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Legend

Taxpayer =
State =
State Statute =

State Statute §§ p-q =
State Statute § r =
State Statute § s =
State Statute § t =
Manual §§ u-v =

State Statute § w =
State Statute § x =
Program A =
Program B =
Program C =
Program D =
Program E =
Department =
State Plan Amendment y =
State Plan Amendment z =

Dear

The Taxpayer, a department of State, requested rulings on whether certain payments to individual care providers under State's in-home supportive care programs will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Internal Revenue Code (Code), and, therefore, the Taxpayer is not required under section 6041 or 6051 to report the payments as wages subject to income tax.

The Taxpayer is responsible for directing and overseeing State's in-home supportive care programs. These programs assist qualifying aged, blind, or disabled persons who are unable to perform one or more activities of daily living independently and who cannot remain safely at home without assistance. See State Statute §§ p-g, § r, § s and § t; and Manual §§ u-v.

State Statute § w requires the Taxpayer to perform the duties and obligations, including making tax returns and withholding tax, of the care recipient as employer under State Statute § w.

The Taxpayer requested rulings regarding payments made to individual care providers under the following programs when the care recipient lives in the care provider's home:

- (1) State's program pursuant to section 1905(a)(24) of the Social Security Act (SSA), known as Program A;
- (2) State's program pursuant to section 1915(j) of the SSA, known as Program B;
- (3) State's program pursuant to section 1915(k) of the SSA, known as Program C, and
- (4) State's state-funded residual program, known as Program D.

The Taxpayer requested rulings that payments made under the above programs be treated the same as the payments described in Notice 2014-7, 2014-4 I.R.B. 445, available at www.irs.gov/irb/2014-4_IRB/ar06.html, with the result that it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

Specifically, the Taxpayer requested the following rulings:

- (1) Medicaid payments made under Program A, pursuant to section 1905 of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of Code, and, therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages to the care provider subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

(2) Medicaid payments made under Program B, pursuant to section 1915(j) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code, and, therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

(3) Medicaid payments made under Program C, pursuant to section 1915(k) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the care provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code, and, therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

(4) State-funded payments made under Program D to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides with the provider will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code, and, therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax. Further, the Taxpayer may treat these payments the same as the excludable payments described in Notice 2014-7, and it may look to the Q&As on the Notice for information on its reporting and withholding obligations.

I. BACKGROUND

State offers in-home supportive care to aged, blind, or disabled individuals under three Medicaid programs funded by State and the federal government and a fourth program funded solely by State. The comprehensive federal Medicaid program in State is Program E, which is administered by the Department. The Department is the designated single state agency for the administration and supervision of Program E. The Department has delegated the administration of its in-home supportive care programs to the Taxpayer.

All four of State's in-home supportive care programs are administered by the county welfare departments (CWDs) under the direction and oversight of the Taxpayer, a

department of State. For all four programs, a county processes applications for assistance, determines income and resource eligibility, assesses the type and level of care necessary for an individual to safely remain at home, authorizes services under the individual's plan of care, and implements the care provider enrollment requirements. For all four programs, the Taxpayer facilitates the federal and state funding to the CWDs, and the Taxpayer operates the information and payroll system for all four programs. For all four programs, care recipients (as employers) and individual care providers (as employees) verify, sign, and submit bi-monthly timesheets. For all four programs, the Taxpayer is required to perform all the federal tax-related duties and obligations that the care recipient would have been required to perform as the employer of the care provider.

II. PROGRAM DESCRIPTIONS

Title XIX of the Social Security Act (SSA) authorizes federal grants to states for medical assistance to low-income persons who are age 65 or over, blind, or disabled. These medical assistance programs are jointly financed by the federal and state governments and are administered by the states. Within broad federal rules, each state decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. See 42 CFR § 430.0.

A. State Program A pursuant to Section 1905 of the SSA

Section 1905(a)(24) of the SSA, 42 USC § 1396d(a)(24), includes in the definition of "medical assistance" personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities, or institution for mental disease that are (A) authorized by a physician in accordance with a plan of treatment or (at the option of the state) otherwise authorized for the individual in accordance with a service plan approved by the state, (B) provided by a qualified individual who is not a member of the individual's family, and (C) provided in the home or other permissible location.

Program A, pursuant to section 1905(a)(24) of the SSA and State Statute § r, includes as "medical assistance" certain personal care services and ancillary services that are subordinate to personal care services. To be eligible for these services, the individual must be categorically needy and have a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and must be unable to remain safely at home without these services. As a condition of receiving services under Program A, the applicant must obtain a certification from a licensed health care professional that the applicant is unable to perform some activities of daily living and that, without assistance with activities of daily living, the applicant is at risk of placement in out-of-home care. See State Statute § x. For Program A, a care provider may not be a spouse of the care

recipient or the parent of a care recipient who is a minor child (definition of family member). See State Statute § r.

B. Program B pursuant to Section 1915(j) of the SSA

Section 1915(j) of the SSA, 42 USC 1396n(j), includes as “medical assistance” payment for part or all of the cost of self-directed personal assistance services (other than room and board) under the state plan that are provided pursuant to a written plan of care to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require and receive personal care services under the state plan, or home and community-based services provided pursuant to a waiver under subsection (c) of section 1915 of the SSA. Self-directed personal assistance services may not be provided under subsection (j) to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services who is not related by blood or marriage.

For purposes of section 1915(j) of the SSA, “self-directed personal assistance services” means personal care services and related services, or home and community-based services otherwise available under the state plan or subsection (c) of section 1915 of the SSA, that are provided to an eligible participant under an approved self-directed service plan. At the election of the state, a participant may choose to use any individual capable of providing the assigned tasks, including a legally liable relative, as a paid provider of the services.

Pursuant to State Statute § s, State amended its Medicaid plan under Title XIX of the SSA to include a section 1915(j) program, known as Program B. See State Statute § s; State Plan Amendment y. As a condition of receiving services under Program B, the applicant must obtain a certification from a licensed health care professional that the applicant is unable to perform some activities of daily living and that, without assistance with activities of daily living, the applicant is at risk of placement in out-of-home care. See State Statute § x. State allows a legally liable relative to be a paid provider. See State Plan Amendment y.

C. State Program C pursuant to Section 1915(k) of the SSA

Section 1915(k) of the SSA, 42 USC § 1396n(k), includes in the definition of “medical assistance” certain home and community-based attendant services and supports for individuals who are eligible for medical assistance under the state plan and whose income does not exceed 150 percent of the poverty line or, if greater, the income level applicable for an individual who has been determined to require an institutional level of care to be eligible for nursing facility services under the state plan, and for whom that there has been a determination that, but for the provision of such services, the individual would require the level of care provided in a hospital, a nursing facility, an intermediate

care facility for persons with intellectual disabilities, or an institution for mental disease, the cost of which could be reimbursed under the state plan.

Section 1915(k) of the SSA generally includes as “medical assistance” home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing. A family member may be a paid provider. See 42 USC § 1396n(k)(1)(A)(iv)(III).

Pursuant to State Statute § t, State amended its Medicaid plan under Title XIX of the SSA to include a section 1915(k) program, known as Program C. See State Statute § t; State Plan Amendment z. Program C requires, in part, a determination, at least annually, that, in the absence of home and community-based attendant services and supports, the individual would require the level of care furnished in a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, an institution providing psychiatric services for individuals under age 21, or an institution for mental diseases for individuals age 65 or over, the cost of which could be reimbursed under the State plan.

D. Program D State-funded Residual Program

State Statute §§ p-q describe the residual in-home supportive care program funded solely by State, known as Program D. Program D provides in-home supportive care for aged, blind, or disabled persons, who cannot remain safely at home without assistance and who are not eligible for a State/Federal Medicaid program. Supportive services include personal care services and other supportive services that enable the care recipient to live at home. As a condition of receiving services under Program D, the applicant must obtain a certification from a licensed health care professional that the applicant is unable to perform some activities of daily living and that, without assistance with activities of daily living, the applicant is at risk of placement in out-of-home care. See State Statute § x.

III. LAW

Section 61(a) of the Code provides that, except as otherwise provided, gross income means income from whatever source derived, including compensation for services.

Section 131(a) of the Code excludes qualified foster care payments from the gross income of a foster care provider.

Section 131(b)(1) of the Code defines a qualified foster care payment, in part, as any payment under a foster care program of a state or a political subdivision of a state that is either (1) paid to the foster care provider for caring for a qualified foster individual in the foster care provider’s home, or (2) a difficulty of care payment.

Section 131(b)(2) of the Code defines a qualified foster individual as any individual who is living in a foster family home in which the individual was placed by an agency of a state or a political subdivision of a state or by a qualified foster care placement agency.

Section 131(b)(3) of the Code defines a qualified foster care placement agency, in part, as a placement agency that is licensed or certified for the foster care program of a state or a political subdivision of a state.

Section 131(c) of the Code defines difficulty of care payments as compensation to a foster care provider for the additional care required because the qualified foster individual has a physical, mental, or emotional handicap. The provider must provide the care in the provider's foster family home, a state must determine the need for this compensation, and the payor must designate the compensation for this purpose. In the case of any foster home, difficulty of care payments are not excludable to the extent that the payments are for more than 10 qualified foster individuals who have not attained age 19 or 5 qualified foster individuals who have attained age 19. See § 131(c)(2).

Notice 2014-7 provides that the Internal Revenue Service (Service) will treat qualified Medicaid waiver payments as difficulty of care payments under section 131(c) of the Code that are excludable from the gross income of the individual care provider. The Notice defines qualified Medicaid waiver payments as payments by a state, a political subdivision of a state, or an entity that is a certified Medicaid provider, under a Medicaid waiver program to an individual care provider for nonmedical support services provided under a plan of care to an eligible individual (whether related or unrelated) living in the individual care provider's home. The Notice addresses only payments under a state Medicaid Home and Community-Based Services waiver program under section 1915(c) of the SSA.

Q&A1 at www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income, provides that whether the Service will treat payments received by an individual care provider under a state program other than a section 1915(c) program as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code will depend on the nature of the payments and the purpose and design of the program.

Section 3402(a) of the Code, relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures.

Section 6041(a) of the Code provides, in part, that all persons engaged in a trade or business and making payments in the course of the trade or business to another person of wages or other fixed or determinable gains, profits, and income of \$600 or more in any taxable year must render a return of information in the form and manner prescribed

by regulations.

Section 1.6041-1(b) of the Income Tax Regulations (regulations) clarifies that the term "all persons engaged in a trade or business" includes states and their subdivisions.

Section 1.6041-1(c) of the regulations provides that income is fixed when it is to be paid in amounts definitely predetermined and that it is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained.

Section 1.6041-2(a) of the regulations provides that wages, as defined in section 3401, paid to an employee must be reported on Form W-2, "Wage and Tax Statement."

Section 6051(a) of the Code provides that employers must furnish the tax return copy and the employee's copy of Form W-2 to employees for remuneration paid during the calendar year. The Form W-2 must show, among other information, the total amount of wages paid subject to withholding of income tax, the total amount of wages paid subject to social security and Medicare taxes, and the total amounts of income tax and social security and Medicare taxes deducted and withheld. Section 6051(d) of the Code and section 31.6051-2(a) of the Employment Tax Regulations provide that employers must file a copy of the Form W-2 with the Social Security Administration.

IV. ANALYSIS

A. Payments under State's In-Home Supportive Care Programs Will Be Treated as Excludable Difficulty of Care Payments

The underlying rationale in Notice 2014-7 for treating certain Medicaid waiver payments, pursuant to section 1915(c) of the SSA, as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code is the similarity in the purpose and design of Medicaid waiver programs and foster care programs. The Notice provides:

Section 131 does not explicitly address whether payments under Medicaid waiver programs are qualified foster care payments. Medicaid waiver programs and state foster care programs, however, share similar oversight and purposes. The purpose of Medicaid waiver programs and the legislative history of § 131 reflect the fact that home care programs prevent the institutionalization of individuals with physical, mental, or emotional handicaps. See 128 Cong. Rec. 26905 (1982) (stating that "[difficulty of care payments] are not income to the [foster] parents, regardless of whether they, dollar for dollar only cover expenses. [These] parents are saving the taxpayers' money by preventing institutionalization of these children."); S. Rep. No. 97-139 at 481 (1981) (describing the purpose of the amendment to 42 USC §1396n, allowing Medicaid waivers for home and community-based services, as "[permitting] the Secretary

to waive the current definition of covered [M]edicaid services to include certain nonmedical support services, other than room and board, which are provided pursuant to a plan of care to an individual otherwise at risk of being institutionalized and who would, in the absence of such services be institutionalized”). Both programs require state approval and oversight of the care of the individual in the provider’s home. The programs share the objective of enabling individuals who otherwise would be institutionalized to live in a family home setting rather than in an institution, and both difficulty of care payments and Medicaid waiver payments compensate for the additional care required.

Whether certain payments under State’s in-home supportive care programs will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code depends on an analysis of the purpose and design of the programs and the nature of the payments.

1. Purpose of State’s In-Home Supportive Care Programs

Eligibility for State’s four in-home supportive care programs varies by program, but all programs have the shared purpose of preventing institutionalization and enabling an eligible individual to be cared for in a home setting. Both Program C, pursuant to section 1915(k) of the SSA and State Statute § t, and a Medicaid waiver program under section 1915(c) of the SSA require a determination that the individual needs an institutional level of care. Specifically, section 1915(k)(1) requires a determination that, but for the provision of home and community-based attendant services and supports, the individual would require care in a hospital, a nursing facility, an intermediate care facility, or an institution for mental diseases.

Programs A, B, and D provide for care to individuals who are at risk of institutionalization. As a condition of receiving in-home supportive care, these programs require that an applicant or recipient obtain a certification from a licensed health care professional that the individual is unable to perform one or more activities of daily living independently and that, without services to assist the individual with activities of daily living, the individual is at risk of placement in out-of-home care. See State Statute § x. The certification must include, at a minimum, both of the following: (1) a statement that the individual is unable to perform independently one or more activities of daily living, and that one or more of the services available under the in-home supportive care program is recommended to prevent the need for an out-of-home placement; and (2) a description of any condition or functional limitation that has resulted in, or contributed to, the need for assistance. See State Statute § x.

Thus, the purpose of all four of State’s in-home supportive care programs is similar to the purpose of foster care programs as stated in Notice 2014-7: That is, both State’s in-home supportive care programs and foster care programs prevent institutionalization of

individuals with physical, mental, or emotional handicaps and enable such individuals to be cared for in a home setting.

2. Design of State's In-Home Supportive Care Programs

All four of State's in-home supportive care programs are administered by the county welfare departments (CWDs) under the direction and oversight of the Taxpayer, a department of State. For all four programs, a county processes applications for assistance, determines income and resource eligibility, assesses the type and level of care necessary for an individual to remain safely at home, authorizes services under the individual's plan of care, and implements the care provider enrollment requirements.

Thus, the design of all four of State's in-home supportive care programs is similar to the design of foster care programs: That is, both State's in-home supportive care programs and foster care programs require state approval and oversight of the care in the provider's home.

3. Nature of Payments under State's In-Home Supportive Care Programs

The nature of the payments is similar under all four of State's in-home supportive care programs. For example, Program C provides for home and community-based attendant services and supports that include assistance with the activities of daily living, the instrumental activities of daily living, and health-related tasks. Similarly, the services provided under Program A and Program B include personal care services and ancillary services subordinate to personal care services.

The nature of the payments to individual care providers under all four of State's in-home supportive care programs is similar to the nature of difficulty of care payments. Difficulty of care payments compensate a provider for the additional care required because an individual has a physical, mental, or emotional handicap. Similarly, an in-home supportive care provider receives compensation for the additional care required by an individual who needs assistance with one or more activities of daily living to remain safely at home and to prevent institutionalization. See State Statutes §§ q, r, s, and t; and State Plan Amendments y and z.

Accordingly, the purpose and design of all four of State's in-home supportive care programs are similar to the purpose and design of foster care programs, and the nature of the described payments to providers is similar to the nature of difficulty of care payments under section 131 of the Code. Therefore, payments under all four of State's in-home supportive care programs to an individual care provider for in-home supportive care provided for an eligible recipient who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131.

B. Taxpayer's Reporting and Withholding Obligations in General

In general, payments made to an individual care provider as an employee of the care recipient as employer are wages that would be: (1) includable in the provider's gross income and subject to income tax under section 61(a)(1) of the Code, (2) reportable on Form W-2 under sections 6041 and 6051, and (3) subject to income tax withholding under section 3402. However, payments made to an individual care provider that are excludable from the gross income of the provider under section 131 are not reportable under section 6041 or 6051 as wages subject to income tax and income tax withholding. Nevertheless, payments made to an individual care provider generally are wages subject to taxes under the Federal Insurance Contributions Act (FICA) (also known as social security and Medicare taxes) and the Federal Unemployment Tax Act (FUTA) unless an exception applies.

Specifically, if the care recipient (and not an outside agency) is the employer of the individual care provider, the FICA tax rules for domestic service (household work done in or around the care recipient employer's home) may apply. Under those rules, payments for services performed for a spouse or a child and services performed for a parent by a child under the age of 21 generally are not subject to FICA tax under section 3121(b)(3)(B) of the Code. In addition, if wages for domestic services paid during a calendar year are below a threshold (\$2,000 for 2016), the wages are not subject to FICA tax under sections 3121(a)(7)(B) and 3121(x). Similarly, payments for services performed for a spouse or a child and services performed for a parent by a child under the age of 21 are not subject to FUTA tax under section 3306(c)(5). In addition, there is a dollar threshold for wages paid to all household employees for purposes of FUTA tax under section 3306(a)(3).

Accordingly, for those payments that are excludable from an individual care provider's gross income under section 131 of the Code, the Taxpayer is not required under section 6041 or 6051 to report the payments as wages subject to income tax and income tax withholding. However, the Taxpayer may be required under sections 6041 and 6051 to report the payments as wages to the individual care provider subject to FICA and FUTA taxes, unless one of the exceptions applies. In addition, the Taxpayer may look to the Q&As on Notice 2014-7 (in particular, Q&As 15 - 20), available on irs.gov at <https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income>, and Publication 926, Household Employer's Tax Guide, also available on irs.gov, for further information on its reporting and withholding obligations.

V. CONCLUSIONS

For the reasons explained above, the described payments under all four of State's in-home supportive care programs will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Specifically, the following rulings are granted:

- (1) Medicaid payments made under Program A, pursuant to section 1905 of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax.
- (2) Medicaid payments made under Program B, pursuant to section 1915(j) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax.
- (3) Medicaid payments made under Program C, pursuant to section 1915(k) of the SSA, to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax.
- (4) State-funded payments made under Program D to an individual care provider for in-home supportive care provided for an eligible recipient (whether related or unrelated) who resides in the provider's home will be treated as difficulty of care payments excludable from the gross income of the provider under section 131 of the Code. Therefore, the Taxpayer is not required under section 6041 or 6051 to report these payments as wages subject to income tax.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. All taxpayer identifying information has been redacted as required under section 6110(c).

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Donna Welsh
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)