Office of Chief Counsel
Internal Revenue Service
Memorandum

Number: **201104032**
Release Date: 1/28/2011

CC:ITA:B05:MFSchmit
FILES-135502-10

UILC: 108.00-00, 108.05-00

date: September 24, 2010

to: Division Counsel (Acting) CC:WI
Attn: Joanne B. Minsky

from: Associate Chief Counsel (Income Tax & Accounting)
CC:ITA:05 Attn: William A. Jackson /s/ W.A.Jackson

subject: Tax Treatment of Payments Made Pursuant to Programs M and N

This Chief Counsel Advice responds to your August 9, 2010, request for assistance regarding the above matter. This advice may not be used or cited as precedent.

LEGEND:

State A =

Program M =

Program N

ISSUE

Whether certain payments received by health care professionals ("Taxpayers") pursuant to State A's Programs M and N, are excludable from the Taxpayers' gross incomes

under section 108(f)(4) of the Internal Revenue Code (the "Code") (as amended by section 10908 of the Patient Protection and Affordable Care Act of 2010).

CONCLUSION

Payments received by Taxpayers under State A's Programs M and N, as currently structured, are includable in their gross incomes under section 61(a) of the Code as compensation for services, and are not excludable from gross income under section 108(f)(4), as amended.

FACTS

State A has in effect a number of programs designed to attract health care professionals (including physicians, physician assistants, dentists, nurse practitioners, etc.) to perform services in health care shortage, rural, low-income, and other underserved areas of the State.

Among these programs is Program M, a health professionals tuition reimbursement program, which provides participants with a payment in return for a service commitment of a certain number of years of practice in an eligible community practice area. The amount of the payment, described as a "tuition reimbursement," is equal to a certain multiple of the State medical school's recent resident tuition cost.

Additionally, State A maintains a health professionals recruitment incentive program, Program N. Under this program, participants are paid a certain incentive in return for their agreement to perform a period of service in a designated eligible service area of State A.

Participants need not have outstanding student or other types of loans or indebtedness to participate in Programs M or N, and information available indicates that recipients may spend the incentives received under these programs as they wish.

State A also maintains a State Loan Repayment Program, providing for the repayment of qualifying educational loans for health care professionals, in return for service commitments in eligible underserved or shortage areas of State A. This program, described in section 108(f)(4), is not at issue in this advice.

LAW AND ANALYSIS

Section 61(a) of the Internal Revenue Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including income from compensation for services, and income from the discharge of indebtedness.

Under section 61, Congress intends to tax all gains or undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. *Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955), 1955-1 C.B. 207.*

Section 108(f)(4), prior to its recent amendment by the Patient Protection and Affordable Care Act of 2010 (the "Act"), provided for the exclusion from income and employment taxes, of payments received under the National Health Service Corps Loan Repayment Program, and certain State loan repayment programs qualifying under section 338I of the Public Health Service Act.

Section 10908 of the Act amended section 108(f)(4) to expand the exclusion to include amounts received by individuals under "any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State)." This provision is effective for amounts received by individuals in taxable years beginning on or after December 31, 2008.

Section 108(f) of the Code addresses, generally, the tax treatment of (student) loans, in circumstances encompassing loan discharges, forgivenesses, refinancings and discharges, and certain repayments (section 108(f)(4)). As presently structured, the programs considered here, Programs M and N, are not loan repayment or forgiveness programs: individuals participating in these programs need have neither student nor any loans to receive payments thereunder, and participants having loans need not use the proceeds to discharge or repay such loans. Rather, benefits paid to enrollees in these two programs represent employment incentives or compensation for agreeing to perform services for or as directed by the payor. As such, amounts received under these programs are not amounts received under a "State loan repayment or loan forgiveness program," but rather represent income includable under section 61(a) of the Code.

Accordingly, we conclude that the payments made to Taxpayers participating in State A's Programs M and N, as presently structured, are not within the exclusion described in section 108(f)(4) as amended. Were the Programs modified to provide for the repayment of existing educational loans, future payments under the Programs might be eligible for exclusion. We would be pleased to work with the Programs to achieve such a result.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Thank you for soliciting our views in this matter. If you have any questions concerning this advice, please contact Michael Schmit or William Jackson, at (202) 622-4960

Associate Chief Counsel
Income Tax and Accounting

/s/ William A. Jackson

By_____
William A. Jackson
Chief, Branch 5
Income Tax and Accounting

Attachment:
Copy of this memorandum