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 SUBJECT ITR Subsection 1100(26)  
 SECTION ITR 1100(26), 1100(24)

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: Whether the distribution of electricity includes the transmission of electricity.

POSITION: Yes

REASONS: According to the various court cases, it would appear that the definition of distribution is interpreted in the broad meaning of the word to include transmission.

XXXXXXXXXX

2012-046550  
 J. Nichols

December 18, 2012

Dear XXXXXXXXXX

Re: Subsection 1100(26) of the Income Tax Regulations

We are writing in reply to your letter dated October 4, 2012, requesting our views as to whether the term "distribution" as used in paragraph 1100(26)(a) of the Income Tax Regulations (the "Regulations") may be interpreted in the broad and general sense to include the term "transmission".

Our comments

Written confirmation of the tax implications inherent in particular transactions may only be provided by this Directorate where the transactions are proposed, and are the subject matter of an advance income tax ruling, submitted in the manner set out in Information Circular 70-6R5, Advance Income Tax Ruling, dated May 17, 2002. This Information Circular and other Canada Revenue Agency ("CRA") publications can be accessed on the Internet at <http://www.cra-arc.gc.ca>. Where the particular transactions are completed, the inquiry should be addressed to the relevant Tax Services Office, a list of which is available on the "Contact Us" page of the CRA website. We are, however, prepared to provide the following general comments.

Subsection 1100(24) of the Regulations restricts the amount of capital cost allowance ("CCA") that a taxpayer may claim with respect to property that is "specified energy property" as defined in subsection 1100(25) of the Regulations to an amount that is the lesser of:

- (a) the amount of CCA otherwise determined for such property, or

(b) the taxpayer's net income (after deducting all expenses, other than CCA, related to earning such income) from all specified energy property of the taxpayer.

Paragraph 1100(26)(a) of the Regulations provides an exemption to the specified energy property rules, for certain corporations (and partnerships each member of which was an eligible corporation) whose principal business is, among other things, the sale, distribution or production of energy, including electricity.

As described in paragraph 23 of Interpretation Bulletin IT-476R Capital Cost Allowance - Equipment Used in Petroleum and Natural Gas Activities, it is the CRA's opinion based on the decisions of the courts in Northern and Central Gas Corporation Ltd. [87 DTC 5439] and Pacific Northern Gas Limited, [91 DTC 5287] that the words "distributing equipment and plant" and "distribution of gas" as used in paragraph (n) of Class 1 should be interpreted in a broad and general sense and should not be given the more restrictive meaning used by the natural gas industry to distinguish between a natural gas transmission system and a natural gas distribution system.

In our view, since the specified energy property rules also involve the computation of CCA, it is our opinion that the rationale described above should also apply for purposes of interpreting the term "distribution" as used in subparagraph 1100(26)(a)(iii) of the Regulations.

We trust our comments will be of assistance.

Yours truly,

Fiona Harrison, C.A.  
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