



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 14, 2001

OFFICE OF
CHIEF COUNSEL

Number: **200138007**
Release Date: 9/21/2001
UILC No. 61.40-00

CC:ITA:4:SAIskow
WTA-N-126140-01

MEMORANDUM FOR DEBRA W. THOMPSON
FIELD GROUP MANAGER
T:GE:ITG:7284

FROM Heather C. Maloy
Associate Chief Counsel
(Income Tax & Accounting)

SUBJECT: Native American Housing Assistance

LEGEND

X =

This Chief Counsel Advice responds to your request for assistance dated May 10, 2001, regarding the tax treatment of housing assistance payments to certain individuals under the Native American Housing Assistance and Self-determination Act, 25 U.S.C. §§ 4102-4212 ("the Act"). Although the Service has not issued any published guidance addressing the taxability of payments under the Act, we are pleased to provide you with the following general information. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE:

Are housing assistance payments made to certain individuals under the Act includible in the recipients' gross income?

FACTS:

The Act provides that the Federal Government has a responsibility to promote the general welfare by aiding individuals and families seeking affordable homes, and assisting those who cannot provide fully for themselves because of temporary circumstances or factors beyond their control. In particular, the Act acknowledges the unique responsibility of the Federal Government to protect and support Indian tribes and their members by promoting affordable housing for low-income members of Indian tribes. The Secretary of the U.S. Department of Housing and Urban Development ("HUD") administers the Act through the Office of Native American Programs.

Under the Act, certain low-income individuals and families are eligible to receive housing assistance in the form of grants and loans. However, an Indian tribe may provide assistance for acquisition, new construction and other forms of development of affordable housing to families who are members of an Indian tribe who are not low-income families to the extent the HUD Secretary approves the activities because there is a need for housing for such families that cannot be reasonably met without such assistance. Under the Act, a family that acquires housing must be a low-income family only at the time of (i) purchase, in the case of existing housing, (ii) entry into a lease-purchase agreement, in the case of housing subject to such a purchase arrangement, or (iii) entry into a purchase contract, in the case of a contract to purchase housing to be constructed. The term “low-income family” is defined by the Act as a family whose income does not exceed 80 percent of the median income for the area.

According to the information you submitted, housing assistance may be provided directly to a bank to defray part of a recipient’s downpayment and closing costs, and to reduce the mortgage to a level affordable to the recipient. As security for the assistance, a second deed of trust is recorded against the property in the amount of the assistance provided. This amount will be forgiven if the recipient pays the monthly mortgage payments and continues to maintain the home as a personal residence.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code and the Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived.

However, the Internal Revenue Service has held that payments made under legislatively provided social benefit programs for promotion of the general welfare are not includible in an individual’s gross income. Rev. Rul. 75-271, 1975-2 C.B. 23, addresses mortgage assistance payments made to individuals that are, in substance, interest subsidies paid under § 235 of the National Housing Act to assist lower income families in acquiring homes. The ruling states that the program is based on need and that subsidy payments increase or decrease based on changes in the homeowner’s income, which must be periodically recertified. The ruling holds that the interest subsidy payments are in the nature of general welfare and are not includible in an individual recipient’s gross income.

Rev. Rul. 76-395, 1976-2 C.B. 16, addresses home rehabilitation grants received by low-income homeowners residing in a defined area of a city. The homeowners received the grants from the city, which obtained the grant funds under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. §§ 5301–5317 (“the 1974 Act”), a federal program to develop viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. The ruling concludes that the payments are in the nature of general welfare and, therefore, not includible in the homeowners’ gross income.

Rev. Rul. 98-19, 1998-1 C.B. 840, holds that a relocation payment received under the 1974 Act by a resident of a local jurisdiction to defray the expenses of moving from the

resident's flood-damaged residence to another residence is in the nature of general welfare and is not includible in the individual's gross income under § 61. See also Rev. Rul. 76-373, 1976-2 C.B. 16.

The Service has not published guidance specifically addressing payments made under the Act. In addition, we have not been provided with information about a specific program under the Act and, therefore, are unable to address the taxability of payments thereunder. However, as discussed above, payments analogous to the housing assistance payments described in your memo have been held to be in the nature of general welfare and, therefore, not includible in the recipient's gross income.

This memorandum calls attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. An Indian tribe may request a letter ruling under Rev. Proc. 2001-1, 2001-1 I.R.B. 1, regarding whether it is required to file Forms 1099 under § 6041 for housing assistance payments it makes to individual tribal members pursuant to a grant that it receives under the Act. If housing assistance payments are not includible in a tribal member's gross income under the general welfare doctrine, the tribe would not be required to file a Form 1099 under § 6041 for the payments. On the other hand, the tribe generally would be required to file Forms 1099 under § 6041 for housing assistance payments if a tribal member is required to include the payments in income and such payments total \$600 or more during the year.

We hope that this memorandum is helpful in responding to the inquiry you have received. If you or X have any further questions, or you or X want to discuss obtaining more specific guidance, please contact Sheldon A. Iskow at (202) 622-4920.