

ACTION ON DECISION

Subject: *Feigh v. Commissioner*, 152 T.C. No. 15 (2019)
T.C. Docket No. 20163-17

Issues: Whether the Service will follow the Tax Court’s opinion in *Feigh* that (1) Medicaid waiver payments received as wages for the care of the taxpayers’ disabled adult children in their own home are not excludable from income under I.R.C. § 131; and (2) if such payments are treated as excludable from gross income pursuant to Notice 2014-7, 2014-4 I.R.B. 445, the payments nevertheless may be earned income for determining a taxpayer’s eligibility to receive the earned income credit (EIC) under I.R.C. § 32 and the additional child tax credit (ACTC) under I.R.C. § 24.

Discussion: Notice 2014-7, 2014-4 I.R.B. 445, (the Notice) provides that “as of January 3, 2014, the Service will treat qualified Medicaid waiver payments as difficulty of care payments” excludable from gross income under I.R.C. § 131. The Notice pertains to Medicaid waiver payments received by an individual care provider as part of a State’s Medicaid Home and Community-Based Services Waiver Program under section 1915(c) of the Social Security Act, 42 U.S.C. § 1396n(c) (2012). The Notice defines qualified Medicaid waiver payments as payments made by a state, political subdivision of a state, or a certified Medicaid provider to an individual care provider for nonmedical support services provided under a plan of care to an eligible related or unrelated individual living in the individual care provider’s home.

For purposes of determining a taxpayer’s eligibility for, and the amount of, a taxpayer’s EIC and ACTC, earned income generally includes (i) wages and other employee compensation, unless the compensation is not includible in the taxpayer’s gross income, and (ii) net earnings from self-employment (subject to exceptions not applicable here). See I.R.C. §§ 32(c)(2) and 24(d)(1)(B)(i).

In 2015, Mrs. Feigh received \$7,353 of wages that were qualified Medicaid waiver payments. On their 2015 joint Federal income tax return the Feighs excluded the amount of these payments from gross income under the Notice and included it in earned income to claim an EIC and an ACTC. The Service disallowed the taxpayers’ EIC and ACTC, stating that an amount excluded from gross income under the Notice is not earned income for determining eligibility for the EIC and the ACTC. The taxpayers petitioned the Tax Court, challenging the Service’s determination.

The Tax Court agreed with the taxpayers, holding the payments received as wages for the care of the taxpayers’ disabled adult children in their own home were not excludable under I.R.C. § 131 and that, even though the Service continues to allow taxpayers to treat such payments as excludable under § 131 pursuant to the Notice, the Service

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cannot reclassify a taxpayer's income through a notice so that it no longer qualifies as earned income for determining eligibility for the EIC or the ACTC.

The Service will follow the *Feigh* opinion. Accordingly, in cases in which the Service permits taxpayers, pursuant to the Notice, to treat qualified Medicaid waiver payments as difficulty of care payments excludable under § 131, the Service will not argue that payments that otherwise fall within the definition of earned income under § 32(c)(3) are not earned income for determining eligibility for the EIC and the ACTC merely because they are excludable under the Notice.

Recommendation: Acquiescence in result only on issues (1) and (2).

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