

INTERNAL REVENUE SERVICE

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[REDACTED]

[REDACTED]

Dear [REDACTED]:

This letter is in response to your inquiry dated February 20, 2004, asking about the taxability of certain payments to the shrimp industry in South Carolina under the Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11 (the "Act"). Section 501(d)(1) of the Act provides for economic assistance to the shrimp industry in South Carolina and other states.

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 IRS has held that payments to individuals by governmental entities under legislatively provided social benefit programs for the promotion of the general welfare are not includible in the recipient's gross income. To qualify under the general welfare exception, payments must:

- Be made from a governmental fund,
- Be for the promotion of general welfare (i.e., generally based on individual or family needs), and
- Not represent compensation for services.

For example, Rev. Rul. 76-144, 1976-1 C.B. 17, concludes that 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 gross income.

On the other hand, governmental payments to businesses generally do not qualify for the general welfare exception because the payments are not based on individual or family need. Also, payments that compensate for lost profits or business income, whether to businesses or individuals, do not qualify under the general welfare exception. For example, Notice 2003-18, 2003-14 I.R.B. 699, concludes that grants that compensate small businesses for certain economic losses resulting from the attack on the World Trade Center do not qualify for the general welfare exception because that exception is limited to individuals who receive governmental payments to help them with their individual needs.

The purpose of the payments authorized by the Act appears to be to compensate the shrimp industry for economic losses, not to promote the general welfare based on individual or family need. As Notice 2003-18 indicates, payments that compensate businesses for economic losses do not qualify for the general welfare exception. Accordingly, these payments also appear to not qualify for the general welfare exception.

I hope this information is helpful. If you have any further questions, please call [REDACTED] (Identification Number [REDACTED]) at [REDACTED].

Sincerely,

Robert M. Brown
Associate Chief Counsel
(Income Tax & Accounting)