



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

OFFICE OF THE CHIEF COUNSEL

November 10, 2009

Number: **INFO 2009-0230**
Release Date: 12/31/2009

UIL: 61.00-00

CONEX-145781-09

The Honorable Paul W. Hodes
Member, U.S. House of Representatives
221 Main Street, Suite 201
Nashua, NH 03060

Attention:

Dear Congressman Hodes:

This letter responds to your inquiry dated October 7, 2009, submitted on behalf of your constituent, . She asked about the taxability of the "difficulty of care payments" that she receives for providing care to her adult disabled daughter.

In general, compensation for services is included in gross income [section 61(a)(1) of the Internal Revenue Code (the Code)]. In *Bannon v. Commissioner*, 99 T.C. 59 (1992), a mother received payments for the care of her adult disabled daughter through a state program to provide supportive services to disabled adults living at home. Although the payments were not taxable to the daughter, the Tax Court held that the payments were taxable to the mother as compensation for services and that the law did not provide an exclusion for the payments.

Certain payments to a foster care provider, including any "difficulty of care payments," are excluded from gross income (section 131 of the Code). Difficulty of care payments are defined, in part, as compensation for the additional care of a qualified foster individual that the state determines is necessary by reason of the individual's physical, mental, or emotional handicap. Section 131 applies only to payments for foster care, not to the care of a child by a parent. Congress would need to enact legislation to exclude from gross income payments that a parent receives for providing care to a disabled child.

I hope this information is helpful. If you have any questions, please contact
or me at .

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)