Internal Revenue Service

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Date:

December 05, 2007

Department = State = Program = Taxpayer = X = Y = z = a =

Dear :

This letter responds to a request for a letter ruling on the tax treatment of payments Taxpayer makes pursuant to the Program. Specifically, Taxpayer requests a ruling that it does not have an information reporting obligation under § 6041 of the Internal Revenue Code for payments it makes under the Program because the payments are excluded from income under the general welfare exclusion.

FACTS

Department is a State agency established to advise, assist, and serve State's growing elderly population. Department's mission is to create an environment that provides choices, promotes independence, health, and well-being, and enables elderly individuals to remain in their communities and avoid nursing home placement through its various programs.

The legislative purpose of the Program is to encourage the provision of care for low-income elders in family-type living arrangements as an alternative to nursing homes or other institutional care settings. To be eligible to participate in the Program, the elderly individual must:

(1) be at least 60 years old;

- (2) have income not exceeding Medicaid limits for institutional care;
- (3) be at risk for nursing home placement, which is measured by the total number of Activities of Daily Living (personal care tasks such as bathing and eating) and Instrumental Activities of Daily Living (normal, everyday tasks performed by an independent individual such as meal preparation and shopping) that the elderly individual requires help to accomplish; and
- (4) live with an adult caregiver who is present in the home and able to provide supervision and care for the elderly individual.

Only those elders who receive a high-risk evaluation in terms of risk of institutional placement are eligible for participation in the Program. Currently, elders participating in the Program have an average monthly income of \$z, and on average require assistance on more than 4 of the 6 Activities of Daily Living and almost all of the 8 Instrumental Activities of Daily Living. More than half of the elders participating in the Program have dementia.

Commercial caregivers are not eligible to participate in the Program. Thus, caregivers are automatically considered unsuitable if, for example, they hold themselves out to the public as an adult family care home, group home, half-way house, assisted living facility, or other similar facility offering room, board, and personal services.

The Program provides for two types of subsidy payments, basic and special, to offset, in part, the costs of support and maintenance for elderly individuals living in the home of a capable adult caregiver, usually a spouse or other relative. The basic subsidy is a monthly payment to the caregiver to defray, in part, the basic living needs of the elderly individual, such as food, clothing, housing, medical needs, and other incidentals (not covered by Medicare, Medicaid, or other insurance), and averages slightly above \$a – well below actual monthly costs for the out-of-pocket items needed to care for an elder person residing at home.

Special subsidy payments are made for additional goods and services that the case manager determines are necessary to maintain the health and well-being of the elderly person. Special subsidy payments can be made for items such as chore services, counseling, home-delivered meals, education and training for the caregiver, housing adaptations, medical therapeutic services, medical transportation, respite care, medical supplies and equipment (such as medication and wheelchairs). Upon approval by the case manager of a special subsidy in a specific case, the payment is made through a reimbursement program upon submission of substantiation by the caregiver or the vendor providing goods or services to the elderly individuals.

The basic and special subsidies promote the health and well-being of elderly individuals by partially reimbursing the caregivers for some of the monthly living expenses of the elderly individuals, and are not a payment for caring for the elderly individuals or for any other services. Because of this subsidization of their home living costs, many elderly

individuals are able to postpone nursing home care for longer periods than would otherwise be the case, or avoid institutional care altogether.

Department administers the Program through State's aging network, which consists of X and Y. The X (including Taxpayer) are agencies that within a geographic area monitor service providers, write subsidy checks, and serve as the final appeal for client/applicant grievances. The Y are local agencies or community service providers that determine client eligibility and eligible subsidy amount, provide care planning and case management, annually reassess on-going eligibility, enter data to generate monthly payments, prepare reports, and maintain documentation.

LAW AND ANAYLYSIS

Section 61(a) provides generally that, except as otherwise provided by law, gross income includes all income from whatever source derived.

The Internal Revenue Service, however, has held that payments under legislatively provided social benefit programs for the promotion of the general welfare are not includible in an individual's gross income (the general welfare exclusion). In determining whether the general welfare exclusion applies to such payments, the Internal Revenue 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 without regard to, for example, financial status, health, educational background, or employment status); and (3) not be made with respect to services rendered by the recipient. Rev. Rul. 74-153, 1974-1 C.B. 20. holds that monthly payments the State of Maryland makes to financially-needy adoptive parents for the necessary support and maintenance of their adopted child and which they use for the care of the child are excluded from the adoptive parents' income under the general welfare exclusion. The ruling states that the adoption payments made under the state program are disbursements from a general welfare fund in furtherance of the state's social welfare objectives and are furnished to assist the adoptive parents in the care of the adopted child.

Section 6041(a) provides generally that all persons engaged in a trade or business that pay another person \$600 or more in any taxable year 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 the payment.

Taxpayer makes payments pursuant to the Program to defray a part of the costs necessary to maintain the health of frail, elderly individuals who need daily care. These payments are made from a governmental fund pursuant to a state statute, are based on economic need and health status of the elderly individuals, and are not for services rendered by the caregivers or the elderly individuals. Because the payments are intended to reimburse the caregivers' expenses of promoting the health and well-being of the elderly individuals, the interposition of the caregivers as the recipients does not

preclude the application of the general welfare exclusion. Accordingly, the basic and special subsidy payments Taxpayer makes for the benefit of the elderly individuals pursuant to the Program are not includible in the incomes of the elderly individuals or their home caregivers. Thus, Taxpayer is not required by § 6041 to file information returns for such payments with respect to either the elderly individuals or their home caregivers.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

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.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

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

Enclosure