 21, 1980, forwarded for our review a letter from your constituent, Mr. John Holt.

Mr. Holt's letter includes as an attachment an article by David Morris in which the author raises an issue in regard to the provisions of section 44C(c)(10) of the Internal Revenue Code of 1954, which was added by the Crude Oil Windfall Profit Tax Act of 1980 (Act) (Pub. L. 96-223, Sec. 203, 94 Stat. 258, 1980-3 C.B. 30), that provides for reduced tax credits in the case of "subsidized energy financing."

The issue is whether the term "subsidized energy financing" applies to the principal or only to the interest of the loan.

The Service views the term "subsidized energy financing" as applying to the principal and not just the interest. This view is required by the language of the Code and the legislative history of the Act.

Section 44C(c)(10) of the Code states that, "For purposes of determining the amount of energy conservation or renewable energy source expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing" (emphasis added).

The phrase "expenditures which are made from" implies a sum, that is, the principal out of which the taxpayer will purchase energy conservation or renewable energy source property.

The Hon. Paul E. Tsongas

The conference report on the Act further clarifies the issue by stating that the effect of the rule (to prevent double benefits) provided in the conference agreement, in conjunction with the present treatment of nontaxable grants, is that the purchaser of the eligible equipment must choose between the tax credit, on the one hand, and subsidized energy loans and nontaxable grants on the other hand. (Emphasis added). See H. R. Rep. No. 96-817 (Conf. Rep.), 96th Cong., 2d Sess. 121 (1980), 1980-3 C.B. 245, 281. This language makes it clear that Congress was referring to the principal and not only the interest on the loan. The conference report goes on to state that subsidized energy financing includes, but is not limited to, the direct or indirect use of tax-exempt bonds for providing funds under such a program. Subsidized energy financing, however, does not include loan guarantees. Ibid.

Mr. Morris, the author of the article, does not seem to fully comprehend that subsidized energy financing means only subsidized by federal, state or local governmental units and that low interest loans provided by a public utility with its own funds or with funds borrowed at market rates is not subsidized energy financing for the purposes of the residential energy credit.

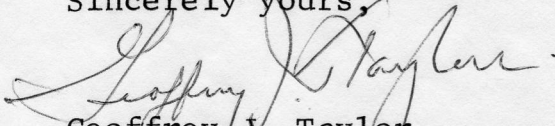
The article states ~~that~~ the intent of Congress in inserting section 44C(c)(10) of the Code is not clear. The conference report again provides enlightenment in stating that the conference agreement provides rules to coordinate the residential energy credits with other government subsidies for energy-related expenditures. The conferees are concerned that if no such rules were adopted, the compound effect of various subsidized loan and grant programs could lead to a situation in which the taxpayer could purchase this property with very little expenditure of his own funds. See H. R. Rep. No. 96-817 (Conf. Rep.), 96th Cong., 2d Sess. 120 (1980), 1980-3 C.B. 245, 280.

The Hon. Paul E. Tsongas

The article also raises the same issues in regard to the business energy investment credit. The Act in section 223 amended section 48(1)(11) of the Code to provide for a proportionate reduction of qualified investments when business energy property is financed in whole or part by subsidized energy financing. The conference report on this provision makes essentially the same comments as for the residential energy credit. Again the wording is such that it is clear that the entire amount of the loan and not just the interest is involved. See H. R. Rep. No. 96-817 (Conf. Rep.) 96th Cong., 2d Sess. 136, (1980), 1980-3 C.B. 245, 296.

We trust that the above information will assist you in responding to Mr. Holt. In accordance with your request we are enclosing a copy of this letter and your forwarded correspondence.

Sincerely yours,


Geoffrey J. Taylor
Chief, Engineering and
Valuation Branch

Enclosures