



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

OFFICE OF
CHIEF COUNSEL

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CC:ITA:B05:PRENO-01421-05

Dear

This letter responds to your request for information dated December 22, 2004. Specifically, you have requested whether (1) a stipend payment under Article 18 section 23-18-201(1) of the (the Act) issued to eligible students by the (the Fund) is subject to federal income taxation and (2) whether the answer to issue (1) would be different under pending legislation that would classify the stipend payments from the Fund as refunds of taxes for state budgeting purposes. Based on the information both oral and written furnished by you we provide the following general information.

Section 117 of the Internal Revenue Code determines whether the stipend is excludable from the recipient student's gross income. In general, gross income does not include any amount received as a qualified scholarship by an individual who is a candidate for a degree by an educational organization described in section 170(b)(1)(A)(ii) of the Code (most schools). For purposes of section 117, "qualified scholarship" means any amount received by an individual as a scholarship or fellowship grant and used for qualified tuition and related expenses. The term "qualified tuition and related expenses" means tuition and fees required for the enrollment or attendance of a student at an educational organization described in section 170(b)(1)(A)(ii).

The Fund is a trust for the benefit of eligible undergraduate students. Undergraduates in who are admitted to participating public or private institutions in the state will receive stipends starting in July, . It appears that the payment of a stipend from the Fund qualifies for exclusion from the gross income of a recipient under section 117(a) of the Code, to the extent the amount is expended for qualified tuition and related expenses at an educational organization. Since the terms of the Act provide that the stipend shall not exceed the student's in-state tuition, it appears that by

definition the stipend can only be used for "qualified" expenses as defined in the Code.

As for issue (2), the Internal Revenue Service generally does not provide advice regarding the tax consequences of legislative proposals. Please note, however, that the proposed legislation's particular designation of the payments, including designation as "tax refunds" for state budgetary purposes, generally is not relevant to the question of whether the payments are includable or excludible from the eligible students' gross income under section 117. Tax refunds generally are refunds of taxes paid by a taxpayer. Under the pending legislation a stipend payment will be made to an eligible student regardless of whether or not the student paid any taxes.

This letter sets forth certain relevant general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See section 2.04 of Rev. Proc. 2005-1, 2005-1 I.R.B. 1. The Internal Revenue Service will consider a request by a taxpayer for a private letter ruling after the requirements of section 7 of the revenue procedure are met. Rev. Proc. 2005-1 may be accessed at www.irs.gov/irb/2005-01.

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Sincerely,

Roy A. Hirschhorn
Assistant Branch Chief, Branch 5
(Income Tax & Accounting)

cc: taxpayer representative