DRAFT

Control Number: RR-109108-97 9/25

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF)

WR-FICA

Notice 98-

SECTION 1. PURPOSE

This notice addresses the federal income and employment tax consequences of payments received by individuals with respect to certain work activities performed in state programs under part A of title IV of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996) (TANF payments). The notice sets forth certain conditions under which TANF payments are not income, earned income, or wages for federal income and employment tax purposes. The Treasury Department and the Internal Revenue Service intend to issue regulations that will address the federal income and employment tax consequences of TANF payments. The regulations generally will be effective retroactively to [INSERT DATE NOTICE IS RELEASED TO THE PUBLIC]. As applied to the interim period between [INSERT DATE NOTICE IS RELEASED TO THE PUBLIC] and the date the regulations are issued, the regulations will be consistent with this notice.

DRAFT

SECTION 2. SCOPE

This notice addresses only the treatment of TANF payments under certain income and employment tax provisions of the Internal Revenue Code. Because this notice is based on the "general welfare doctrine" (see section 4.01, below), which is unique to the determination of federal tax liability, ~~no~~ this notice does not determine ~~implication is intended regarding~~ the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act and other federal and state employment laws. This notice does not reach a determination as to whether the recipient of TANF payments is a common law employee or is self-employed. For purposes of the analysis set forth herein, however, it is assumed that the recipient of the TANF payments is a common law employee.

OK

SECTION 3. BACKGROUND

Congress reformed the welfare system through the enactment of PRWORA, which replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). AFDC required individuals to perform some work activities in order to continue to receive public assistance. TANF provides states with more flexibility than they had under AFDC to determine basic eligibility rules and benefit amounts. TANF also requires that specified percentages of individual recipients engage in work activities and imposes penalties on the states for non-compliance with that requirement.

For purposes of TANF, the term "work activities" is defined under § 407(d) of the Social Security Act, 42 U.S.C. § 607(d), as:

(1) unsubsidized employment;

(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

DRAFT

SECTION 4. TREATMENT OF TANF PAYMENTS

.01 General Analysis.

The federal income and employment tax consequences of TANF payments generally are determined under the following analysis.

Payments by a governmental unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. See Rev. Rul. 71-425, 1971-2 C.B. 76. Similarly, these payments are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts and circumstances, payments by a governmental unit are basically compensation for services rendered, even though some training is provided then the payments are includible in the individual's gross income and are wages for employment tax purposes. Similarly, such payments generally are earned income for EIC purposes. See Rev. Rul. 75-246

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In addition, § 32(c)(2)(B)(v) of the Internal Revenue Code (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of

[Proposed addition Not agreed to is attached]

Where payments to a participant in a social benefit program are made by an entity for which the participant provides services, and some or all of the payments (whether termed "wages" or otherwise) are subsidized by a state or local welfare or work training agency, the participant is in essence engaged in subsidized employment. Under these circumstances, such payments are includible in the individual's gross income, are wages for employment tax purposes, and are earned income for EIC purposes.

title IV of such Act, but only to the extent such amount is subsidized under such State program."

.02 Application of General Analysis to Certain TANF Payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents.

In many of these cases, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed.

These cases typically share, and can be identified by, common characteristics. In cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, will not be earned income for EIC purposes, and will not be wages for employment tax purposes:

(1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to

administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);

(2) The determination of the individual's eligibility to receive any payment is based on need and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i)(I) of the Social Security Act)) and the Food Stamp Act of 1977; and

(3) The size of the individual's payment is determined by the applicable welfare law, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable welfare law) divided by the higher of the federal or state minimum wage.

The federal income and employment tax treatment of TANF payments that do not satisfy each of these three conditions is determined under the general analysis described in section 4.01, above.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in section 4.02 of this notice. Written comments should be submitted by October 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service

Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R (Notice 98-__)
Room 5228 (IT&A:Br2)
1111 Constitution Avenue, NW
Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to: http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS internet site). All comments will be available for public inspection and copying in their entirety.

FURTHER INFORMATION

For further information, contact Mr. Edwin B. Cleverdon at (202) 622-4920 regarding the income tax issues in this notice and Ms. Jean Casey at (202) 622-6060 regarding the EIC and employment tax issues in this notice (not toll-free calls).

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C 20006
(202) 637-5000

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Jake West
Martin J. Maddaloni
Boyd D. Young

July 30, 1998

Mr. Bruce Reed
Advisor to the President for
Domestic Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

WR-FICA

Dear Bruce:

The AFL-CIO and the Clinton Administration share a keen interest in the fair treatment of individuals who are required to work as a condition of receiving Temporary Assistance for Needy Families (TANF). The Administration has frequently stated its view, which we strongly share, that such individuals should be afforded the same status and protections as other workers, and should not be subjected to second-class status or inferior treatment.

We understand that for several months, the Treasury Department and Internal Revenue Service have been working on a draft regulation to address the tax treatment of TANF payments for TANF recipients engaged in work activities. We believe that Treasury's proposed approach would relieve states and TANF recipients of all tax liability (income tax, FUTA, and FICA) for TANF payments under the IRS's "general welfare doctrine." That doctrine has typically been applied in circumstances where individuals receive benefit payments and receive training but do not perform services in exchange for their benefits. We are greatly concerned that applying the doctrine to TANF payments in circumstances where individuals are clearly performing services sends the message that these individuals are not "real workers," and jeopardizes their status as employees under labor and employment laws. Given its prior pronouncements on the importance of employment protections for workfare participants, I am confident that the Administration shares this concern.

We have consistently taken the view, and have conveyed a detailed analysis supporting our view, that an approach utilizing existing "work relief" exemptions in the governing statutes is superior to the approach under consideration by Treasury, because the "work relief" approach

both meets the policy objectives of the Administration and the states without expanding IRS precedent and endangering employee status and related protections for TANF workers.

Earlier this week, we learned that Treasury had decided to proceed with its original "general welfare" approach, albeit with the addition of language aimed at making clear that the ruling in no way was intended to have any effect on labor and employment laws. To the extent language has been added to address concerns regarding potential adverse implications of the Treasury ruling, we appreciate those efforts. At the same time, we do not believe this cures the problem, because by issuing a directive applying the "general welfare doctrine" to TANF payments where recipients are clearly engaged in services, Treasury's approach still sends the message that TANF recipients engaged in work activities are not like other workers. We believe such an approach would also constitute a significant expansion of the general welfare doctrine from current precedent.

We are greatly disappointed that the Administration appears to have decided to proceed down this path when a superior and less harmful approach is available to it, and we ask that the Administration reconsider its decision. If the Administration insists on following the "general welfare doctrine" course, it must ensure that it correctly applies, and does not expand, the doctrine. We ask that the Administration not publish any notice until we have an opportunity to discuss this matter.

Thank you for your consideration.

Sincerely,

Gerald M. Shea
Assistant to the President for Government Affairs

AFL-CIO
815 16th Street, NW,
Washington, DC 20006
PHONE: (202) 637-5237
FAX: (202) 637-5138

Date: 7/30/98

TO: Bruce Reed
Advisor to the President for Domestic Policy

FAX #: 456-2878

FROM: Gerald M. Shea
Assistant to the President for Government Affairs

Number of Pages (including cover sheet): 3

DPC staff continue to work mightily on worker standards. Unfortunately, Treasury seems to hear a different drummer. Please give me a call when you can.

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C 20006
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EXECUTIVE COUNCIL

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July 30, 1998

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Advisor to the President for
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The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

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Thank you for your consideration.

Sincerely,

Gerald M. Shea
Assistant to the President for Government Affairs

June 8, 1998

Job Creation Serving Community Needs -- Welfare to Work Initiatives from Across the Nation*

by

National Employment Law Project

The federal welfare law enacted in August 1996, combined with the 3-billion dollar "Welfare to Work" (WtW) program signed into law a year later, have fueled initiatives across the country to create transitional wage-paying jobs for welfare recipients. These programs most often provide employment in the public and non-profit sectors in order to best target and address local community needs.

Not unlike the highly-successful YouthBuild program and other innovative job creation initiatives, these are jobs that participants can proudly promote in seeking unsubsidized jobs, while in many instances also providing job training and eligibility for the Earned Income Tax Credit (as much as $3,600 a year in additional income at no cost to the state). This contrasts significantly with workfare programs which, the studies have consistently shown, do not result in an increase in employment or earnings or reduced reliance on public assistance.

As summarized below, cities and states across the country are now implementing transitional employment programs using WtW, Temporary Assistance for Needy Families (TANF), Job Training Partnership Act (JTPA), private foundation and other available funding sources. Advocates and policy makers in other cities and counties (Baltimore, Oakland, and New York City) and states (California, Michigan, New York and Pennsylvania) are actively planning similar initiatives.

Washington State Community Jobs Initiative

- The Community Jobs Initiative (CJI) is now placing 540 low-income parents on public assistance in a mix of public and private non-profit jobs across five regions of the state. This effort is seen by the state as the first phase of program, to be expanded statewide in the near future.

- The jobs, which integrate education and training, are designed to directly benefit the community with placements in agencies such as the Forest Service, tribal enterprises, and local housing authorities.

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* We appreciate the significant contribution from the staff of the Center on Budget & Policy Priorities (CBPP) and the Center on Law & Social Policy (CLASP) in preparing this summary. Maurice Emsellem of the National Employment Law Project (NELP), Cliff Johnson of the CBPP (202-408-1080), and Steve Savner of CLASP (202-328-5118) are actively monitoring transitional employment programs while also providing technical assistance to policy makers and advocates.

National Employment Law Project
55 John Street, 7th Floor, New York, NY 10038
(212) 285-3025, ext. 106 • nelp@igc.org • (212) 285-3044 (fax)

- Participants in the program work in 9-month positions for 20 hours per week at the minimum wage, which is supplemented by the Earned Income Tax Credit (EITC). Wages are subsidized entirely by the participants' public assistance grants (as authorized by federal and state law), and work expenses, including FICA payroll taxes, are reimbursed by the program.

Vermont's Community Service Employment Program

- In place since 1995, Vermont's Community Service Employment Program is required of TANF participants who reached their time limit on welfare and still cannot find unsubsidized work.
- Vermont has placed 215 participants since November 1995 in public and non-profit wage-paying jobs across the state. Work sites include schools, libraries and other public facilities as well as non-profit agencies.
- The 10-month positions are compensated at the minimum wage, supplemented by the EITC, and provision is made to reimburse work expenses, including FICA payroll taxes.

Philadelphia's Transitional Work Program

- Philadelphia has established the Transitional Work Program which will grow from 250 to 750 jobs over three years in a mix of public sector and non-profit community-based workplaces, serving a total of 3,000 participants.
- Positions will be developed to ensure that participants learn transferable work skills and receive significant on-site support, including workplace mentors.
- Participants will work in 6-month positions for 25 hours per week, and an additional 10 hours per week will expressly provide for workplace training.
- Participants will be compensated at the minimum wage, supplemented by the EITC and a bonus of up to $650 when the participant secures an unsubsidized job. The cost of participants' wages are paid primarily by converting TANF benefits to a wage under an agreement with the State of Pennsylvania.
- The City is actively seeking to secure national and local foundation funding to support the development of a new non-profit agency to administer the program.
- The program is funded with a combination of TANF dollars committed by the State and by City WtW formula funding.

Detroit's Welfare to Work Formula Grant Program

- Beginning July 1, 1998, Detroit's WtW program will create 2,000 wage-paying jobs for TANF participants for the equivalent of 6 months of full-time work. Participants will be placed public agencies and in private for-profit employment with employers who agree to hire suitable participants after the subsidy ends.

San Francisco's New Ways to Work Program

- With funding received from a federal WtW competitive grant, San Francisco will create a 200-person pilot program of wage-based jobs for nine-month positions, with the employer of record being a community-based organization. Wages will be covered by converting the TANF benefits to a wage, which will be supplemented by WtW funds and the EITC.

Welfare Reform: Application of FICA to Workfare Jobs

Summary of Draft Notice

The draft notice establishes that payments that meet the following three-part test will not be subject to FICA taxes or the EITC:

- The only payments the individual receives for the work activity come directly from the state or local welfare agency, or its contractor;
- Payment is funded entirely by TANF and/or food stamps; and
- Size of the payment is limited by welfare laws; and the number of hours is limited by the size of the payment divided by the minimum wage.

The policy would be effective immediately. After considering public comments, the IRS would then issue a formal regulation.

The notice is based on IRS's 1971 "general welfare" doctrine, summarized in the guidance as "Payments by a government unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments."

The guidance notes that "Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents." The guidance then discusses how in many cases the TANF payments are received in lieu of payments a family would have received under AFDC and are based primarily on family need. It then establishes the three part test listed above for those payments that will not be considered wages for tax purposes.

The ruling contains a disclaimer: "This notice does not determine the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act."

Letter from Gerry Shea

The July 30th letter from Gerry Shea said "To the extent language has been added to address concerns regarding potential adverse implications of the Treasury ruling, we appreciate those efforts. At the same time, we do not believe this cures the

problem, because by issuing a directive applying the "general welfare doctrine" to TANF payments where recipients are clearly engaged in services, Treasury's approach still sends the message that TANF recipients engaged in work activities are not like other workers."

FICA Meeting ~~-- 10:00 a.m.~~ 2:30 pm

Issue: Should Treasury proceed with its draft ruling that workfare participants are not subject to income and employment taxes?

Summary of Draft Ruling:

- 3-part test for whether workfare is subject to taxes:
  - The only payments the individual receives for the work activity come directly from the state or local welfare agency, or its contractor.
  - Payment is funded entirely by TANF and/or food stamps.
  - Size of the payment is limited by welfare laws; and the number of hours is limited by the size of the payment divided by the minimum wage.

- Ruling is based in part on IRS's 1971 "general welfare" doctrine, which states that "disbursements by a government to an individual under a legislatively provided social benefit program for the promotion of the general welfare, and that are not made basically for services rendered" are not subject to income or employment taxes.

  Ruling states that a TANF payment may be made both for the promotion of the general welfare and as compensation for services, and it is not practically feasible to determine the relative proportion of each purpose. Therefore, it carves out the 3-part exception above for cases where the primary measure of the amount received is the state's welfare grant rather than the value of services performed.

- Ruling has disclaimer: "No implication is intended as to ... whether an employment relationship exists under any other provision of law, including FLSA."

Concern by Unions/DOL:

- Risk that courts, in determining whether FLSA really applies to workfare position, will import logic of tax ruling that work is not really or entirely compensation for services.

- Unions believe that Treasury has a viable alternative: a 1950 Social Security law says that people employed by states who are "employed to relieve [them] from unemployment" are not covered by FICA.

Response by Treasury:

- Risk that courts will use this ruling to rule that workfare participants are not subject to employment laws appears small to non-existent. Examples given by unions are not convincing.

- The unions' alternative is not promising. The scope of employment it would

cover is not clear (e.g., may not be limited to workfare). Also, it does not deal with income taxes. Fuller evaluation of unions' alternative would take many months.

Draft Talking Points for Unions:

- We appreciate your work in helping Treasury evaluate all of the possible alternatives it has to answer this question.

- However, we understand from Treasury officials that they have serious concerns about your alternative route to a FICA exemption.

- Courts have a significant basis for determining that FLSA and other worker protections apply to those on workfare, including the underlying FLSA law and the May 1997 DOL guidance on workfare. They are very unlikely to turn to a tax ruling as a basis for their decisions.

- We continue to believe that this FICA exemption will help our long-term efforts to ensure that workfare participants retain the essential labor protections we have worked so hard to secure for them.

- A ruling should be issued as soon as possible. We should not allow a continued delay to give the Congressional majority another opportunity to try to roll back worker protections.

- The FICA exemption is also fair in light of Congress's decision that those on workfare are not eligible for the EITC.

- Treasury's ruling, while effective immediately, would be subject to a public comment process, and followed by a regulation that will consider comments received.

- We remain committed to enforcing the application of the FLSA and other worker protection laws to those on workfare. For example, in the current dispute in California, DOL has been vigilant in informing state officials and the public that the state's interpretation of the law is erroneous.

Department Of The Treasury
Office of Tax Legislative Counsel
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

July 27, 1998

cc Bill Marshall 6.7906 or 6.1647
Cynthia Rice

Marvin Krislov fax 219.7057
Stacey Grundman fax 219.9216

To: Diana Fortuna

Fax: 456-7431

Number of pages (including this coversheet): 8

From: Paul Crispino

Tel: 202/622-0224
Fax: 202/622-9260

Comments: Attached is, what should be, the final draft of the workfare notice. If you have any questions, please call me. Thanks.

Latest from Treasury

NOTE: THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND/OR RESTRICTED AS TO OR EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAWS. If the recipient of this message is not the addressee (i.e. the intended recipient), you are hereby notified that you should not read this document and that any dissemination, distribution, or copying of this communication, except insofar as is necessary to deliver this document to the intended recipient, is strictly prohibited. If you have received this communication in error, please notify the sender immediately by telephone, and you will be provided further instructions about the return or destruction of this document. Thank you.

DRAFT

Control Number: RR-109108-97

Part III - Administrative, Procedural, and Miscellaneous

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Notice 98-

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(2) subsidized private sector employment;

(3) subsidized public sector employment;

(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

(5) on-the-job training;

(6) job search and job readiness assistance;

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

SECTION 4. TREATMENT OF TANF PAYMENTS

.01 General Analysis.

The federal income and employment tax consequences of TANF payments generally are determined under the following analysis.

Payments by a governmental unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. See Rev. Rul. 71-425, 1971-2 C.B. 76. Similarly, these payments are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts and circumstances, payments by a governmental unit are basically compensation for services rendered, then the payments are includible in the individual's gross income and are wages for employment tax purposes. Similarly, such payments generally are earned income for EIC purposes.

In addition, § 32(c)(2)(B)(v) of the Internal Revenue Code (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of

title IV of such Act, but only to the extent such amount is subsidized under such State program."

.02 Application of General Analysis to Certain TANF Payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents.

In many of these cases, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed.

These cases typically share, and can be identified by, common characteristics. In cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, will not be earned income for EIC purposes, and will not be wages for employment tax purposes:

(1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to

administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);

(2) The determination of the individual's eligibility to receive any payment is based on need and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i)(I) of the Social Security Act)) and the Food Stamp Act of 1977; and

(3) The size of the individual's payment is determined by the applicable welfare law, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable welfare law) divided by the higher of the federal or state minimum wage.

The federal income and employment tax treatment of TANF payments that do not satisfy each of these three conditions is determined under the general analysis described in section 4.01, above.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in section 4.02 of this notice. Written comments should be submitted by October 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service

Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R (Notice 98-__)
Room 5228 (IT&A:Br2)
1111 Constitution Avenue, NW
Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to: http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS internet site). All comments will be available for public inspection and copying in their entirety.

FURTHER INFORMATION

For further information, contact Mr. Edwin B. Cleverdon at (202) 622-4920 regarding the income tax issues in this notice and Ms. Jean Casey at (202) 622-6060 regarding the EIC and employment tax issues in this notice (not toll-free calls).