

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

CC:ITA:4:VJDriscoll  
PRES-110590-10

UIL: 131.00-00

date: March 29, 2010

to: John Tuzynski  
Chief, Employment Tax  
Small Business/ Self-Employed SBSE  
Attn: Judith Davis

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from: Donna Welsh  
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Associate Chief Counsel  
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subject: Biological Parent and Section 131

This memorandum responds to your request for assistance. This advice may not be used or cited as precedent.

Issue

May a biological parent who receives payment for the care of a disabled biological child qualify as a foster care provider under section 131 of the Internal Revenue Code.

Conclusion

A biological parent may not qualify as a foster care provider under section 131.

Law and Analysis

Section 131(a) of the Code provides that gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments. Neither the Code nor the regulations define the term "foster care" or "foster care provider."

**PMTA 2010-07**

The ordinary meaning of foster care excludes care by a biological parent. To “foster” is to give parental care to a child who is not one’s natural or legally adopted child. Black’s Law Dictionary 727 (9<sup>th</sup> ed. 2009). See section 152(f)(1)(A)(i) and (ii) of the Code, which differentiates between a son or daughter and a foster child. See also *Bannon v. Commissioner*, 99 T.C. 59 (1992), in which the Tax Court held that payments to the mother of an adult disabled daughter for providing in-home supportive services were income to the mother.

We hope this memorandum is responsive to your request. Please call Victoria Driscoll at (202) 622-4920.