

October 14th, 2016

Ali Zaidi, Associate Director for Natural Resources
Office of Management and Budget

Christy Goldfuss, Managing Director
Council on Environmental Quality

Jeffrey Zients, Director
National Economic Council

cc:

*Jerry Abramson, Director
Intergovernmental Affairs*

*Dr. John Holdren, Director
Office of Science and Technology Policy*

Re: Federal Tax Penalties for Local Water Efficiency Rebates

Dear Mr. Zaidi, Ms. Goldfuss, & Mr. Zients,

As members of the National League of Cities and WaterNow Alliance, we ask for your support in resolving a federal issue of great importance to our communities. Public water utilities comprise over 80% of U.S. municipal water providers. Our ability to provide clean and reliable drinking water supplies faces growing challenges from drought, stormwater runoff, aging infrastructure, rising costs, and more. Consumer rebates and subsidies are among our most cost-effective and efficient tools for increasing water supply resilience, limiting pollutants in waterways, and keeping water affordable for citizens. Interest is growing to substantially increase these subsidies in order to scale water use efficiency and green infrastructure programs and avoid costlier, and less sustainable, alternatives for our utilities.

As our water rebate programs have grown, there has been significant uncertainty as to how the IRS will treat these rebates, raising the question as to whether such a program might subject our agencies to penalties for failure to issue 1099s to participating consumers. These programs are limited to repayment for specific out-of-pocket expenses that benefit the community far more than consumers themselves. Requiring the recipients to be taxed on these reimbursements would work as a significant financial penalty, and thus a major disincentive for consumer participation in conservation programs, fundamentally undermining their effectiveness.

In many similar situations where the tax consequences of a particular policy incentive is unclear or would create an administrative burden on taxpayers and the government, the IRS has exercised its administrative discretion to provide clarity as to whether a subsidy should be treated as taxable income.

We applaud the White House's leadership on water innovation and sustainability with its recent Water Summit, and we appreciate your outreach to communities. For our efforts to be successful, it is essential to eliminate the threat of federal tax liability for those participating in our water conservation programs. The Administration is on record supporting a tax exemption for water efficiency rebates,¹ but has not yet taken action to put this policy into place.

¹ <https://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2016.pdf>

The IRS has discretion to determine that consumer subsidies of this type represent a reduction of the purchase price of the efficiency or green infrastructure installation, and is therefore not income, and that the current exemption for the exclusion of energy conservation rebate from taxable income under the Tax Code also covers water as a result of the “energy water nexus.” Various other avenues for administrative remedies have been provided to you and your staffs previously.

From our perspective as local water decision makers, it is important that the Administration act quickly as we head into what may well be another dry year in the West. Public water utilities shoulder the vast majority of the funding burden for water infrastructure. Our ability to invest significantly in the types of innovative and sustainable water solutions supported by the Administration requires that we eliminate federal disincentives.

Thank you very much for your consideration. If you have any questions please reach out to WaterNow Alliance Executive Director, Cynthia Koehler, ck@waternow.org or 415.360.2999

Sincerely,

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