

Office of Chief Counsel
Internal Revenue Service
Memorandum

CC:ITA:B04:
PREF-124679-06

[Third Party Communication:
Date of Communication: <Month> DD, YYYY]

Number: **200648027**
Release Date: 12/1/2006

UILC: 61.00-00

date: July 25, 2006

to: Acting Area Counsel
(Small Business/Self-Employed: Area 1
CC:SB:1
Attention:

from: Senior Technician Reviewer, Branch 4
Associate Chief Counsel
(Income Tax and Accounting)
CC:ITA:4

subject:

LEGEND:

State =

Act =

b =

c =

d =

This Chief Counsel Advice responds to your request for assistance. You requested advice on the tax treatment of certain subsidy payments made by State to participants

in a state health insurance program. Specifically, you have asked whether the subsidy payments made by State to certain participants in order to reduce the cost of health insurance premiums are included in the gross income of recipients and whether State must issue Forms 1099-MISC, "Miscellaneous Income," to recipients. This advice may not be used or cited as precedent.

FACTS

The Act establishes a comprehensive state-sponsored program aimed at providing affordable health care coverage to employees of small businesses; self-employed individuals and their employees and dependents; and other uninsured individuals on a voluntary basis.

A business that participates in the program must pay at least b percent of the health insurance premiums for each employee. The employee must pay the remainder, up to c percent, of the cost of the premium. The Act provides that State will pay a subsidy for employees enrolled in the program who have an income under d percent of the federal poverty level and who are residents of State. The purpose of the subsidy is to defray all or part of the cost of the health insurance premium paid by the employee. The amount of the subsidy payment depends on the income of the employee and may be determined by a sliding scale based on income and other factors.

In addition the Act provides that State will pay a subsidy to reduce the cost of the health insurance premium for eligible individuals who have an income under d percent of the federal poverty level and who otherwise do not have health insurance. The amount of the subsidy for the purchase of coverage is determined on a sliding scale based on the income of the individual.

LAW

Section 61(a) of the Internal Revenue Code and the Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived.

The Internal Revenue Service (Service) has held that payments under legislatively provided social benefit programs for the promotion of general welfare are not includible in an individual's gross income (the general welfare exception). In determining whether the general welfare exception applies to payments, the Service generally requires that the payments (1) be made from a governmental general welfare fund; (2) be for the promotion of the general welfare (*i.e.*, on the basis of need rather than to all residents regardless of, for example, financial status, health, educational background, or employment status); and (3) not be made for services furnished by the recipient. See, *e.g.*, Rev. Rul. 57-102, 1957-1 C.B. 26 (a benefit payment to a blind person under the Public Assistance Law of Pennsylvania is not includible in the recipient's gross income) and Rev. Rul. 78-170, 1978-1 C.B. 24 (payments made by the State of Ohio to lower-

income, elderly individuals to reduce their cost of winter energy consumption are not includible in their gross incomes). *Compare* Rev. Rul. 76-131, 1976-1 C.B. 16 (payments made by the State of Alaska to individuals at least 65 years of age who have maintained an Alaska domicile for at least 25 years under a program to continue their residence in the state did not qualify under the general welfare exception because the payments were made to residents regardless of financial status, health, educational background, or employment status) with Rev. Rul. 98-19, 1998-1 C.B. 840 (a relocation payment authorized and funded by federal statutes and made to an individual to help defray the cost of moving from a flood-damaged residence to another residence is in the nature of general welfare and not includible in the recipient's gross income under § 61).

Section 6041(a) provides that, generally, all persons engaged in a trade or business who pay another person \$600 or more of fixed or determinable income in the course of that trade or business must file an information return setting forth the amount of the payment and the recipient of that payment.

ANALYSIS AND CONCLUSION

In the present case, the facts indicate that the subsidy payments are made from a governmental welfare fund; are based on the financial need of the recipient and are not payable to all residents regardless of financial status; and are not for services furnished by the recipient. State's subsidy payments made pursuant to the Act are, therefore, not includible in the gross income of recipients under the general welfare exception. Because the payments are not income to the recipients, State is not required to issue Forms 1099-MISC for the payments.

Except as expressly set forth above, no opinion is expressed regarding the federal income tax consequences of the subsidy payments described above under any provision of the Code.

We hope this memorandum is responsive to your request. If you have any further questions, please contact _____ at _____