



Informational Memo

Correspondence from the Internal Revenue Service (IRS) Regarding Difficulty of Care Payments

ODP Communication Number: Memo 095-10

Audience: All Interested Parties

Purpose: This Informational Memo is intended to provide information regarding the Internal Revenue Service (IRS) regulations regarding “difficulty of care payments”. Contained in this Informational Memo is a letter from Deputy Secretary Kevin T. Casey as well as a correspondence from the IRS issued to a Representative from the State of New Hampshire.

Please contact the appropriate Office of Developmental Programs Regional Program Manager with questions.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
P.O. BOX 2675
HARRISBURG, PENNSYLVANIA 17105-2675

KEVIN T. CASEY
Deputy Secretary
Office of Developmental Programs

JUL 8 - 2010

TELEPHONE NUMBER: (717) 787-3700
FAX: (717) 787-6583

Dear Colleague:

Attached please find correspondence from the Internal Revenue Service (IRS) regarding "difficulty of care payments". Although this correspondence was issued to a Representative from the state of New Hampshire, it is applicable to the Federal IRS regulations regarding difficulty of care.

Difficulty of care regulations can be found at Title 26, Subtitle A, Chapter 1, Subchapter B, Part III, Section 131, *Certain Foster Care Payments*. These regulations outline federal requirements for the taxability of difficulty of care payments. The attached correspondence further clarifies the difficulty of care regulations.

Please review the correspondence as it relates to services rendered by family members, and make any necessary adjustments to existing practices that are not consistent with the correspondence. Local tax experts may be utilized to determine necessary actions in complying with IRS regulations and related clarifications.

Please contact the appropriate Office of Developmental Programs Regional Program Manager with any issues in implementing this directive.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin T. Casey", with a long horizontal flourish extending to the right.

Kevin T. Casey

Enclosure



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

November 10, 2009

Number: **INFO 2009-0230**
Release Date: 12/31/2009

UIL: 61.00-00

CONEX-145781-09

The Honorable Paul W. Hodes
Member, U.S. House of Representatives
221 Main Street, Suite 201
Nashua, NH 03060

Attention:

Dear Congressman Hodes:

This letter responds to your inquiry dated October 7, 2009, submitted on behalf of your constituent, . She asked about the taxability of the "difficulty of care payments" that she receives for providing care to her adult disabled daughter.

In general, compensation for services is included in gross income [section 61(a)(1) of the Internal Revenue Code (the Code)]. In *Bannon v. Commissioner*, 99 T.C. 59 (1992), a mother received payments for the care of her adult disabled daughter through a state program to provide supportive services to disabled adults living at home. Although the payments were not taxable to the daughter, the Tax Court held that the payments were taxable to the mother as compensation for services and that the law did not provide an exclusion for the payments.

Certain payments to a foster care provider, including any "difficulty of care payments," are excluded from gross income (section 131 of the Code). Difficulty of care payments are defined, in part, as compensation for the additional care of a qualified foster individual that the state determines is necessary by reason of the individual's physical, mental, or emotional handicap. Section 131 applies only to payments for foster care, not to the care of a child by a parent. Congress would need to enact legislation to exclude from gross income payments that a parent receives for providing care to a disabled child.

I hope this information is helpful. If you have any questions, please contact
or me at .

Sincerely,

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