



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

OFFICE OF  
CHIEF COUNSEL

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Dear \_\_\_\_\_ :

This letter responds to your request for information dated July 02, 2008. You asked whether the parents of disabled children must include in gross income reimbursement payments received from a school board in accordance with the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§ 1400 -1482 (IDEA) for the cost of educational services provided by a non-public school. We are pleased to provide you with the following information.

IDEA ensures that all children with disabilities have available to them a free appropriate public education. 20 U.S.C. § 1415(b)(7) allows parents who are unsatisfied with their child's school placement to challenge that placement in a hearing before an impartial hearing officer. Under the standard set forth by the United States Supreme Court in School Comm. of Burlington v. Department of Ed. Of Mass., 471 U.S. 359 (1985), a board of education may be required to pay for non-public education services obtained by a parent for his or her child if: (1) the services offered by the board were inadequate or inappropriate; (2) the services obtained by the parent were appropriate; and (3) equitable considerations support the parent's claim. Id at 370, 374.

If a parent prevails under the standards set forth in the IDEA and Burlington, the school board must pay for the cost of the non-public education in order to satisfy its legal obligation to provide a free appropriate education. Florence County Sch. Dist. Four v. Carter, 510 U.S. 7, 12 (1993). The "[r]eimbursement merely requires the school board to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper [plan]." Burlington, 471 U.S. 359, 370-371 (1985).

Section 61(a) of the Internal Revenue Code of 1986 provides that except as otherwise provided by law, gross income means all income from whatever source derived. It is a well settled principle that reimbursements (other than those specifically excluded by

law) for the personal expenses of the taxpayer are includible in the taxpayer's gross income. Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929); Rev. Rul. 79-49, 1979-1 C.B. 57; and Rev. Rul. 74-75, 1974-1 C.B. 19.

It is also a long-standing position of the Internal Revenue Service that in a nonemployment context, reimbursements for expenses incurred by a taxpayer on behalf of another are not includible in the taxpayer's gross income. See for example, Rev. Rul. 79-142, 1979-1 C.B. 58; Rev. Rul. 77-280, 1977-2 C.B. 14; Rev. Rul. 67-30, 1967-1 C.B. 9; Rev. Rul. 63-77, 1963-1 C.B. 177; and Rev. Rul. 55-555, 1955-2 C.B. 20. In Rev. Rul. 57-60, 1957-1 C.B. 25, clarified by Rev. Rul. 60-280, 1960-2 C.B. 12, a parent or other person not engaged in the business of transporting children received payments from a school board to drive children to school when no bus service was available. The Service held that reimbursement payments made by the school board were not includible in the parent's income as they were expenses incurred on behalf of the school board which was obligated to furnish transportation to the children.

Thus, payments analogous to those described in your letter have been held to be reimbursements for expenses incurred on behalf of the school board and therefore, neither includible in the recipient's gross income nor subject to information reporting if the payments are made directly to the parent.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2008-1, § 2.04, 2008-1 I.R.B. 7 (Jan. 7, 2008). If you have any additional questions, please contact our office at

Sincerely,

William A. Jackson  
Branch Chief, Branch 5  
(Income Tax & Accounting)

cc: