

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
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Legend

Taxpayer =

State =

State Administrative Code =

State Administrative Code § a =

State Administrative Code § b =

State Administrative Code § c =

State Administrative Code § d =

State Administrative Code § e =

State Administrative Code § f =

State Statute =

State Statute § g =

State Statute § h =

State Administrative Code § i =

State Administrative Code § j =

State Statute § k =

State Administrative Code § l =

State Administrative Code § m =

State Administrative Code § n =

Program A =

Program B =

Dear :

The Taxpayer, an agency of State, requested rulings on whether certain payments to individual care providers under State's in-home supportive care programs will be treated

as difficulty of care payments excludable from the gross income of the individual care provider under section 131 of the Internal Revenue Code (Code), and, therefore, the Taxpayer is not required under section 6041, 6041A, or 6051 to report the payments as wages subject to income tax.

The Taxpayer is responsible for directing and overseeing the following two State in-home supportive care programs funded in part by the federal government through Medicaid under Title XIX of the Social Security Act (SSA):

- (1) State's program pursuant to section 1915(k) of the SSA, known as Program A; and
- (2) State's program pursuant to section 1905 of the SSA, known as Program B.

These programs assist qualifying aged, blind, or disabled persons who are unable to perform activities of daily living independently and who cannot remain safely at home without assistance. See State Administrative Code § a. Under both programs, care providers include, among others, individual providers who provide in-home services to eligible individuals (also referred to as "care recipients" or "eligible recipients") and residential providers, including licensed adult family homes. See State Administrative Code § b. Under both programs, in the case of an eligible child, the Taxpayer will not compensate a responsible parent or other responsible adult for the care that would be provided to a child who does not have a disability or chronic illness. See State Administrative Code § c.

The Taxpayer requested rulings regarding payments it makes under Programs A and B to individual care providers when the care recipient lives in the care provider's home. The Taxpayer also requested that the payments it makes to individual care providers under Programs A and B be treated the same as the payments described in Notice 2014-7, 2014-4 I.R.B. 445, available at www.irs.gov/irb/2014-4_IRB/ar06.html, with the result that it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

Specifically, the Taxpayer requested the following rulings:

- (1) Medicaid payments made under Program A, pursuant to section 1915(k) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of Code, and, therefore, the Taxpayer is not required under section 6041, 6041A, or 6051 to report these payments as wages to the care provider subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As relating to the Notice for information on its reporting and withholding obligations.

(2) Medicaid payments made under Program B, pursuant to section 1905 of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code, and, therefore, the Taxpayer is not required under section 6041, 6041A, or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

I. BACKGROUND

State offers in-home supportive care to aged, blind, or disabled individuals under two Medicaid programs, Program A and Program B, which are funded by State and the federal government. The Taxpayer, an agency of State, administers both of State's in-home supportive care programs. In order to receive services under either Program A or Program B, an applicant must request an assessment of need from the Taxpayer and submit a medical evaluation. See State Administrative Code § d. For both Programs, the Taxpayer assesses, at every twelve months, the individual's need for personal care services to live safely in a home setting and to avoid institutionalization. See State Administrative Code § e. For both programs, the Taxpayer, or a local agency, processes applications for care services, determines income and resource eligibility, assesses the type and level of care necessary for an eligible individual to safely remain at home, and authorizes services under the individual's plan of care. See State Administrative Code § f.

For both programs, the Taxpayer represents that it processes and approves payments to the individual care provider and that it files information returns and withholds and pays any applicable taxes on such payments in accord with previous rulings from the Service regarding its employment tax reporting responsibilities for payments under similar programs. Further, the Taxpayer represents that it reports the care recipient as the employer of the care provider on the information returns in accord with the previous rulings. We are not ruling whether the conclusions in the previous rulings govern the specific payments at issue.

II. PROGRAM DESCRIPTIONS

Title XIX of the Social Security Act (SSA) authorizes federal grants to states for medical assistance to low-income persons who are age 65 or over, blind, or disabled. These medical assistance programs are jointly financed by the federal and state governments and are administered by the states. Within broad federal rules, each state decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. See 42 CFR § 430.0.

A. State Program A pursuant to Section 1915(k) of the SSA

Section 1915(k) of the SSA, 42 USC § 1396n(k), includes in the definition of “medical assistance” certain home and community-based attendant services and supports for individuals who are eligible for medical assistance under the state plan and whose income does not exceed 150 percent of the poverty line or, if greater, the income level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the state plan, and with respect to whom that there has been a determination that, but for the provision of such services, the individual would require the level of care provided in a hospital, a nursing facility, an intermediate care facility for persons with intellectual disabilities, or an institution for mental disease, the cost of which could be reimbursed under the state plan.

State Statute § g authorizes State to provide Medicaid personal care services under Program A. State Statute § h provides that “personal care services” means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person’s disability. As a condition of receiving services under Program A, the Taxpayer must assess the applicant’s needs at least annually and make a determination that, in the absence of in-home services, the individual would require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over (or will likely need the level of care within 30 days unless the services under Program A are provided). See State Administrative Code §§ i and j.

B. State Program B pursuant to Section 1905 of the SSA

Section 1905(a)(24) of the SSA, 42 USC § 1396d(a)(24), includes in the definition of “medical assistance” personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities, or institution for mental disease that are (A) authorized by a physician in accordance with a plan of treatment or (at the option of the state) otherwise authorized for the individual in accordance with a service plan approved by the state, (B) provided by a qualified individual who is not a member of the individual’s family, and (C) provided in the home or other permissible location.

Program B, pursuant to section 1905(a)(24) of the SSA and State Statute § k, includes as “medical assistance” certain personal care services. As a condition of receiving services under Program B, the Taxpayer must assess the applicant’s needs at least annually and make a determination that the individual is unable to perform a certain number of activities of daily living. See State Administrative Code §§ l and m.

III. LAW

Section 61(a) of the Code provides that, except as otherwise provided, gross income means income from whatever source derived, including compensation for services.

Section 131(a) of the Code excludes qualified foster care payments from the gross income of a foster care provider.

Section 131(b)(1) of the Code defines a qualified foster care payment, in part, as any payment under a foster care program of a state or a political subdivision that is either (1) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or (2) a difficulty of care payment.

Section 131(b)(2) of the Code defines a qualified foster individual as any individual who is living in a foster family home in which the individual was placed by an agency of a state or political subdivision or by a qualified foster care placement agency.

Section 131(b)(3) of the Code defines a qualified foster care placement agency, in part, as a placement agency that is licensed or certified for the foster care program of a state or political subdivision of a state.

Section 131(c) of the Code defines difficulty of care payments as compensation to a foster care provider for the additional care required because the qualified foster individual has a physical, mental, or emotional handicap. The provider must provide the care in the provider's foster family home, a state must determine the need for this compensation, and the payor must designate the compensation for this purpose. In the case of any foster home, difficulty of care payments are not excludable to the extent that the payments are for more than 10 qualified foster individuals who have not attained age 19 or 5 qualified foster individuals who have attained age 19. See § 131(c)(2).

Notice 2014-7 provides that the Internal Revenue Service (Service) will treat qualified Medicaid waiver payments as difficulty of care payments under section 131(c) of the Code that are excludable from the gross income of the individual care provider. The Notice defines qualified Medicaid waiver payments as payments by a state, a political subdivision of a state, or an entity that is a certified Medicaid provider, under a Medicaid waiver program to an individual care provider for nonmedical support services provided under a plan of care to an eligible individual (whether related or unrelated) living in the individual care provider's home. The Notice addresses only payments under a state Medicaid Home and Community-Based Services waiver program under section 1915(c) of the SSA.

Q&A1 at www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income, provides that whether the Service will treat payments received by an individual care provider under a state program other than a section 1915(c) program as difficulty of care payments excludable from the gross income of the

provider under section 131 of the Code will depend on the nature of the payments and the purpose and design of the program.

Section 3402(a) of the Code, relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures.

Section 6041(a) of the Code provides, in part, that all persons engaged in a trade or business and making payments in the course of the trade or business to another person of wages or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year must render a return of information in the form and manner prescribed by regulations.

Section 1.6041-1(b) of the Income Tax Regulations (regulations) clarifies that the term "all persons engaged in a trade or business" includes states and their subdivisions.

Section 1.6041-1(c) of the regulations provides that income is fixed when it is to be paid in amounts definitely predetermined and that it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Section 1.6041-2(a) of the regulations provides that wages, as defined in section 3401, paid to an employee must be reported on Form W-2, "Wage and Tax Statement."

Section 6041(A)(a) of the Code provides, in part, that if any service-recipient engaged in a trade or business pays in the course of the trade or business remuneration aggregating \$600 or more in a calendar year to a person, for services performed by that person, then the service-recipient shall make a return setting forth the aggregate amount of the payments. For purposes of section 6041A(a), the term "remuneration" does not include amounts paid to any person for services performed by that person if the service-recipient knows that such amounts are excludable from the gross income of the person performing the services. See Prop. Reg. § 1.6041A-1(a)(1)(ii). Section 6041A(c) provides that section 6041A(a) does not apply if a statement regarding the services is required to be furnished under section 6051.

Section 6051(a) of the Code provides that employers must furnish the tax return copy and the employee's copy of Form W-2 to employees for remuneration paid during the calendar year. The Form W-2 must show, among other information, the total amount of wages paid subject to withholding of income tax, the total amount of wages paid subject to social security and Medicare taxes, and the total amounts of income tax and social security and Medicare taxes deducted and withheld. Section 6051(d) of the Code and section 31.6051-2(a) of the Employment Tax Regulations provide that employers must file a copy of the Form W-2 with the Social Security Administration.

IV. ANALYSIS

A. Payments under State's In-Home Supportive Care Programs Will Be Treated as Excludable Difficulty of Care Payments

The underlying rationale in Notice 2014-7 for treating certain Medicaid waiver payments, pursuant to section 1915(c) of the SSA, as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code is the similarity in purpose and design of Medicaid waiver programs and foster care programs. The Notice provides:

Section 131 does not explicitly address whether payments under Medicaid waiver programs are qualified foster care payments. Medicaid waiver programs and state foster care programs, however, share similar oversight and purposes. The purpose of Medicaid waiver programs and the legislative history of § 131 reflect the fact that home care programs prevent the institutionalization of individuals with physical, mental, or emotional handicaps. See 128 Cong. Rec. 26905 (1982) (stating that “[difficulty of care payments] are not income to the [foster] parents, regardless of whether they, dollar for dollar only cover expenses. [These] parents are saving the taxpayers’ money by preventing institutionalization of these children.”); S. Rep. No. 97–139 at 481 (1981) (describing the purpose of the amendment to 42 USC §1396n, allowing Medicaid waivers for home and community-based services, as “[permitting] the Secretary to waive the current definition of covered [M]edicaid services to include certain nonmedical support services, other than room and board, which are provided pursuant to a plan of care to an individual otherwise at risk of being institutionalized and who would, in the absence of such services be institutionalized”). Both programs require state approval and oversight of the care of the individual in the provider’s home. The programs share the objective of enabling individuals who otherwise would be institutionalized to live in a family home setting rather than in an institution, and both difficulty of care payments and Medicaid waiver payments compensate for the additional care required.

Whether certain payments under State’s in-home supportive care programs will be treated as difficulty of care payments excludable from the gross income of the individual care provider under section 131 of the Code depends on an analysis of the purpose and design of the programs and the nature of the payments.

1. Purpose of State’s In-Home Supportive Care Programs

Eligibility for State’s programs varies slightly, but both programs have the shared purpose of preventing institutionalization and enabling an eligible individual to be cared for in a home setting. Program A, pursuant to section 1915(k) of the SSA and State Administrative Code § i, and a Medicaid waiver program under section 1915(c) of the SSA, require that the Taxpayer determine that the individual needs an institutional level of care. Program B provides for care to individuals who are at risk of institutionalization

and requires the Taxpayer to determine that the individual is unable to perform a certain number of activities of daily living independently. See State Administrative Code § b. Thus, the purpose of both of State's in-home supportive care programs is similar to the purpose of foster care programs as stated in Notice 2014-7: That is, both of State's in-home supportive care programs and foster care programs prevent institutionalization of individuals with physical, mental, or emotional handicaps and enable such individuals to be cared for in a home setting.

2. Design of State's In-Home Supportive Care Programs

Both of State's in-home supportive care programs are administered by the Taxpayer, an agency of State. For both programs, the Taxpayer, or a local agency, processes applications for assistance, determines income and resource eligibility, assesses the type and level of care necessary for an individual to remain safely at home, and authorizes services under the individual's plan of care. Thus, the design of both of State's in-home supportive care programs is similar to the design of foster care programs: That is, both of State's in-home supportive care programs and foster care programs require approval and oversight by the state, or an agency of the state, of the individual's care in the provider's home.

3. Nature of Payments under State's In-Home Supportive Care Programs

The nature of the payments is similar under both of State's in-home supportive care programs. Both programs provide personal care services and supports that include assistance with the activities of daily living, the instrumental activities of daily living, and health-related tasks. The nature of the payments to individual care providers under both of State's in-home supportive care programs is similar to the nature of difficulty of care payments. Difficulty of care payments compensate a provider for the additional care required because an individual has a physical, mental, or emotional handicap. Similarly, an in-home supportive care provider receives compensation for the additional care required by an individual who needs assistance with activities of daily living to remain safely at home and to prevent institutionalization. See State Administrative Code §§ c and n.

Accordingly, the purpose and design of both of State's in-home supportive care programs are similar to the purpose and design of foster care programs, and the nature of the payments to providers is similar to the nature of difficulty of care payments under section 131 of the Code. Therefore, payments under both of State's in-home supportive care programs to an individual care provider for in-home supportive care provided for an eligible recipient who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code.

B. Taxpayer's Reporting and Withholding Obligations in General

In general, payments made to an individual care provider as an employee of the care recipient as employer are wages that would be: (1) includable in the provider's gross income and subject to income tax under section 61(a)(1) of the Code, (2) reportable on Form W-2 under sections 6041 and 6051, and (3) subject to income tax withholding under section 3402. However, payments made to an individual care provider that are excludable from the gross income of the provider under section 131 are not reportable under section 6041 or 6051 as wages subject to income tax and income tax withholding. Nevertheless, payments made to an individual care provider generally are wages subject to taxes under the Federal Insurance Contributions Act (FICA) (also known as social security and Medicare taxes) and the Federal Unemployment Tax Act (FUTA) unless an exception applies.

Specifically, if the care recipient (and not an outside agency) is the employer of the individual care provider, the FICA tax rules for domestic service (household work done in or around the care recipient employer's home) may apply. Under those rules, payments for services performed for a spouse or a child and services performed for a parent by a child under the age of 21 generally are not subject to FICA tax under section 3121(b)(3)(B) of the Code. In addition, if wages for domestic services paid during a calendar year are below a threshold (\$2,000 for 2016), the wages are not subject to FICA tax under sections 3121(a)(7)(B) and 3121(x). Similarly, payments for services performed for a spouse or a child and services performed for a parent by a child under the age of 21 are not subject to FUTA tax under section 3306(c)(5). In addition, there is a dollar threshold for wages paid to all household employees for purposes of FUTA tax under section 3306(a)(3).

Accordingly, for those payments that are excludable from an individual care provider's gross income under section 131 of the Code, the Taxpayer is not required under section 6041 or 6051 to report the payments as wages subject to income tax and income tax withholding. However, the Taxpayer may be required under section 6051 to report the payments as wages to the individual care provider subject to FICA and FUTA taxes, unless one of the exceptions applies. In addition, the Taxpayer may look to the Q&As on Notice 2014-7 (in particular, Q&As 15 - 20), available on irs.gov at <https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>, and Publication 926, Household Employer's Tax Guide, also available on irs.gov, for further information on its reporting and withholding obligations.

In addition, reporting is not required under section 6041A of the Code. Section 6041A(c) provides that reporting is not required under section 6041A(a) if reporting for the services is required under section 6051. Therefore, if the payments are wages subject to FICA and FUTA, and thus reportable under section 6051, no reporting is required under section 6041A. Further, if there is an exception to FICA and FUTA reporting such that reporting is not required under section 6051, the payments would also not be reportable under section 6041A because the Taxpayer knows that the

payments are excludable from the income of the care provider. See Prop. Reg. §1.6041A-1(a).

V. CONCLUSIONS

For the reasons explained above, the described payments under both of State's in-home supportive care programs will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Specifically, the following rulings are granted:

- (1) Medicaid payments made under Program A, pursuant to section 1915(k) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer is not required to report these payments under section 6041A.
- (2) Medicaid payments made under Program B, pursuant to section 1905) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer is not required to report these payments under section 6041A.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. All taxpayer identifying information has been redacted as required under section 6110(c).

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Donna Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)

cc: