

Internal Revenue Service

Number: **20221002**

Release Date: 5/27/2022

Index Number: 61.00-00, 139.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-118389-21

Date:
March 01, 2022

Via e-fax:

TY:

Legend

- P =
- S1 =
- S2 =
- S3 =
- Date A =
- Date B =
- Date C =
- Date D =
- Year 1 =
- Year 2 =
- State A =
- State B =
- State C =
- State D =
- State =
- Commission
- State Program =
- Office
- Emergency =
- Act =

- Order =

Notice A =

Type E
arrearages =

Type N
arrearages =

Type O
arrearages =

N1 =

N2 =

N3 =

N4 =

N5 =

N6 =

R =

Dear :

This responds to the request for a private letter ruling dated Date A, Year 2, submitted on behalf of P regarding the application of the information reporting requirements under § 6041 of the Internal Revenue Code (Code) to amounts received from State A for the benefit of the customers of P's subsidiaries.

FACTS

P, a utility services holding company, is engaged in the generation, delivery, and marketing of energy through subsidiaries. Through its regulated electric and gas subsidiaries, P engages in the purchase and regulated retail sale of electricity and natural gas, the transmission of electricity to retail customers and the distribution of natural gas to retail customers.

P is the parent of a consolidated group of companies, which include utility companies S1, S2 and S3 (collectively "Utility Companies" or "Taxpayers"). S1 is incorporated under the laws of State A and employs an accrual method of accounting. S2, incorporated under the laws of both State B and State C, and S3, incorporated under the laws of State C and State D, also employ the accrual method of accounting. The Utility Companies are public utilities under the Federal Power Act, 16 U.S.C. §§ 791a - 828c, subject to regulation of transmission rates and other aspects of the Utility Companies' businesses. S1 is the largest natural gas and electric utility in State A. S2 provides natural gas and electricity to customers in a portion of State B and electricity to customers in State A. S3 furnishes energy service to electric customers in State A and State D. The State Commission regulates the Utility Companies' rates and service, issuances of certain securities, and other aspects of the businesses.

State Program Office aids low-income households in State A, including financial aid to prevent the loss and restoration of home energy service. The programs offered by State Program Office include N1 separate varieties of benefits, including financial assistance to customers for current electric bills and grants to help customers with large past-due electric bills. Eligibility for assistance is based on a household's gross monthly income, and limitations on eligibility are based on N2 percent of the Federal Poverty Level, the number of members of the household, and whether any household members are over age N3.

In a letter dated Date B, Year 1, the President of the United States determined that the Emergency is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5207) and that such major disaster exists in State A. See Notice A. That disaster declaration and those relating to the other states, the District of Columbia and five U.S. territories continued through Year 2.

On Date C, Year 2, State A enacted the Act, which includes provisions creating a fund designated to receive moneys appropriated to State Commission for assisting households with utility arrearages in response to the Emergency.

The Act authorized the Governor of State A to transfer funds to a program for grants to eliminate the following arrearages of certain utility customers: 1) Type E arrearages; 2) Type N arrearages; and 3) Type O arrearages. Section N4 of the Act reflects that the legislature of State A intends that to the extent practicable, funds be distributed R throughout State A. The Act allocated funds totaling \$N5, and the Utility Companies received approximately N6 percent of those funds to apply to customer utility accounts.

State Commission's Order, dated Date D, Year 2, includes a finding that the Act requires that the energy assistance funds be apportioned consistent with the Act.

The Utility Companies applied the funds received from State A directly to utility customer accounts to satisfy arrearages in accordance with the guidance in Order. Utility customers never had direct access to the energy assistance funds and no customer was required to take action to effectuate the satisfaction of his or her arrearages.

REQUESTED RULING

Taxpayers have requested the following ruling:

The Taxpayers' application of funds provided pursuant to the Act to reduce or eliminate eligible customers' utility bill arrearages, as described above, are not payments by the Taxpayers to eligible customers under § 6041 and, consequently, Taxpayers are not required to file information returns for such amounts.

LAW AND ANALYSIS

Section 6041(a) and § 1.6041-1(a)(1)(i) of the Income Tax Regulations (Regulations) provide, with exceptions not applicable here, that all persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income, aggregating \$600 or more in the taxable year must file an information return with the Internal Revenue Service (Service). Under § 6041(d), the person required to make a return is also required to furnish an information statement to the payee.

Section 1.6041-1(a) of the regulations provides that the § 6041 information reporting requirement applies to payments made during the calendar year to another person of “fixed or determinable income.” Section 1.6041-1(c) provides that income is “fixed” when paid in amounts definitely predetermined and “determinable” whenever there is a basis for calculating the amount to be paid. As used in § 6041, “income” means “gross income.” Thus, § 6041 only requires reporting of payments of \$600 or more which are includible in the recipient’s gross income under § 61. Accordingly, to determine whether Taxpayers are required to furnish information returns to utility customers, it is necessary to examine whether the application of funds provided by State A to customers’ utility bills is includible in customers’ incomes.

Section 61(a) of the Code provides that except as otherwise provided by law “... gross income means all income from whatever source derived” and encompasses any “accession to wealth, clearly realized, over which taxpayers have complete dominion.” *Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955).

The Service has historically concluded that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of general welfare are not included in the recipient’s income (“general welfare exclusion”). Rev. Rul. 74-205, 1974-1 C.B. 21 (replacement housing payments made to displaced homeowners pursuant to the Housing and Urban Development Act of 1968 were excluded from recipients’ incomes); Rev. Rul. 72-340, 1972-2 C.B. 31 (stipends paid by city to probationers receiving training to increase job skills, remedial education and counseling services as part of program to reduce recidivism).

To qualify under the general welfare exclusion, payments must: (i) be made from a governmental fund; (ii) be for the promotion of the general welfare (i.e., generally based on individual or family need); and (iii) not represent compensation for services. Rev. Rul. 76-395, 1976-2 C.B. 16; Rev. Rul. 75-246, 1975-1 C.B. 24.

Generally, governmental payments made without regard to financial status, health, educational background, or employment status are not based on individual or family need and therefore do not qualify under the general welfare exclusion. *Maines v.*

Commissioner, 144 T.C. 123, 138-39 (2015) (refundable state tax credits aimed at encouraging economic development not conditioned upon a showing of need); Rev. Rul. 76-131, 1976-1 C.B. 16 (payments by Alaska to individuals based on age and long-term residency but without regard to financial or employment status, employment, or education). However, in the context of a federally-declared disaster, the financial need of individuals affected by the disaster is presumed. For example, Rev. Rul. 76-144, 1976-1 C.B. 17 holds that grants made under the Disaster Relief Act of 1974 to help individuals and families affected by a disaster meet extraordinary disaster-related expenses or serious needs in the categories of medical, dental, housing, personal property, transportation, or funeral expenses, (not including categories of non-essential, decorative or luxury items) are excluded from gross income under the general welfare exclusion. In such context, because “need” is not defined in terms of individual financial need, the general welfare exclusion applies equally to all residents of an affected area regardless of their income levels.

The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (Jan. 23, 2002), added § 139. A “qualified disaster relief payment” is defined under § 139(b)(1) as any amount paid to or for the benefit of an individual to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster. Additionally, § 139(b)(4) defines a qualified disaster relief payment as any amount that is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare. A qualified disaster relief payment under § 139(b) qualifies only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

Section 139(b)(4) codifies, but does not supersede, the general welfare exclusion for certain disaster relief payments to individuals. Because “of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred.” Staff of the Joint Committee on Taxation, *Technical Explanation of the “Victims of Terrorism Tax Relief Act of 2001” as Passed by the House and Senate on December 20, 2001*, JCX-93-01, at 16. The Service does not require individuals to account for actual disaster-related expenses for governmental payments to qualify under either the general welfare exclusion or § 139(b) if the amount of the payments can be expected to be reasonably commensurate with the expenses incurred.

In this case, Taxpayers’ application of funds provided by State A to the past-due utility bills of eligible residential customers with Type E arrearages and Type N arrearages qualify as disaster relief payments under § 139(b)(1) because the payments compensate those customers in State A for the reasonable and necessary personal living and family expenses incurred as the result of the continuing effects of the Emergency. State A funds applied by Taxpayers to utility customers’ accounts are

expected to be commensurate with the utility arrearages described above. The presidentially declared disaster for the Emergency continued throughout Year 2 and, consequently, the Emergency is a qualified disaster. See § 139(c) of the Code.

The Taxpayers' application of funds provided by State A to the past-due utility bills of eligible residential customers with Type O arrearages qualify as disaster relief payments under § 139(b)(4) because such amount is paid by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare. These payments also qualify for the general welfare exclusion.

The payments for Type E, Type N, and Type O arrearages are excluded under § 139(b) as long as the eligible residential customers are not otherwise compensated for by insurance or otherwise. As a result, the Taxpayers are not required to file information returns or furnish payee statements reporting these payments under § 6041.

CONCLUSION

The Taxpayers' application of funds provided pursuant to the Act to reduce or eliminate eligible customers' utility bill arrearages, as described above, are not reportable payments by Taxpayers to eligible customers under § 6041 and, consequently, Taxpayers are not required to file information returns for such amounts.

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.

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

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: