



**Department of Energy**  
Washington, DC 20585

**SEP PROGRAM NOTICE 10-012**  
**EFFECTIVE DATE: July 22, 2010**

**SUBJECT: GUIDANCE FOR STATE ENERGY PROGRAM GRANTEES ON CONSUMER REBATE PROGRAMS FOR ENERGY STAR AND OTHER QUALIFIED ENERGY EFFICIENCY APPLIANCES.**

**PURPOSE**

To provide guidance to the Department of Energy's (Department or DOE) State Energy Program (SEP) grantees on consumer rebate programs for Energy Star and other qualified energy efficiency appliances.

**SCOPE**

The provisions of this guidance apply to grantees of SEP funds, pursuant to Formula Grant or American Recovery and Reinvestment Act of 2009 (Recovery Act).

**LEGAL AUTHORITY**

SEP is authorized under the Energy Policy and Conservation Act, as amended (42 U.S.C. § 6321 et seq.) All grant awards made under this program shall comply with applicable law including the Recovery Act and other procedures applicable to this program.

**GUIDANCE**

**State Energy Efficiency Appliance Rebate Program**

As part of the Energy Policy Act of 2005, Congress established the State energy efficient appliance rebate program (SEEARP) to provide incentives for residential consumers to purchase energy efficient appliances. Pub. L. No. 109-58; 119 Stat. 617; 42 U.S.C. § 15821. Under the program, the Secretary of DOE allocates funds to an eligible State's energy office if the State meets the following requirements set forth in 42 U.S.C. § 15821:

1. establishes a State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products to replace used appliances of the same type;
2. submits an application for the allocation at such time, in such form, and containing such information as the Secretary may require;

3. provides assurances satisfactory to the Secretary that the State will use the allocation to supplement, but not supplant, funds made available to carry out the State program.

Under 42 U.S.C. § 15821(e) the State energy office in determining the amount of a rebate must consider certain factors including –

1. the amount of the allocation to the State energy office under the statute;
2. the amount of any Federal or State tax incentive available for the purchase of the residential Energy Star product; and
3. the difference between the cost of the residential Energy Star product and the cost of an appliance that is not a residential Energy Star product, but is of the same type as, and is the nearest capacity, performance, and other relevant characteristics (as determined by the State energy office) to, the residential Energy Star product.

The Recovery Act appropriated \$300 million to DOE for the SEEARP. Title IV of Division A of Recovery Act, Pub. L. No. 111-5, 123 Stat. 115, 138; H.R. Conf. Rep. No. 111-16 at 427 (2009). The SEEARP has been successful in supporting the mission on energy efficiency, driving replacement of old of appliances and simultaneously allowing for the acceleration of payments. In fact, some state programs were oversubscribed in a matter of hours. Participants recognize the benefits of the SEEARP which is now familiar and has an established structure in place – both at DOE and in all 56 states and territories.

#### **APPLIANCE REBATES UNDER THE SEP PROGRAM**

The Energy Policy and Conservation Act, as amended (42 U.S.C. § 6321 et seq.), authorizes the Department to administer the SEP program. The Recovery Act appropriated approximately \$3.1 billion to DOE for the implementation of the SEP. Title IV of Division A of Recovery Act, Pub. L. No. 111-5, 123 Stat. 115, 138; H.R. Conf. Rep. No. 111-16 at 427 (2009). SEP grantees are receiving funding for a variety of energy efficiency and renewable energy programs, some of which include rebate and grant programs for Energy Star and other qualified energy efficiency appliances.

As mentioned above, the SEEARP for eligible State energy office's has been effective in many jurisdictions. SEP grantees implementing appliance rebate programs using SEP Recovery Act funds should use the requirements set forth in 42 U.S.C. § 15821 and regulatory practices of SEEARP. For those SEP grantees implementing appliance rebate programs in accordance with this guidance, please refer to the IRS letter dated July 13, 2010 (GENIN-126830-10) addressed to the DOE Deputy General Counsel for Energy Policy for guidance on the tax treatment of such appliance rebates. If grantees follow

this DOE guidance and the parameters set out in the IRS letter (see Attachment 1 and Attachment 2 below), grantees and other payors of SEP funded appliance rebates would not be required by IRS to report such payments on forms 1099.

A handwritten signature in black ink that reads "Tobias Russell". The signature is written in a cursive style with a large, stylized initial 'T'.

Tobias Russell  
Acting Program Manager  
Weatherization and Intergovernmental Program  
Energy Efficiency and Renewable Energy

## Attachment 1



OFFICE OF THE CHIEF COUNSEL

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

July 13, 2010

CC:ITA:B04  
GENIN-126830-10

UIL: 61.40-00

Mr. Robert H. Edwards, Jr.  
Deputy General Counsel for Energy Policy  
Office of the General Counsel  
United States Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Mr. Edwards:

This letter responds to your inquiry about whether rebates that state and local governments provide to individuals for the purchase of energy efficient home appliances constitute income for federal income tax purposes. As you explained to us, the State Energy Program (SEP) pursuant to 42 U.S.C. § 6322(d)(5)(A) and the Energy Efficiency and Conservation Block Grant (EECBG) Program pursuant to 42 U.S.C. § 17154(4) authorize state, local governments, and Indian tribes to use funds appropriated under the American Recovery and Reinvestment Act (ARRA) for these rebates. You indicated that Title 42 of the U.S. Code does not prescribe particular terms and conditions for any appliance rebate program and that this is the function of the various state and local governments. You also explained that the Department of Energy's (DOE) Weatherization and Intergovernmental Program of the Office of Energy Efficiency and Renewable Energy will release guidance that SEP and EECBG grantees implementing appliance rebate programs using ARRA funds should use the requirements set forth in 42 U.S.C. § 15821 and regulatory practices of the State Energy Efficiency Appliance Rebate Program (SEEARP).

The enclosed Chief Counsel Advice, dated March 22, 2010, states that the Internal Revenue Service (IRS) will treat an SEEARP rebate for the purchase of an energy efficient home appliance as a reduction in the purchase price of the appliance rather than income. If SEP and EECBG grantees follow DOE's guidance, then the IRS will extend this treatment to SEP and EECBG ARRA-funded consumer rebate programs for Energy Star and other qualified energy efficiency appliances under 42 U.S.C. § 6322(d)(5)(A) or 42 U.S.C. § 17154(4). We do not express an opinion on SEP and EECBG ARRA-funded energy efficiency and renewable energy rebate and grant programs that are not consumer rebate programs for Energy Star and other qualified energy efficiency appliances.

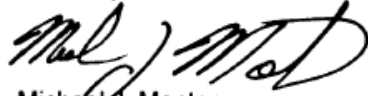
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GENIN-126830-10

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Please contact (202) 622-4920 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "MJ Montemurro". The signature is stylized and cursive.

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

Enclosure

Attachment 2

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:ITA:B04:FWDunham  
PRES-107757-10

UILC: 61.00-00, 6041.00-00

date: March 22, 2010

to: Carol Campbell, Division Counsel  
(CC:WI)

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

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subject: Energy Star Appliance Rebate Program

This Chief Counsel Advice addresses an issue under your jurisdiction. This advice may not be used or cited as precedent.

As part of the Energy Policy Act of 2005, Congress established the State energy efficient appliance rebate program to provide incentives for residential consumers to purchase energy efficient appliances. Pub. L. No. 109-58; 119 Stat. 617; 42 U.S.C. § 15821. Under the program, the Secretary of the Department of Energy (DOE) allocates funds to an eligible State's energy office if the State meets certain requirements including establishing a "State energy efficient appliance rebate program to provide rebates to residential consumers for the purchase of residential Energy Star products, or products with improved energy efficiency in cold climates, to replace used appliances of the same type." See 42 U.S.C. § 15821(b). Under 42 U.S.C. § 15821(e) the State energy office in determining the amount of a rebate ("Energy Star rebate") must consider certain factors including— (i) the difference between the cost of the residential Energy Star product or product with improved energy efficiency in a cold climate and the cost of a similar appliance that is not a residential Energy Star product or product with improved energy efficiency in a cold climate and (ii) the amount of any Federal or State tax incentive for the purchase of a residential Energy Star product or product with improved energy efficiency in a cold climate.

The American Recovery and Reinvestment Act of 2009 ("ARRA") appropriated \$300 million to DOE for the Energy Star rebate program. Title IV of Division A of ARRA, Pub. L. No. 111-5, 123 Stat. 115, 138; H. R. Conf. Rep. No. 111-16 at 427 (2009). ARRA was a direct response to the economic crisis, designed, in part, to preserve and create

**PMTA 2009-165**

jobs, promote economic recovery, and invest in environmental protection and other infrastructure that will provide long-term economic benefits. ARRA directs the President and heads of federal departments and agencies to commence expenditures and activities as quickly as possible consistent with prudent management. See § 3 of ARRA, 123 Stat. at 115-116.

Under these facts, the Internal Revenue Service will treat payments to consumers funded by the \$300,000,000 ARRA appropriation (ARRA Energy Star rebates) as reductions in the purchase price of the purchased product rather than income. Consequently, consumers must reduce the adjusted basis of property acquired with an ARRA Energy Star rebate by its amount and must not treat that amount as an expenditure in determining any federal income tax deduction or credit. In addition, States and other payors of ARRA Energy Star rebates are not required to report such payments on Forms 1099.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views. We understand you will share this advice with Operating Division field personnel.

Please call Frank W. Dunham III at (202) 622-4920 if you have any further questions.