

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM
June 8, 2000

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CASE MIS No. TAM-117292-99/CC:DOM:IT&A:B1

District Director

Taxpayers' Names:
Taxpayers' Address:

Taxpayers' Identification Nos:
Years Involved:
Date of Conference:

LEGEND:

Taxpayers =

Group Home =

Sponsoring Agency =

State =

Year 1 =

Year 2 =

Memo =

ISSUE:

Are certain payments that the Taxpayers received for foster care in Year 1 and Year 2 qualified foster care payments under section 131 of the Internal Revenue Code?

CONCLUSION:

The payments in issue are qualified foster care payments under section 131 of the Internal Revenue Code.

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FACTS:

The Taxpayers are married individuals who were licensed by the State to operate a group home for eight children in Year 1 and Year 2. They did not operate any other group homes. The Taxpayers incorporated Sponsoring Agency as a nonprofit, nonstock corporation under State law to sponsor the Taxpayers' Group Home, as well as a group home licensed to the son of one of the Taxpayers and his wife, and a group home licensed to the daughter of one of the Taxpayers. The Taxpayers, the son, and a social worker employed by the Sponsoring Agency are its officers and directors.

State law defines a family-operated group home as a home for which the licensee is one or more individuals who operate not more than one group home. State law provides that any individual or organization wanting to operate a group home, except a county agency or a child welfare agency licensed to place children in group homes, shall contract in writing with a sponsoring agency, specifying the program under which the home shall be operated and providing for the exclusive placement of children in the group home by or through the sponsoring agency.

Under State law, a sponsoring agency must be a child welfare agency licensed to place children in group homes, a county agency, or the department of health and social services. State law requires that every child welfare agency shall be incorporated. The Sponsoring Agency did not apply for tax exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3).

During Year 1 and Year 2, the Sponsoring Agency was a child welfare agency licensed as a child placing agency for children ages 10 through 17. However, the license states on its face the following condition: "Agency is authorized only to sponsor (3) group foster homes." The Taxpayers have submitted letters from the State and various counties which support their assertion that in Year 1 and Year 2, the State and the counties, not the Sponsoring Agency, placed the children in the Taxpayers' Group Home.

The State pays unincorporated group homes and incorporated group homes differently. The State's Uniform Foster Care Rate Policy applies to unincorporated group homes. By contrast, the state establishes a rate annually for each incorporated group home based on budget information requested from the incorporated group home. Payments to incorporated group homes are reported on the group home payroll. Payments to unincorporated group homes are reported on the foster family care payroll.

The Memo states the following: "If a child is placed in a treatment foster home through a private child placing agency, the purchasing county is required to establish

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payments based upon the Uniform Foster Care Rate. Other costs charged by the private child placing agency must be paid from other line items (e.g., purchase of services.)” Thus, the Memo continues, if a county places a child with a private agency, the county must determine how much of the cost charged by the agency is a payment for foster care and how much of the cost is a payment for services.

In Year 1 and Year 2, the Group Home appears on a list showing the rates for incorporated group homes with a reference to the Sponsoring Agency. During those years, the Sponsoring Agency entered into purchase of services contracts to provide foster care for children. The Sponsoring Agency paid the Taxpayers a portion of the funds it received under these contracts to care for children in the Taxpayers’ Group Home. The amount that the Taxpayers received for each foster child per month was less than the limit imposed by the Uniform Foster Care Rate Policy for family-operated group homes. After the conference, the Taxpayers submitted information that indicates that the amounts that the Taxpayers received for foster care were basic maintenance payments or difficulty of care payments.

LAW AND ANALYSIS:

Section 131(a) of the Internal Revenue Code states that gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

Section 131(b)(1) of the Code defines the term “qualified foster care payment.” A qualified foster care payment is any amount that is paid by a state or a political subdivision of a state or by a placement agency that is tax exempt under section 501(a) of the Code as an organization described in section 501(c)(3), if that amount is paid to the foster care provider for caring for a qualified foster individual in the foster care provider’s home, or if that amount is a difficulty of care payment.

Section 131(b)(2) of the Code defines the term “qualified foster individual.” A qualified foster individual is any individual living in a foster family home in which the individual was placed by an agency of a state or political subdivision of a state or, if the individual is under age 19, a placement agency that is tax exempt under section 501(a) as an organization described in section 501(c)(3).

Section 131(c)(1) of the Code defines the term “difficulty of care payments.” Difficulty of care payments are payments to individuals for the additional care of a qualified foster individual provided by reason of a physical, mental, or emotional handicap of the qualified foster individual with respect to which the state has determined a need for additional compensation. Difficulty of care payments must be designated by the payor as payments for that purpose. The additional care must be provided in the foster care provider’s home.

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Status of the Group Home as a Family-Operated Group Home

The threshold issue on these facts is whether the Taxpayers' Group Home is a family-operated group home. Although the Taxpayers' Group Home was licensed in their individual names as a family-operated group home, the name of the Group Home appears on a schedule of rates charged by incorporated group homes with a reference to the Sponsoring Agency.

Section 131 does not apply to corporation-operated group homes. The statute contemplates that the foster care provider is an individual providing care in the individual's family home. Section 131(c) defines the term "difficulty of care payments" as payments to "individuals" (emphasis added). Moreover, section 131 initially used the term "foster parent," a term that refers to an individual. The term "foster care provider" replaced the term "foster parent" merely to reflect the amendment of section 131 to apply to certain payments for the foster care of adults, as well as certain payments for the foster care of children.

The Group Home was licensed as a family-operated group home and the payments that the Taxpayers received for foster care from the Sponsoring Agency were within the limit of the Uniform Foster Care Rate Policy applicable to family-operated group homes. Letters submitted by the Taxpayers after the conference indicate that the payments received for foster care were basic maintenance payments or difficulty of care payments. Accordingly, for purposes of this technical advice, the Group Home will be treated as a family-operated group home in Year 1 and Year 2.

Placement

Under section 131(b)(1), a qualified foster care payment must be a payment for the care of a qualified foster individual. Under section 131(b)(2), which defines the term "qualified foster individual," an individual under age 19 must be placed by a state, a political subdivision of a state, or a placement agency that is described in section 501(c)(3) and is exempt from tax under section 501(a) of the Code.

As stated, the Sponsoring Agency is not exempt from tax under section 501(a) of the Code. Therefore, to meet the requirements of section 131(b)(2), the State or a political subdivision of the State must have placed the children in the Taxpayers' Group Home. We accept the evidence presented by the Taxpayers that the children placed in their Group Home in Year 1 and Year 2 were placed by the State or a county.

Payment

The payments that the Taxpayers received for foster care were within the limit of the State's Uniform Foster Care Rate Policy. The Taxpayers have presented evidence these amounts were basic maintenance payments or difficulty of care payments.

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Accordingly, we accept the Taxpayers' argument that the payments they received for foster care were payments by the State or a county.

Conclusion

In conclusion, the payments that the Taxpayers received for foster care in Year 1 and Year 2 within the limit of the State's Uniform Foster Care Rate Policy are qualified foster care payments under section 131 of the Internal Revenue Code.

A copy of this technical advice memorandum is to be given to the taxpayers. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.