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Legend

County C =

State =

Authority =

Program A =

Program B =

Workers =

Dear

This is in reply to your letter requesting a private letter ruling concerning whether certain housing benefits provided to employees of County C are excludable from gross income and subject to federal income tax withholding.

Facts:

According to the facts submitted, County C and the Authority are political subdivisions of the State. The Authority is charged, among other responsibilities, with regulating the provision of safe, decent, and sanitary housing accommodations to County C residents of low and moderate income levels, in part through its Program B. Under this program, both for-sale and rental affordable housing accommodations (Program B benefits) are made available to low and moderate income level individuals living or working in County C. In addition to Program B, the Authority has also established Program A to provide safe, decent and affordable short-term rental housing

of modest standards to low and moderate income individuals who are enrolled in an employer-sponsored training program within County C, and who will likely succeed if given some additional supports, such as affordable housing assistance.

Program A is open to all employers throughout County C (county employers), and the Authority has entered into various understandings with such employers respecting the provision of these integrated housing and training benefits to qualified county employers' employees, generally trainees. In addition, and specific to this ruling request, the Authority has entered into specific memoranda of understanding (MOUs) to make its Program B housing/trainee assistance benefits available to county employees who are County C employees otherwise meeting the general income level and program requirements. Specifically, the Authority will extend its Program B benefits to employees of County C, including certain workers (Workers).

The housing/training assistance benefits provided under Program B and Program A to low and moderate income level County C trainees are made available to such employees on the same basis and for the same purposes as such benefits are extended to other county employee/trainees generally, and no benefits have been set aside specifically for County C employee/trainees. Benefits are awarded on a nondiscriminatory and nonpreferential selection basis among the class of eligible participants that includes both County C employees/trainees and employees of other county employers.

You have requested a ruling concerning whether the value of the housing benefits provided to individuals who are employees of County C governmental functions, under the Authority's Program A, an activity of County C's broader Program B, and under Program B under the circumstances described above are excludable from the recipients' gross incomes for federal income tax purposes and subject to federal income tax withholding.

Law & 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. 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.

Although section 61 provides for broad includibility in gross income, the Internal Revenue Service (IRS) has consistently held that payments to individuals by governmental units under legislatively provided social benefit programs for promotion of the general welfare, that do not represent compensation for services, are excludable from the recipient's gross income ("general welfare exclusion").

The general welfare exclusion applies only to governmental payments out of a welfare fund based upon the recipients' identified need and not where made as compensation for services. *See, e.g.*, Rev. Rul. 57-102, 1957-1 C.B. 26 (payments to the blind); Rev. Rul. 74-74, 1974-1 C.B. 18 (awards to crime victims or their dependents); Rev. Rul. 74-205, 1974-1 C.B. 20 (replacement housing payments under the Housing and Urban Development Act of 1968 to aid displaced individuals and families); Rev. Rul. 75-271, 1975-2 C.B. 23 (assistance payments for lower income families to acquire homes); Rev. Rul. 76-395, 1976-2 C.B. 16 (home rehabilitation grants to low-income recipients); Rev. Rul. 77-77, 1977-1 C.B. 11 (payments to Indians to stimulate and expand Indian-owned economic enterprises); and Rev. Rul. 98-19, 1998-15 I.R.B. 5 (relocation payments made to flood victims).

Rev. Rul. 98-19, 1998-1 C.B. 840, and Rev. Rul. 76-373, 1976-2 C.B. 16, concern the taxation of relocation payments under Title I of the Housing and Community Development Act of 1974 ("1974 Act"), which has the primary objective of developing viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Rev. Rul. 98-19 holds that the payments authorized by the 1974 Act and made by a local government to individuals moving from flood-damaged areas to other residences, are in the nature of 'general welfare' and therefore are not includible in gross income. Similarly, Rev. Rul. 76-373 holds that relocation payments (e.g., for reasonable expenses in moving a person's family or personal property) made to individuals displaced by activities assisted under Title I of the 1974 Act, are in the nature of 'general welfare' and therefore are not includible in gross income.

In Rev. Rul. 75-271, *supra*, the IRS held that mortgage assistance payments to lower income individuals provided under a governmental housing program designed to assist lower income families in acquiring home ownership and that were based on a consideration of financial need determined under Department of Housing and Urban Development guidelines, were in the nature of general welfare payments, and were excludable from recipients' gross incomes under the general welfare exclusion.

Similarly, amounts provided by governmental units to low and moderate-income level individuals for training, retraining, and the development of productive job skills, to assist such individuals in obtaining gainful employment, are also in the nature of general welfare. *See*, Rev. Rul. 63-136, 1963-2 C.B. 19, Rev. Rul. 75-246, 1975-1 C.B. 24, Rev. Rul. 71-425, 1971-2 C.B. 76,

Under County C's Program A and Program B, affordable housing assistance and job training benefits are provided to county employees and trainees, including County C employees/trainees, on the basis of low and moderate-income level qualification, without regard to the employees' status as the employee of a particular county employer, municipal, state or local governmental employer.

Rev. Rul. 75-246, *supra*, states that the determination as to whether payments under work-training programs are includable in a participant's gross income rests on whether the activity for which the payments are received is basically the performance of services, or is only participation in the training program that promotes the general welfare. In the case of County C's Program B and Program A, benefits flow from a recipient's general eligibility as a low or moderate-income level county trainee, and not by reason of any County C or governmental employee relationship; any County C-employer relationship is merely coincidental. See, also, Rev. Rul. 79-131, 1979-1 C.B. 368, involving the selection of certain benefits recipients on a nondiscriminatory basis, applicable by analogy.

Based on the information submitted and representations made, and assuming Program B and Program A are operated substantially as described, the benefits provided to low and moderate-income level county employees/trainees, including County C employees/trainees, to assist them in securing safe, affordable, and reasonably proximate housing and acquiring new job skills, are substantially similar to those benefits previously considered by the IRS in the authorities addressed above, are similarly within the scope of the "general welfare exclusion," and are thus excludable from the gross incomes of recipients for federal income tax purposes. The subject benefits are made by a governmental body, from a governmental welfare fund, pursuant to a legislative enactment, not as compensation for services, and for the promotion of the general welfare.

Section 3402(a) requires every employer to withhold income tax on wages in accordance with tables or computational procedures prescribed by the Secretary. Wages is defined as all remuneration for services performed by an employee for his or her employer, unless excepted. Generally, amounts excludable from the gross income of an employee under the general welfare exclusion are not remuneration for employment and therefore are not subject to income tax withholding under section 3402(a). Accordingly, the benefits provided by County C to its employees under Program A would be excludable from wages and not subject to income tax withholding to the extent that the benefits are excludable from gross income under the general welfare exclusion.

Rulings

Assuming Program B and Program A are operated as described, with no particular preference or prejudice shown to County C employees or their governmental employers over the employees of other eligible county employers in the selection of benefit recipients, we conclude that the value of the described housing assistance benefits provided under Program B and Program A to employees of County C, including the Workers, is excludable from the gross incomes of such recipients for federal income tax purposes because the payments or benefits are in the nature of general welfare, and do not represent compensation for services within the contemplation of section

61(a) of the Code. Also, the benefits provided to employees of County C under Program B and Program A that are excludable from gross income are not wages subject to federal income tax withholding.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)

Enclosures:
Copy of letter
Copy for section 6110 purposes