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memorandum

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to: Andrew E. Zuckerman
Federal State and Local Government T:GE:FSLG

from: Robert M. Brown
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subject: FEMA Mitigation Programs

You have requested our views regarding the tax consequences of grant payments made under the Flood Mitigation Assistance Program (FMA), the Pre-Disaster Mitigation Program (PDM), and the Hazard Mitigation Grant Program (HMGP) that are used to elevate structures located on flood-prone properties owned by individuals and businesses. The programs are designed to mitigate the adverse effects of future disasters. We conclude that the foundation elevations provided to property owners under all three programs are includible in the property owners' gross income under § 61 of the Internal Revenue Code.

BACKGROUND: DESCRIPTION OF FEMA PROGRAMS

Overview of the FMA, the PDM, and the HMGP. Under these programs, the Federal Emergency Management Agency (FEMA) distributes funds to states, which set mitigation priorities and administer the programs. The states then assist communities with such mitigation programs as elevating or relocating flood-prone homes, acquiring vulnerable properties, and retrofitting structures. Once a project is approved, the local community becomes a subgrantee. Usually, the local community contracts out for the mitigation work; sometimes, however, the local government will have property owners arrange for contractors to perform the work, and then reimburse them for the costs. Thus, homeowners and business owners generally do not directly receive the cash proceeds of a grant. Also, communities may use grant funds to acquire properties from owners to restrict the land so acquired permanently to undeveloped open space. Participation of property owners in the programs is **voluntary**. In addition, the program is open to property owners regardless of income level and regardless of whether the property is used for personal (*e.g.*, a principal residence) or business use.

All projects under the programs must be cost-effective. This means that "the cost of funding of the project [must be] less than the cost of damages expected to be incurred

in **future** disasters without the project, and that the project will substantially reduce the risk of **future** damage, hardship, loss or suffering resulting from a major disaster."[1] [Emphases added.] This cost-effective requirement has also been incorporated into regulations governing the programs. Thus, one criterion that a project under the HMGP must meet is that it–

> Will not cost more than the anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if future disasters were to occur. Both costs and benefits will be computed on a net present value basis.[2]

That the purpose of the three programs is to reduce the effect of future disasters rather than relieve the effects of current disasters is made clear in FEMA's manual for its benefit-cost analysis software program, which states:

> The benefits of hazard mitigation are avoided **future** damages. Benefits are **not** the damages experienced in the declared event. ...
>
> Mitigation **may not** be cost-effective even though a particular facility experienced great damage in the declared event, if the event were a low probability (i.e., a 500- or 1,000 year) event. Conversely, mitigation **may** be cost effective even though the particular facility experienced little or no damage in the declared event **if** the probability of future damage is high.[3]

Payments may be made in one of two scenarios: (1) directly to the contractor pursuant to a contract entered into between the state and/or local government, the contractor, and the homeowner ("Contractor Payment") or (2) to the homeowner who in turn pays the contractor.

In the case of a Contractor Payment, the state or local government is responsible under a FEMA HMGP sample contract for the following:

- Bid document preparation, bid review, and review and limited inspection as necessary to assure reasonable compliance with codes for all project construction;
- Technical review and approval of construction activities;

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[1] Letter from [redacted] to Associate Chief Counsel (Income Tax & Accounting) Heather Maloy, 3 (undated).

[2] 44 C.F.R. § 206.434(b)(5); *see also* 44 C.F.R. § 78.11, containing a similar provision under the FMA.

[3] Federal Emergency Management Agency, *Benefit-Cost Analysis (BCA) of Hazard Mitigation Projects, Appendix 1 to the Riverine Flood-Full Data Module*, 3.

- Overall supervision of the contracts and sub-contracts during the construction phase; and

- Approval of project changes requested by the property owner.[4]

The Flood Mitigation Assistance Program (FMA). The FMA is authorized by 42 U.S.C. §§ 4104c-4104d, and was created as part of the National Flood Insurance Reform Act of 1994, to reduce or eliminate claims under the National Flood Insurance Program (NFIP). Congress believed that the FMA was necessary because "the NFIP has not taken adequate steps to mitigate against flood risk and thereby limit future losses to the Fund." S. Rep. No. 414, 103d Cong., 2d Sess. 26 (1994).

The FMA helps states and localities implement measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures. Eligible projects include elevating, relocating, flood proofing, or demolishing insured structures, and acquiring insured structures and property.

FEMA may contribute up to 75 percent of total eligible costs; a nonfederal source must provide the remainder. A locality receiving a grant is not required to be in an area that is a Presidentially-declared disaster area. A project must be cost effective, cost beneficial to the National Flood Insurance Fund, and technically feasible. States are encouraged to prioritize grant applications that include repetitive loss properties.

The Pre-Disaster Mitigation Program (PDM). The PDM is authorized by § 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121 et seq. (the Stafford Act), as added by § 102 of the Disaster Mitigation Act of 2000, 42 U.S.C. § 5133. Under § 203(b) of the Stafford Act, 42 U.S.C. § 5131(b), the President may establish a program to provide technical and financial assistance to state and local governments to assist in the implementation of pre-disaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property. Eligible projects include the acquisition or relocation of vulnerable properties consistent with the HMGP, hazard retrofitting for flood hazards (*e.g.*, elevation, hurricane shutters), and localized flood control projects. These activities are intended to reduce future losses, economic disruption, and disaster costs for the federal taxpayer. A grant recipient is not required to be located within a Presidentially-declared disaster area.

PDM projects are funded on a 75 percent federal, 25 percent nonfederal cost share basis. However, communities designated as small, impoverished communities receive funding on a 90 percent federal, 10 percent nonfederal cost share basis.[5] The authority

[4] We have assumed that similar provisions apply to contracts under the PDM and FMA. These provisions bear only on the issue of whether state or local governments have information reporting obligations under § 6041 for Contractor Payments.

[5] A small impoverished community is defined as (1) a community of 3,000 or fewer individuals that is identified by the state as a rural community, and is not a remote area within the corporate

for the PDM terminates on December 31, 2004.[6] As of November 21, 2003, no grants had been awarded under the PDM.[7]

The Hazard Mitigation Grant Program (HMGP). The HMGP was created in 1988 by § 404 of the Stafford Act, 42 U.S.C. § 5170c. The HMGP provides funding to states and localities for implementing long-term hazard mitigation measures during the immediate recovery from a disaster. Projects must provide a long-term solution to a problem, such as elevating a home to reduce the risk of future flood damage rather than buying sandbags and pumps to fight the flood. Other eligible projects include acquiring real property, demolishing or relocating buildings, and retrofitting structures. Unlike the other programs, the HMGP requires mitigation projects to be located within a Presidentially-declared disaster area.

Like the other programs, HMGP funding is on a 75 percent federal, 25 percent nonfederal basis.

ISSUES:

1. Are the benefits that a property owner receives under the programs described above for elevating the foundation of a structure on that property excluded from gross income under the Stafford Act, the general welfare exclusion, § 102 (as a gift), or § 139 (as a qualified disaster relief payment), or as a government-created property right?

2. Do the benefits that the owner of a building receives under the programs described above for elevating the foundation of that building under the HMGP qualify for deferral of recognition of gain as an involuntary conversion under § 1033?

3. What amount must a property owner who receives a benefit under the programs described above for elevating the foundation of a structure on that property include in income?

4. Are state and local governments required to file information returns for payments made on behalf of homeowners under the FMA, the PDM, and the HMGP?

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boundaries of a larger city, and (2) economically disadvantaged, with residents having an average per capita annual income not exceeding 80 percent of national per capita income. *See* Notice of Availability of Pre-Disaster Mitigation Planning Grants, 68 F.R. 10018 (March 3, 2003).

[6] H.R. 3181, 108th Cong. 1st Sess., § 2 (2003) extends the authority for the PDM to September 30, 2006, and extends to September 30, 2005, the due date of a Congressional Budget Office report estimating the reduction in Federal disaster assistance that has resulted and is likely to result from the PDM. H.R. 3181 was passed by the House. It was referred to the Senate Committee on Environment and Public Works on December 9, 2003.

[7] *See* 149 Cong. Rec. H12127 (daily ed. Nov. 21, 2003) (statement of Rep. Blumenauer).

5. Are state and local governments required to file information returns for payments made directly to contractors under the FMA, the PDM, and the HMGP?

DISCUSSION

Exclusion under the Stafford Act. It has been argued that Congress never intended property owners to pay income taxes on the value of the improvements they receive under these three programs or any other FEMA mitigation programs. The statutes authorizing the FMA, the PDM, and the HMGP, and the legislative history of those statutes, however, do not address the federal tax treatment of the payments. By contrast, Congress has mandated that Federal major disaster assistance provided to individuals and families (under various federal and state programs, including the PDM and HMGP) not be considered as income or a resource when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs. Section 312(d) of the Stafford Act, 42 U.S.C. § 5155. The combination of Congress' silence on the tax treatment of benefits received under these programs and its specific proscription on counting the value of the benefits as income for specified nontax purposes, suggests that Congress intended the income tax treatment of such payments to be determined solely under the provisions of the Internal Revenue Code.
Government Grant of Property Rights. Rev. Rul. 67-135, 1967-1 C.B. 20, addresses the Bureau of Land Management's noncompetitive leasing of oil and gas rights on Federally-owned lands that are not within any known geological structure of a producing oil and gas field. Under the Bureau's procedures applicants pay both a filing fee and the first year's rental. If there is more than one applicant, the lessee is selected by a lottery drawing; nonselectees are refunded the first year's rental. The ruling holds, without rationale, that the excess of the fair market value of the lease over its cost to the lessee is not income to the taxpayer-lessee under §§ 61 or 74 (pertaining to prizes and awards).

In addition, Rev. Rul. 92-16, 1992-1 C.B. 15, holds, without rationale, that the Environmental Protection Agency's allocation of sulfur dioxide emission allowances to certain utilities under Title IV of the Clean Air Act Amendment of 1990, 42 U.S.C. § 7651 *et seq.,* does not cause the utilities receiving such allowances to realize income under § 61.

In recent years the Service has issued several private letter rulings and technical advice memoranda stating that these two revenue rulings stand for the proposition that the government's granting of a transferable right or the creation of rights under regulatory and licensing arrangements will usually not result in the recognition of income to the recipient of those rights.[8] Benefits that property owners receive under the FEMA programs are specific tangible improvements integrated into their real property rather

[8] *See* LTR 2001-10-022 (December 7, 2000) and LTR 2002-17-052 (January 29, 2002) (state issuance of a financing order to a deregulated utility that creates a property right does not result in income under § 61); TAM 2001-19-007(January 17, 2001) (taxpayer did not realize income under § 61 for "supervisory goodwill" that was considered an asset for federal banking regulation purposes).

than a new separate right or property interest granted by the government. Thus, the rationale for the holdings in Rev. Ruls. 67-135 and 92-16 expressed in recent TAMs and PLRs does not apply to the FEMA programs.

The General Welfare Exclusion. Section 61(a) and the Income Tax Regulations thereunder provide that gross income means all income from whatever source derived, except as otherwise provided by law. Under § 61 Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which the taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955), 1955-1 C.B. 207.

Although § 61 provides for broad includibility in gross income, the Service has held that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of general welfare are not includible in the recipient's gross income. *See*, *e.g.*, Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants received by low-income homeowners residing in a defined area of a city are in the nature of general welfare and thus are not includible in their gross income).

This administrative exception to the general rule of broad includibility under § 61 (the "general welfare exclusion") has generally been limited to payments by governmental entities to individuals (and not businesses) experiencing either (1) disaster-related necessary expenses or serious needs in the aftermath of a major disaster (*see*, *e.g.*, Rev. Rul. 76-144, 1976-1 C.B. 17) or (2) economic need (usually tested by income level). Absent a disaster, the Service generally limits application of the general welfare exclusion to situations based on economic need. *See*, *e.g.*, Rev. Rul. 78-170, 1978-1 C.B. 24 (payments made by Ohio to low-income elderly or disabled residents to reduce their cost of winter energy consumption are not includible in gross income). Conversely, the Service has explicitly declined to apply the general welfare exclusion to governmental programs that are payable to individuals without regard to their financial status, health, educational background, or employment status. *See* Rev. Rul. 85-39, 1985-1 C.B. 21 ("dividend payments" made by the State of Alaska to distribute equitably its energy wealth to the people of Alaska, encourage persons to maintain their residence in Alaska, and reduce population turnover are includible in income under § 61).

In addition, the Service generally has declined to apply the general welfare exclusion to payments to businesses. *See*, *e.g.*, Rev. Rul. 76-75, 1976-1 C.B. 14 (interest reduction payments made by the United States Department of Housing and Urban Development to a mortgagee on behalf of a limited-profit corporation that acquires and leases apartments in a lower income rental housing project are includible in the corporation's gross income). *See also Graff v. Commissioner*, 74 T.C. 743 (1980), *aff'd,* 673 F.2d 784 (5th Cir. 1982), which reaches the same conclusion as Rev. Rul. 76-75.

We believe that the payments made under these three programs provide the property owners with accessions to wealth within the scope of § 61. FEMA's Publication 347, which discusses the benefits of elevating, states that elevating a flood-prone house "can

improve the appearance of the house, can increase space in the house usable for parking and storage, and can add to the value of the house."[9] *Compare* Rev. Rul. 79-264, 1979-2 C.B. 92 (taxpayer did not realize income under § 61 when it permitted a neighboring company to install an air pollution scrubber on its property because the taxpayer had no obligation to reduce air pollution, the scrubber did not increase taxpayer's capacity, revenue, or cost savings, or extend the life of taxpayer's facilities, and the neighboring company retained title and beneficial ownership of the scrubber). We also believe that such accessions to wealth fall far beyond the scope of the general welfare exclusion as set forth in longstanding Service position. FEMA's mitigation function is separate and distinct from its crisis and short-term recovery functions. Payments to help individuals pay for expenses incurred because of a flood that is a Presidentially-declared disaster clearly qualify under the general welfare exclusion. See Rev. Rul. 76-144. The mitigation programs, however, reduce the long-term risk of **future** damage rather than help victims cope with the necessary expenses or serious needs that arise in the immediate aftermath of a disaster.

It might be argued that payments under the HMGP qualify under the general welfare exclusion because they implement mitigation measures after a Presidential disaster declaration, and limit funding to communities that are within a Presidentially-declared disaster area. We disagree. The general welfare exclusion depends on the purpose and intent of the payments–not merely their timing and location. Payments under the HMGP are not made to aid property owners with necessary expenses they incur due to the current disaster. Instead, the mitigation programs' payments are made solely to reduce the long-term risks and costs of **future** disasters. As noted above on page 2, FEMA will fund elevation improvements to a property located within a Presidentially-declared disaster area that was **not** damaged in the flood, if the probability of future damage is high and will not fund such improvements to a property so located that was severely damaged in the flood, if the probability of the recurrence of a disaster is low. Thus, the criteria for a property owner to participate in a structure elevation project are inconsistent with the criteria for general welfare exclusion for disaster relief payments as expressed in longstanding Service position. *See* Rev. Rul. 76-144.

Further, the receipt of benefits under the three programs is neither means-tested nor based on a recipient's personal financial status, health, educational background, or employment status. In addition, the payments are available to properties used for both personal and business use. Although FEMA will provide a greater percentage of payments in small impoverished communities under the PDM, participation in a project by a property owner is not based on the family or individual need of the property owner; property owners may qualify under the PDM regardless of their income level and even if the property is for business use.

Thus, the benefits received by property owners under the FEMA mitigation programs do not qualify for exclusion under the general welfare exclusion.

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[9] Federal Emergency Management Agency, *Publication 347: Above the Flood: Elevating Your Floodprone House*, page 5-1 (May 2000).

Section 102. Section 102 provides that gross income does not include the value of property acquired by gift. Under § 102(a), a gift must proceed "from a 'detached and disinterested generosity,' . . . 'out of affection, respect, admiration, charity or like impulses.'" *Commissioner v. Duberstein*, 363 U.S. 278, 285 (1960), 1960-2 C.B. 428. On the other hand, payments that proceed "primarily from the 'constraining force of any moral or legal duty' or from 'the incentive of anticipated benefit' of an economic nature" are not gifts. *Duberstein* at 285. We believe that § 102 does not apply to the mitigation payments because Congress' intent in establishing the programs proceeds, not from detached or disinterested generosity, but from the anticipated economic benefit the Federal government will derive from reduced expenditures to alleviate the costs of future disasters. As noted above, to qualify for a grant under the mitigation programs, the net present value of the cost of a project must not be more than the net present anticipated value of the reduction in both direct damages and subsequent negative impacts to the area if a future disaster were to occur.

Section 139. Section 139(a) excludes from gross income any amount received by an individual as a qualified disaster relief payment. Section 139(b)(1) provides, in part, that the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual:

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster (§ 139(b)(1));

(2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence, or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster (§ 139(b)(2)); or

(3) if such amount is paid by a Federal, state, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare (§ 139(b)(4)). Thus, § 139(b)(4) codifies (but does not supplant) the administrative general welfare exclusion with respect to certain disaster relief payments to individuals.[10]

We believe that payments under mitigation programs do not qualify for exclusion from income under § 139. As noted above under the general welfare exclusion discussion, the payments do not qualify under § 139(b)(4) because they are not made to promote the general welfare.

[10] A "qualified disaster" includes (i) a disaster in an area that has been subsequently determined by the President to warrant federal assistance under the Disaster Relief and Emergency Assistance Act (*i.e.*, the Stafford Act), (ii) a disaster resulting from an event that the Secretary has determined to be of a catastrophic nature, and (iii) for amounts described in § 139(b)(4), a disaster that is determined by an applicable governmental authority to warrant governmental assistance. *See* § 139(c).

Payments under the FMA and PDM clearly cannot qualify under § 139, because grants under these programs are made without regard to whether the community receiving the grant is within a Presidentially-declared disaster area or is suffering from an event of a catastrophic nature. It might be argued that benefits a property owner receives under the HMGP, which funds mitigation programs within a Presidentially-declared disaster area during the immediate recovery from a disaster, meet the requirements of § 139(b). However, as discussed above, the payments are not intended to reimburse reasonable or necessary expenses attributable to a disaster; rather, they are specifically targeted to reduce long-term expenses by mitigating the effects of a **future** disaster. Therefore, we believe that § 139(b) does not apply to any benefits property owners receive under the FMA, the PDM, or the HMGP.

Section 1033. In general, taxpayers who receive payments as compensation for property damaged or destroyed by a natural disaster or catastrophe are eligible to defer recognition of the gain realized on the payments, if they otherwise comply with the provisions of § 1033. Under the HMGP, grants for building elevation provided to property owners are intended to implement a long-term hazard mitigation measure after a major disaster declaration rather than compensate the owners for property damaged or destroyed by a major disaster. Therefore, § 1033 does not apply.[11]

Amount Required to be Included in Income. A property owner whose building is elevated under the HMGP, the PDM or the FMA includes in income the cash amount of the grant specified in the contract with that property owner. Even in the contracts which FEMA states that the homeowner is only nominally involved a specific cash grant amount is allocated to the project for each home.[12] Because the taxpayer owns the property that is being elevated, the taxpayer is buying services rather than property.[13] Thus, the taxpayer should include in income the value of the services being provided by the contractor, not the amount by which the value of the property is increased due to the elevation of the building. This view is expressed in Rev. Rul. 79-24, 1979-1 C.B. 60, which holds that a lawyer who is a member of a barter club and receives in a barter exchange painting services for his house had to include in income the value of the painting services. The Service also came to this conclusion in Rev. Rul. 56-181, 1956-1 C.B. 96, which involves a homeowner who receives free installation of louvered windows, jalousies, awnings, *etc.*, on his home by the manufacturer of the products in

[11] Eligible mitigation projects may include the acquisition of a principal residence. Section 121, which excludes from income up to $500,000 of the gain from the sale of a principal residence, will apply to gain realized by taxpayers who sell their homes to a local government under a mitigation program if the taxpayers otherwise meet the requirements of § 121.

[12] A sample contract states, "The Owner [homeowner] will pay the Contractor from funds awarded and administered through the County for the performance of the Contract the sum of $[specific dollar amount] for the work."

[13] In this connection compare § 1.61-2(d)(1) which provides that if a taxpayer receives compensation in the form of services he must include in income the value of the **services** received and § 1.61-2(d)(2) which provides that if a taxpayer receives compensation in the form of property, he must include in income the value of the **property** so provided.

exchange for allowing his home to be used in advertising photographs and demonstrating the products. Rev. Rul. 56-181 holds that the taxpayer includes in income the excess of the value of the products installed over the value of the replaced products prior to removal. In neither revenue ruling did the Service conclude that the value of the services provided to the taxpayer was the increase in the value of the home due to the provision of the services provided (*i.e.*, the painting services or the installing of the windows, *etc*.).

Information Reporting. Section 6041 requires all persons engaged in a trade or business and making payment in the course of such trade or business to another person of compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of $600 or more in any taxable year, to file an information return with the Service and to furnish an information statement to the payee. Section 1.6041-1(b)(1) and (i) provides that payments made by a state or a political subdivision are subject to this reporting requirement.

Section 1.6041-1(c) provides that payments are fixed when they are paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. As used in § 6041, the term "gains, profits, and income" means gross income and not the gross amount paid. A payor generally is not required to make a return under § 6041 for payments that are not includible in the recipient's income, nor is a payor required to make a return if the payor does not have a basis to determine the amount of a payment that is required to be included in the recipient's gross income.

Section 1.6041-1(e) provides that a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in § 1.6041-1(a) and, under all the facts and circumstances, that person—

i. Performs management or oversight functions in connection with the payment (this would exclude, for example, a person who performs mere administrative or ministerial functions such as writing checks at another's direction); or

ii. Has a significant economic interest in the payment (*i.e.*, an economic interest that would be compromised if the payment were not made, such as by creation of a mechanic's lien on property to which the payment relates, or a loss of collateral).

In some cases, there may be more than one person that meets the definition of a middleman, in which case the person closest to the payee is required to report the payment. If more than one person qualifies, the parties may then agree on who will report the payment. *See* § 1.6041-1(e)(2).

Section 1.6041-1(h) provides that for purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any

substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

Information Returns for the Homeowners. In both scenarios, because the entire amount of the grant is includible in the homeowner's gross income, the state or local government is required to report this amount under § 6041. However, under § 1.6041-1(h), the state or local government should report payments in the year made if the payments made during the calendar year are $600 or more, rather than the year the grant is awarded, because the terms of the contract present a substantial limitation and restriction as to the time or manner of payment or condition upon which payment is to be made.[14]

Information Returns for the Contractors. In the Contractor Payment scenario, a contract is entered into between the state or local government, a homeowner, and a contractor whereby the state or local government makes payments directly to the contractor. Under the contract, the state or local government is performing management and oversight functions in connection with a payment to a contractor, and is therefore considered the payor required to file Form 1099, even though the payment is being made on behalf of a homeowner who would not be required to file Form 1099. *See* 1.6041-1(e).

The payment to the contractor is reportable by the state or local government under § 6041 unless an exception applies. Payments made directly to contractors to perform services under the FEMA mitigation grant programs are "fixed and determinable income" and are generally reportable on Form 1099, if the amount paid to a payee in a calendar year is $600 or more and no exception applies under § 1.6041-3. For example, reporting is not required if the payee is a corporation or the payment is for materials.

SUMMARY AND CONCLUSIONS

The foundation elevations provided to property owners under all of these programs are includible in the property owners' gross income under § 61. Property owners must include in income the cash amount of the grant.

State and local governments are required to file information returns for payments made on behalf of a homeowner under § 6041 in the year(s) that the payment(s) is made if the payments are $600 or more during any calendar year.

State and local governments are required to file information returns for payments made directly to a contractor under § 6041 if the payments are $600 or more during a calendar year unless an exception applies (*e.g.*, information reporting is not required if a payee is a corporation or the payment is for materials).

[14] This conclusion is consistent with the year of inclusion rules for cash basis taxpayers under § 451.

If you have any questions, please call Michael J. Montemurro at 622-7101 or Sheldon Iskow at 622-8533.