

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: James E. Cannon
Associate Area Counsel
(Small Business/Self-Employed)
CC:SB:5:KCY

from: Robert M. Brown
Associate Chief Counsel
(Income Tax and Accounting)
CC:ITA

subject:

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

You have received inquiries concerning the federal tax treatment of payments made under _____) (hereinafter "the statute").

FACTS

_____ recently enacted the statute providing for payments to certain individuals who filed _____ personal income tax returns. Qualifying individuals received payments based on the adjusted gross income (AGI) and total number of exemptions shown on their _____ personal income tax returns. The amount of a payment decreases as AGI increases and as the number of exemptions decreases. For example, the maximum payment is \$ _____ to an individual with AGI under \$ _____ and _____ or more exemptions, and the minimum payment is \$ _____ to an individual with AGI over \$ _____ and _____ exemption.

Individuals were not eligible to receive a payment if (1) they were a dependent of another individual during the _____ tax year, (2) they were not a resident of _____ on the last day of the _____ tax year, or (3) they were an inmate of a public institution for more than six months during the _____ tax year. _____ made the payments during _____.

The payments were made from surplus state funds. The Governor's reason for calling the legislature into special session, and the legislature's response to that call, indicate that:

- The payments were made to most of _____ residents rather than to a narrow class of residents who are in economic need (needs-based general welfare payments).
- The payments were not income tax refunds of current and prior years' state income taxes.
- The payments were not intended to be gifts.

DISCUSSION

Income Tax Consequences to Recipients

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided, gross income means all income from whatever source derived. Rev. Rul. 85-39, 1985-1 C.B. 21, holds that recipients were required to include in gross income under § 61 a state's payments of a part of its mineral wealth to all state residents that were made, in part, to reduce the harmful effects of population turnover by providing an incentive for residents to remain in the state. The payments provided for under the recently enacted _____ statute are analogous to the payments described in Rev. Rul. 85-39. See also Rev. Rul. 76-131, 1976-1 C.B. 16. In addition, there are no other provisions of the Code that would exclude the payments from gross income.

Therefore, the payments that _____ made during _____ are includible in the recipients' gross income under § 61.

Information Reporting

You also asked us whether the payments are subject to information reporting. Section 6041(a) provides 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 of \$600 or more in any taxable year shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the

amount of such gains, profits, and income, and the name and address of the recipient of such payment. Section 6041(d) provides that every person required to make a return under § 6041(a) shall furnish certain information to each person with respect to whom such a return is required. Section 1.6041-1(b)(1) and (g) of the Income Tax Regulations provide that payments made by a state or a political subdivision are subject to this reporting requirement.

Pursuant to the statute, the state paid less than \$600 to each individual. (The statute's maximum payment is \$.) Accordingly, there is no reporting requirement under § 6041 for the payments if these are the only payments from the state to the individual for the year in question. We note, however, that if provides an individual with the payments described in this memorandum and other payments of income reportable under § 6041, such payments may be required to be aggregated for information reporting purposes. See § 1.6041-1(a)(1)(i)-(ii).

Please call at if you have any further questions.

cc: Thomas R. Thomas CC:SBSE
Carol A. Campbell CC:WI
Martin B. Kaye CC:SB:5