

Part 1

Section 61.—Gross income defined

26 C.F.R. 1.61-1(a): Gross income

Rev. Rul. 2009-19

ISSUE

If a homeowner benefits from Pay-for-Performance Success Payments under the United States Government's Home Affordable Modification Program (HAMP), are those payments excludable from income under the general welfare exclusion?

FACTS

The deep contraction in the economy and in the housing market has created stress for homeowners throughout the country. Large numbers of homeowners are struggling to afford their current monthly mortgage payments and are at risk of losing their homes. In response, the United States Government announced the Homeowner Affordability and Stability Plan (the Plan), which helps at-risk homeowners modify their mortgages to avoid foreclosure.

HAMP, a key component of the Plan, helps homeowners who have defaulted, or are at risk of default, on their mortgages because, for example, they are suffering

serious hardships, decreases in income, increases in expenses, and high mortgage debt compared to monthly income.

Under HAMP, homeowners that make timely payments on their modified loans are eligible to have incentive payments made on their behalf to lenders/investors. Each month that a homeowner makes a mortgage payment on time, the homeowner accrues an amount toward a Pay-for-Performance Success Payment. A payment of the accrued amounts is made annually, to reduce the principal balance on the homeowner's mortgage loan. Homeowners can receive principal reductions of up to \$1,000 per year for up to five years, subject to a *de minimis* threshold.

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have a substantial role in administering HAMP.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Payments under governmental social benefit programs for the promotion of the general welfare and not for services rendered, however, are not includible in a recipient's gross income (general welfare exclusion). See Rev. Rul. 74-205, 1974-1 C.B. 20; Rev. Rul. 98-19, 1998-1 C.B. 840.

Pay-for-Performance Success Payments made under the United States Government's Home Affordable Modification Program promote the general welfare by helping homeowners who are at risk of losing their homes pay the mortgage loans on their primary residences and do not involve the performance of services. These payments meet the requirements of the general welfare exclusion.

HOLDING

If a homeowner benefits from Pay-for-Performance Success Payments under the United States Government's Home Affordable Modification Program, the payments are excludable from income under the general welfare exclusion.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Iskow at (202) 622-4920 (not a toll-free number).