

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:ITA:4 – CONEX-121312-02

Date: September 2, 2002

Dear [REDACTED]

Commissioner Rossotti has asked me to respond to your letter dated March 1, 2002, asking the Internal Revenue Service to address what you describe as “an inequity in the taxability of federal fishery disaster relief funds” for payments under [REDACTED] and [REDACTED] programs. Federal law prohibits us from disclosing to you any return or return information with respect to [REDACTED] program. Also, we do not have the specific facts of the [REDACTED] program before us. We are, however, pleased to provide you with the following general information, which we hope will be responsive to your concerns.

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, including but not limited to compensation for services and gross income derived from business.

Under the general welfare exception, however, the Service has held that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of the general welfare are not includible in the recipient’s gross income. Whether payments qualify under the general welfare exception depends on what the payments compensate for. For example, payments to economically needy individuals for basic living expenses such as food, utilities, or job training courses in which the trainee does not perform services would be excludable from income under the general welfare exception. See, e.g., Rev. Rul. 76-144, 1976-1 C.B. 17 (grants to help disaster victims meet extraordinary disaster-related necessary expenses or serious needs, such as medical or dental, housing, personal property, transportation, and funeral expenses, are in the nature of general welfare and, therefore, not includible in their gross income). See also Rev. Rul. 75-246, 1975-1 C.B. 24 (stipends paid by a state to an individual while attending vocational, occupational, and basic educational training in a classroom setting are not includible in gross income).

However, payments under governmental programs to individuals representing compensation for lost wages or lost profits are includible in gross income. Thus, for example, § 85 precludes the general welfare exception from applying to payments of unemployment compensation by specifically requiring those payments to be included in

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gross income. In addition, the Staff of the Joint Committee on Taxation's explanation of new § 139(b)(4), which codifies the exclusion from gross income under the general welfare exception for governmental payments to individuals in connection with a qualified disaster states:

As under the present law general welfare exception, the exclusion does not apply to payments in the nature of income replacement, such as payments to individuals of lost wages, unemployment compensation, or payments in the nature of business income replacement.

Staff of the Joint Committee on Taxation, 107th Cong. 1st Sess., *Technical Explanation of the "Victims of Terrorism Tax Relief Act of 2001," as Passed by the House and the Senate on December 20, 2001*, 16 (JCX-93-01), December 21, 2001.

We hope that this information is responsive to your concerns. For any further questions, please contact Sheldon A. Iskow of this office at (202) 622-4920.

Sincerely,

Michael J. Montemurro
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)