

Part III - Administrative, Procedural, and Miscellaneous

Restitution Payments under the Trafficking Victims Protection Act of 2000

Notice 2012-12

PURPOSE

This notice provides guidance on the federal income tax treatment of mandatory restitution payments awarded under 18 U.S.C. § 1593, as added by § 112(a) of the Trafficking Victims Protection Act of 2000 (the Act), Division A of Pub. L. 106-386, 114 Stat. 1488-89 (2000).

BACKGROUND

Congress enacted the Act “to combat trafficking of persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” Section 102(a) of the Act. Congress found that “[v]ictims are often forced through physical violence to engage in sex acts or perform slavery-like labor” and that “[s]uch force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.” Section 102(b)(6) of the Act.

Under 18 U.S.C. §§ 1581 through 1594, as amended, Congress has defined criminal acts relating to peonage, slavery, and trafficking in persons and established the fines and terms of imprisonment for persons convicted of the criminal acts. The criminal acts include (i) holding a person to a condition of peonage; (ii) kidnapping or carrying

away a person to sell the person into involuntary servitude or to be held as a slave, (iii) providing or obtaining a person's services or labor by actual or threatened use of certain means including force, physical restraint, serious harm, and abuse of legal process, and (iv) sex trafficking of children or by force, fraud, or coercion. See 18 U.S.C. §§ 1581, 1583, 1589, and 1591.

Under 18 U.S.C. § 1593, a court must order restitution to a victim for any offense committed under 18 U.S.C. §§ 1581 through 1594, directing a defendant to pay the victim the full amount of the victim's losses. 18 U.S.C. § 1593(b)(1).

The full amount of a victim's losses includes costs for medical services relating to physical, psychiatric, or psychological care; costs for physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys' fees and other costs; and other losses the victim suffers as a proximate result of the offense. See 18 U.S.C. §§ 1593(b)(3) and 2259(b)(3). Under 18 U.S.C. § 1593(b)(3), a victim's losses also include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).

FEDERAL TAX TREATMENT OF BENEFITS

Mandatory restitution payments awarded under 18 U.S.C. § 1593 are excluded from gross income for federal income tax purposes.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information

regarding this notice, contact Mr. Iskow at (202) 622-4920 (not a toll-free call).