DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear :

I am responding to your letter of February 15, 2016, requesting an information letter about the income tax consequences of a crowdfunding effort to purchase a company through contributions for which the contributors will receive . You ask whether the recipient has constructive receipt of the contributed funds before the funds are used to purchase the company, because those funds may have to be returned to the contributors.

Section 2.04 of Rev. Proc. 2016-1, 2016-1 I.R.B. 1, 8, states that a general information letter calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. I hope that the following general information is helpful.

Section 61(a) of the Internal Revenue Code provides the general rule that, except as otherwise provided by law, gross income includes all income from whatever source derived. Gross income includes all accessions to wealth, whether realized in the form of cash, property or other economic benefit. However, some benefits that a taxpayer receives are excludable from income, either because they do not meet the definition of gross income or because the law provides a specific exclusion for certain benefits that Congress chooses not to tax.

In general, money received without an offsetting liability (such as a repayment obligation), that is neither a capital contribution to an entity in exchange for a capital interest in the entity nor a gift, is includible in income. The facts and circumstances of a particular situation must be considered to determine whether the money received in that situation is income.

What that means is that crowdfunding revenues generally are includible in income if they are not 1) loans that must be repaid, 2) capital contributed to an entity in exchange for an equity interest in the entity, or 3) gifts made out of detached generosity and without any “quid pro quo.” However, a voluntary transfer without a “quid pro quo” is not necessarily a gift for federal income tax purposes. In addition, crowdfunding revenues must generally be included in income to the extent they are received for services rendered or are gains from the sale of property.

Section 1.451-2 of the Income Tax Regulations sets forth the constructive receipt doctrine and provides that income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. The regulation further provides that income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. However, a self-imposed restriction on the availability of income does not legally defer recognition of that income.

Thus, the income tax consequences to a taxpayer of a crowdfunding effort depend on all the facts and circumstances surrounding that effort.

A taxpayer may request a private letter ruling from the Internal Revenue Service that applies the law to the taxpayer’s particular facts and circumstances. The procedure for obtaining a private letter ruling is set forth in Rev. Proc. 2016-1, 2016-1 I.R.B. 1. You may obtain a copy of Rev. Proc. 2016-1 on the Service’s website, www.irs.gov.

If you have any questions, please contact   or me at   .

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)