

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
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Legend:

Taxpayer	= Personal Care Attendant Quality Workforce Council (EIN: 81-0783359)
Department	= Executive Office of Health and Human Services
Date	= December 9, 2024
Program	= MassHealth Personal Care Attendant Program
State	= Massachusetts
State Regulation § q	= 130 CMR 422.403
State Regulation § r	= 130 CMR 422.410(A)
State Regulation § s	= 130 CMR 422.422(C)
State Regulation § t	= 130 CMR 422.410(B)
State Statute § e	= MA ST 118E § 71
State Statute § f	= MA ST 118E § 72
State Statute § f	= MA ST 118E § 75
State Statute § h	= MA ST 118E § 73

Dear Dr. Mahaniah:

This letter refers to Taxpayer's request for a private letter ruling, dated Date, requesting a ruling that payments to personal care providers who live in the same home as the person to whom they provide care (Program members) under the State's in-home supportive care program (Program) are difficulty of care payments excludable from the gross income of the provider under section 131 of the Internal Revenue Code (Code). Taxpayer requests that if determined to be difficulty of care payments, Taxpayer is not required under section 6041 or 6051 of the Code to report these payments as wages subject to income tax. Finally, Taxpayer requests that it may treat payments to providers as excludable payments described in Notice 2014-7, 2014-4 I.R.B. 445, such that Department may look to the Q&A on the Notice available at irs.gov for information on reporting and withholding obligations.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

The Program is operated pursuant to section 1905(a)(24) of the Social Security Act (SSA) and was established under State Statute § e.

Taxpayer is the oversight council for the Program, and is within the Department, but not subject to the control of the Department. Department is the state agency for the Medicaid program in State. Taxpayer ensures the quality of long-term, in-home, personal care by recruiting prospective care providers, providing training opportunities for care providers, and providing assistance to Program members. See State Statute §§ e and f. Taxpayer also conducts routine performance reviews of Program and produces reports for the State legislature, governor, and the public that provide an explanation of the full costs of the personal care services. See State Statute § g.

The Program is designed to help prevent the institutionalization of individuals with permanent or chronic disabilities and to enable such individuals to continue to live in their communities of choice. The Program's care providers provide services that consist of physical assistance with activities of daily living and instrumental activities of daily living, which are provided in a community-based setting. See State Regulation § q. Activities of daily living include activities such as bathing or grooming, dressing, eating, and mobility. See State Regulation § r. Instrumental activities of daily living include activities such as household services, meal preparation, and transportation. See State Regulation § t. The Program is a self-directed program, through which the Program member is the employer of the care provider and hires, schedule, trains, directs, supervises, and may terminate the care provider. See State Statute § h.

Under the Program, a Program member receiving care must be determined by State to be clinically and financially eligible for coverage of personal care services. Clinical eligibility for personal care services determines the amount of authorized services and is based on an in-person assessment performed by a personal care management services agency, which is an agent of State. See State Regulation § s.

For persons determined eligible for personal care attendant services, the Department facilitates payment to a care provider via a contract with a fiscal intermediary that performs payroll and required tax withholdings for care providers on behalf of Program members.

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) excludes qualified foster care payments from the gross income of a foster care provider.

Section 131(b) defines a qualified foster care payment, in part, as any payment under a foster care program of a state or a political subdivision of a state 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) 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 a political subdivision by a state or by a qualified foster care placement agency.

Section 131(b)(3) 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 a political subdivision of a state.

Section 131(c) 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 section 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) 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 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) 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 6051(a) 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) 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.

ANALYSIS

A. Payments under State's In-Home Supportive Care Program Will Be Treated as Excludible 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 gross income of the provider under section 131 is the similarity in the purpose and design of the 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 section 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 payments under Program will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 depends on an analysis of the purpose and design of the program and the nature of the payments.

1. Purpose of State's In-Home Supportive Care Program

The purpose of Program is to prevent the institutionalization of individuals with permanent or chronic disabilities and to enable such individuals to continue to live in their communities of choice, including in their own homes.

An individual must be determined by State to be clinically and financially eligible for coverage of personal care services. Clinical eligibility for personal care services determines the amount of authorized personal care services and is based on an in-person assessment performed by a personal care management services agency, which is an agent of State.

Thus, the purpose of State's in-home supportive care program is similar to the purpose of foster care programs as stated in Notice 2014-7. That is, both State's in-home supportive care program 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 Program

The Program is administered under the discretion and oversight of Taxpayer, a division of State Department. Taxpayer carries out recruiting duties, provides training opportunities for care providers, and provides assistance to Program members. Taxpayer also is responsible for reviewing and reporting on the performance and costs of the program to the state government and the public.

Thus, the design of State's in-home supportive care program is similar to the design of foster care programs. That is, both State's in-home supportive care program and foster care programs require state approval and oversight of the care in the provider's home.

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

Care providers employed by Program members in the State's in-home supportive care program receive payments for the performance of care provider services, including assistance to Program members for activities of daily living and instrumental activities of daily living.

The nature of the payments to individual care providers under State's in-home supportive care program 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 one or more activities of daily living to remain safely at home and to prevent institutionalization.

Accordingly, the purpose and design of Program are similar to the purpose and design of foster care programs, and the nature of the described payments to care providers is similar to the nature of difficulty of care payments under section 131. Therefore, payments made under State's in-home supportive care program to an individual care provider for in-home supportive care provided for a Program member who resides in the same home as their provider will be treated as difficulty of care payments excludable from the gross income of the providers under section 131.

B. Taxpayer's Reporting and Withholding Obligations in General

In general, payments made to an individual care provider as an employee of the Program member as employer are wages that would be: (1) includable in the care provider's gross income and subject to income tax under section 61(a)(1), (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 gross income of the provider under section 131 are not reportable under section 6041 or 6051 as wages subject to tax and income tax withholding. Nevertheless, payments made to an individual care provider 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 Program member (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 Program member 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 (\$2,800 for 2025), 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 3306(c)(5) of the Code. 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, Taxpayer is not required under section 6041 or 6051 to report the payments as wages subject to income tax and income tax withholding. However, Taxpayer is required to report payments that are excludable from an individual care provider's gross income in box 12 of Form W-2 with code II. Moreover, taxpayers may be required under sections 6041 and 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, Taxpayer may look to the Q&As on Notice 2014-7 (in particular, Q&As 15 - 20), available on [irs.gov](https://www.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](https://www.irs.gov), for further information on its reporting and withholding obligations.

CONCLUSION

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

- (1) Medicaid payments made under State Program, pursuant to section 1905(a)(24) of SSA, to an individual care provider for in-home supportive care provided for an eligible Program member (whether related or unrelated) who resides in the same home as the care provider will be treated as difficulty of care payments excludable from the gross income of the provider under section 131.
- (2) Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax.

- (3) Taxpayer may treat payments to providers as excludable payments described in Notice 2014-7, such that Department may look to the Q&A on the Notice available at irs.gov for information on reporting and withholding obligations.

The rulings contained in this letter are based upon information and representations submitted by 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,

Amy J.

Pfalzgraf

Amy Pfalzgraf

Branch Chief, Branch 5

Office of Associate Chief Counsel
(Income Tax & Accounting)

Digitally signed by
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cc: Jeffrey Clausen