



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

OFFICE OF
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September 20, 1999

Number: **199948040**
Release Date: 12/3/1999

CC:DOM:IT&A:2
SPR-103214-99

UILC: 61.40-00

MEMORANDUM FOR IRS District Director, Southern California District
Attn: Chief, Examination Division

FROM: Deputy Assistant Chief Counsel
(Income Tax & Accounting)

SUBJECT: Manufactured home rental subsidy payments

This Chief Counsel Advice discusses the tax treatment of rental subsidy payments paid directly to manufactured home owners under section 8(o)(12) of the United States Housing Act of 1937, 42 U.S.C. § 1437f (the Housing Act), as amended by section 557(a) of the Quality Housing and Work Responsibility Act of 1998 (H.R. 4194, Pub. L. 105-276). Chief Counsel Advice does not relate to a specific case and is not binding on Examination or Appeals. This document is not to be cited as precedent.

ISSUES:

- (1) Are the governmental rental subsidy payments described below and made directly to a low-income owner of a manufactured home for the owner's use in renting pad space for the manufactured home excludible from the owner's gross income?
- (2) Does the governmental payor of the rental subsidies described below have any information reporting obligations under the Internal Revenue Code (Code) as to a recipient owner of a manufactured home?

CONCLUSIONS:

- (1) The governmental rental subsidy payments described below are made under a legislatively provided social benefit program for the promotion of the general welfare and are excludible from the gross income of a recipient owner of a manufactured home.
- (2) The governmental payor has no information reporting obligations under the Code for rental subsidies paid directly to a low-income owner of a manufactured home.

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FACTS:

In 1974 Congress amended the United States Housing Act of 1937 (generally administered by the United States Department of Housing and Urban Development (HUD)) to create the Section 8 rental assistance programs. There are two types of Section 8 rental assistance programs: project-based assistance (not discussed here) and tenant-based assistance. The Section 8 tenant-based rental assistance comprises two programs: the Section 8 voucher and certificate programs. These two programs currently are being merged into a new single tenant-based assistance program -- the Section 8 housing choice voucher program.

The Section 8 tenant-based assistance program provides rent subsidies to help low-income families afford the rent for decent, safe, and sanitary housing of a modest nature on the private market. Because the rental assistance is provided on behalf of the family or individual, participants are free to choose any housing that meets the requirements of the program.

The Section 8 tenant-based programs are administered locally by public housing agencies (PHAs). Under the program, a family is issued a housing choice voucher and is responsible for finding and selecting a suitable rental unit. If the landlord is willing to participate in the program, the PHA must conduct a housing quality standards inspection to ensure the unit meets the minimum standards for health and safety. The PHA must also determine whether the rent for the unit is reasonable in comparison to similar units in the market area. If the unit is determined to be eligible for the program, the PHA and the landlord execute a housing assistance payments contract.¹ A rental subsidy is paid directly by the PHA to the landlord on behalf of the participating family. The family pays the difference between the actual rent charged by the landlord and the amount subsidized by the program.

There are several special housing types under the Section 8 tenant-based housing program. For instance, a family may rent a manufactured home with assistance under the program. A PHA also may provide rental assistance for a family that owns the manufactured home and leases only the pad space on which the manufactured home sits. In this case the PHA makes monthly housing assistance payments on behalf of the tenant directly to the owner of the pad space.

¹ A family participating in the program also enters into a contract with the PHA. This contract spells out the responsibilities of the family, including the conditions or causes of termination from the program. The family must provide the PHA with a copy of any owner notice regarding a change in the rental amount (and the services and utilities included in such rent) or of any other owner notice changing the terms or conditions of the family's tenancy.

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Some owners of pad spaces refuse to participate in the Section 8 rental assistance programs. In many cases this refusal creates a severe hardship for the owners of the manufactured home, who cannot afford to move the manufactured home to another park. In § 557 of the Quality Housing and Work Responsibility Act of 1998, Congress directed HUD to carry out a demonstration program during fiscal years 1999, 2000, and 2001 in cases where the owner of the pad space refuses to participate in the Section 8 rental assistance program. The purpose of the demonstration is to test the effectiveness of providing assistance payments directly to the low-income tenant who wishes to receive Section 8 assistance in renting pad space. Section 557 limits public housing authority (HA) participation in this demonstration to the Housing Authority of the County of San Diego, CA, and the Housing of the City of San Diego, CA (the San Diego Housing Commission) (the affected PHAs).

HUD has implemented the demonstration program by waiving specific program requirements ordinarily applying to landlords. However, to the maximum extent possible, HUD will continue to apply normal Section 8 program rules to the demonstration program for pad space rentals. The affected PHAs in San Diego must determine that the initial pad space rental charged is reasonable in amount and that the unit and premises comply with normally applicable housing quality standards. Tenants participating in the demonstration project must comply with the normal Section 8 tenant-based program family obligations, must report all changes in the amount of pad space rent charged, and must provide the affected PHAs with a copy of any new or revised lease agreement for the pad space or of any eviction notice or notice to vacate.

During a family's participation in the program, the affected PHA will make a housing assistance payment directly to the family. The family is solely responsible for paying the entire rent -- both the assisted and the unassisted portions -- to the owner of the pad space. If a tenant participating in the demonstration program is evicted for non-payment of rent, the affected PHA will terminate that tenant's participation in the Section 8 rental assistance program.

LAW AND ANALYSIS:

Section 61(a) of the Code and the Income Tax Regulations thereunder provide that, except as otherwise provided by law, gross income means all income from whatever source derived. The form in which the income is received is not controlling: an amount otherwise includible in gross income will be included regardless whether the amount is paid directly to a recipient or indirectly to a third party on behalf of the recipient.²

² For examples of the latter, see Old Colony Trust Co. v. Commissioner, 279 U.S. 716 (1929); Amey v. Commissioner, 22 T.C. 756 (1954).

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However, the Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for promotion of the general welfare are not includible in the gross income of the individual being benefitted. See, for example, Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants received by low-income homeowners under a governmentally funded community development program are in the nature of general welfare and hence are not includible in the homeowners' gross income); Rev. Rul. 75-271, 1975-2 C.B. 23 (governmental mortgage assistance payments in the nature of interest subsidies paid to mortgagees for benefit of lower income families not includible in families' gross income). These rulings, involving needs-based programs, should be contrasted with non-needs based governmental programs. See, for example, Rev. Rul. 76-131, 1976-1 C.B. 16, in which the IRS determined that Alaska longevity payments made to individuals regardless of their financial status, health, educational background, or employment status were includible in the individuals' gross income.

Individuals and families are eligible to participate in Section 8 rental assistance programs (including the demonstration program) only if they are low income. 42 U.S.C. 1437f(a).³ The demonstration program provides a legislatively provided social benefit comparable to the benefits determined to be excludible in Rev. Rul. 76-395 and Rev. Rul. 75-271. Accordingly, based on the information submitted, the direct rental assistance provided by the affected PHAs to the manufactured home owners under the demonstration program is in the nature of general welfare and is not includible in the manufactured home owners' gross income.⁴

Under § 6041, all persons engaged in a trade or business and making payment in the course of such trade or business to another person of fixed or determinable gains, profits, and income of \$600 or more in a calendar year shall render a true and

³ A low-income family is generally defined as one whose income does not exceed 80 percent of the median income for the area. 42 U.S.C. 1437a(b)(2). The manufactured home owner's income under the Section 8 program generally and the demonstration program in particular must be recertified at least annually by the PHAs, and appropriate adjustments in the payments will be made to reflect any changes.

⁴ The owner of the pad space, however, is required to include the full amount of pad space rent in its gross income under § 61(a)(5). See Rev. Rul. 76-75, 1976-1 C.B. 14 (mortgage payments in the nature of interest subsidies received by mortgagees on behalf of low income homeowners includible in gross income of mortgagees even though homeowners benefitted by such interest subsidies could exclude those subsidies from gross income under Rev. Rul. 75-271). See also Graff v. Commissioner, 74 T.C. 743 (1980), aff'd, 673 F.2d 784 (5th Cir. 1982) (upholding Rev. Rul. 76-75).

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accurate return, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

As we concluded above, payments to an individual pursuant to the demonstration program are in the nature of general welfare and are not includible in the gross income of the owner of the manufactured home. Accordingly, the affected PHAs are not required to report such payments under § 6041.⁵

⁵ As a Section 8 landlord is required to include rental payments in income, however, § 6041 will apply to assistance payments made by HAs to Section 8 landlords unless the payments are for less than \$600 a year or an exception under the § 6041 regulations applies.