

**Office of Chief Counsel
Internal Revenue Service**
memorandum

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subject: Volunteer Property Tax Reduction Under Connecticut Law

You have asked us to determine whether partial property tax abatements and exemptions offered to volunteer emergency responders (“volunteers”) by municipalities in the State of Connecticut constitute taxable income to the recipients. Senator Christopher Dodd and Congressman John Larson have introduced legislation, in the Senate¹ and the House², respectively, that would specifically exclude partial property tax exemptions and abatements from income. We have examined the underlying statute and a similar statute allowing property tax abatements for Massachusetts senior citizens in exchange for services. We conclude that the partial abatements and exemptions of property taxes under this program are includible in the gross income of the recipients.

Overview of the Connecticut Program

Under Connecticut law, municipalities may create a program (the “Program”) to provide property tax relief to persons who “volunteer their services” as emergency responders (such as firefighters, EMTs, paramedics, ambulance drivers etc.). The Program can provide the tax relief as either an abatement of the property tax liability, of up to \$1,000, or as an exemption, of up to \$1,000,000 divided by the mill rate, in the assessed value of the property.³

¹ S. 3012, 107th Cong. (2002).

² H.R. 5416, 107th Cong. (2002).

³ Conn. Gen. Stat. § 12-81w (2001).

POSTU-150848-02

Each municipality establishes the Program requirements that the volunteers must meet in order to qualify for the abatements and exemptions. The requirements of the Programs vary but generally include requirements of service measured either in number of calls or hours of service performed. Some also include meetings attended, certifications held, or years of service as a volunteer as additional methods of earning service credits in order to qualify for the partial abatements or exemptions.

Prior Chief Counsel Advice (CCA)

CC:TEGE issued two CCAs on the Massachusetts senior citizens program that concluded that the tax abatements earned must be included in income and wages for Federal Insurance Contribution Act (FICA) purposes.⁴ CC:ITA issued a CCA that concluded that the tax abatements and the municipality's payment of the seniors' FICA taxes constitute federal taxable income regardless of whether the abatements are state taxable income.⁵ The previous CCAs concluded that the abatement constitutes taxable income because it qualifies as compensation for services.

The CCA, issued by CC:ITA, addressed the possibility that the abatement constituted a gift under § 102, cancellation of debt under §108 or met the requirements for the general welfare exception. Ultimately, the CCA concluded that the property tax abatement program did not meet these, or any other, exclusion from income.

Discussion

Inclusion in Gross Income

Gross income includes all income from whatever source derived, except as otherwise provided by law.⁶ The provision "is broad enough to include in taxable income any economic or financial benefit conferred on the employee as compensation, whatever the form or mode by which it is effected".⁷

Unless an exclusion applies, gross income includes income realized in any form, whether in money, property, or services.⁸ Currently, there is no applicable exclusion under which the property tax abatement or exemption could be excluded from the volunteers' incomes.

⁴ CCA 200025050 (publicly released on June 23, 2000); CCA 200132035 (publicly released on August 10, 2001).

⁵ CCA 200227003 (publicly released on July 5, 2002).

⁶ IRC § 61(a).

⁷ Commissioner v. Smith, 324 U.S. 177, 181 (1945).

⁸ Treas. Reg. § 1.61-1(a).

POSTU-150848-02

The conclusions reached in the foregoing CCAs, finding that the Massachusetts senior citizen property tax abatement program constitutes income, apply to the Programs for volunteers established in accordance with the Connecticut statute. The statute specifically states that the Program is to be offered to the emergency responders who “volunteer their services”.⁹ In return for their services, the volunteers receive compensation in the form of a reduction of their property taxes. The reduction results from an in-kind payment for the volunteer’s services. As such, the property tax abatements and exemptions constitute compensation for services performed by the volunteers.

The services requirement makes the general welfare exception inapplicable to the property tax reductions.¹⁰ Similarly, the requirement of services can change all or a portion of a scholarship that is otherwise excludable from income under § 117, into taxable income to the scholarship recipient. This same analysis can be applied to the evaluation of whether the property tax abatements or exemptions meet the requirements for exclusion from income for rebates.

A rebate or discount is generally construed as a reduction in the cost of an item or the reduction of a liability that is not an accession to wealth or taxable income.¹¹ The Connecticut statute allows for the Programs to reduce the property taxes through either an abatement or an exemption to the assessed value of the property. Because the volunteers provide services to the municipalities and the municipalities benefit from the services, the abatements and exemptions cannot be treated as a rebate.

Worker Status

The status of the volunteer firefighters will determine whether a municipality is required to withhold Federal Insurance Contributions Act (FICA) taxes and federal income taxes. In determining a worker’s status, the primary inquiry is whether the worker is an independent contractor or an employee under the common law standard. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law of agency – whether one party, the principal, is legally responsible for the acts or omissions of another party, the agent – and depends on the principal’s right to direct and control the agent.¹²

Guides for determining a worker's status are found in §§ 31.3121(d)-1 and

⁹ Conn. Gen. Stat. § 12-81w.

¹⁰ CCA 200227003.

¹¹ Rev. Rul. 91-36, 1991-2 C.B. 17; Rev. Rul. 76-96, 1976-1 C.B. 23; Rev. Rul. 84-41, 1984-1 C.B. 130.

¹² IRC § 3121(d)(2); Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318 (1992).

POSTU-150848-02

31.3401(c)-1 of the Employment Tax Regulations, relating to FICA and federal income tax withholding, respectively.

For an in-depth discussion, see the training materials titled "Independent Contractor or Employee?".¹³ The training materials explain the kinds of facts to be considered, including those evidencing behavioral control, those evidencing financial control, and those evidencing the relationship of the parties. The training materials are a guide and are not legally binding. If a municipality would like the Service to make the determination of whether a worker (or class of workers) is an employee, the municipality should file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

Conclusion

The performance of services in return for a benefit, whether it is in the form of money, property, fringe benefit, etc., has long been a taxable event under IRC § 61 as compensation for services. The volunteers, as a result of the Program, will have a lower property tax liability regardless if it is established as an abatement or an exemption. This reduction in the volunteers' property taxes is an in-kind payment in recognition of the services performed by the volunteers and as such results in taxable income to the volunteers.

¹³ Training 3320-102 (Rev. 10-96) TPDS84238I <<http://www.irs.gov/pub/irs-utl/emporind.pdf>>.