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Rev. Rul. 2003-12

Issues

- (1) Are grants individuals receive under a state's program to pay or reimburse certain reasonable and necessary medical, temporary housing, or transportation expenses they incur as a result of a flood includible in gross income?
- (2) Are grants individuals receive under a charitable organization's program to pay or reimburse certain medical, temporary housing, or transportation expenses they incur as a result of a flood includible in gross income?
- (3) Are grants employees receive under an employer's program to pay or reimburse certain reasonable and necessary medical, temporary housing, or transportation expenses they incur as a result of a flood includible in gross income?

Facts

Situation 1. An area within state ST was affected by a flood that was a Presidentially declared disaster as defined in § 1033(h)(3) of the Internal Revenue Code. ST enacted emergency legislation appropriating funds for grants to pay or reimburse medical, temporary housing, and transportation expenses individuals incur as a result of the flood that are not compensated for by insurance or otherwise. ST will not require individuals to provide proof of actual expenses to receive a grant payment. ST's program, however, contains requirements (which are described in the program documents) to ensure that the grant amounts are reasonably expected to be commensurate with the amount of unreimbursed reasonable and necessary medical, temporary housing, and transportation expenses individuals incur as a result of the flood. The grants are not intended to indemnify all flood-related losses or to reimburse the cost of nonessential, luxury, or decorative items and services.

Situation 2. O, a charitable organization described in § 501(c)(3) that is exempt from tax under § 501(a), whose purpose is to provide assistance to individuals who are affected by disasters, also makes grants to distressed individuals affected by the flood described in Situation 1. The grants will pay or reimburse individuals for medical, temporary housing, and transportation expenses they incur as a result of the flood that are not compensated for by insurance or otherwise.

Situation 3. Employer R makes grants to its employees who are affected by the flood described in Situation 1. The grants will pay or reimburse employees for medical, temporary housing, and transportation expenses they incur as a result of the flood that are not compensated for by insurance or otherwise. R will not require individuals to provide proof of actual expenses to receive a grant payment. R's program, however, contains requirements (which are described in the program documents) to ensure that the grant amounts are reasonably expected to be

commensurate with the amount of unreimbursed reasonable and necessary medical, temporary housing, and transportation expenses R's employees incur as a result of the flood. The grants are not intended to indemnify all flood-related losses or to reimburse the cost of nonessential, luxury, or decorative items and services. The grants are available to all employees regardless of length or type of service with R.

Law And Analysis

Section 61(a) provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Rev. Rul. 131, 1953-2 C.B. 112, concludes, in part, that certain payments by an employer to its employees for the purpose of helping the employees defray costs they incurred from personal injury and property loss resulting from a tornado do not come within the concept of gross income to the employees under the predecessor of § 61 because the payments are gratuitous, measured solely by need, not related to services rendered, and designed to place the employees in about the same economic position as they were before the tornado. In 1955, the Supreme Court of the United States held that Congress intended under § 61 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 [47 AFTR 162] (1955), 1955-1 C.B. 207.

The Internal Revenue Service has concluded that payments made by governmental units under legislatively provided social benefit programs for the promotion of the general welfare (i.e., based on need) are not includible in the gross income of the recipients of the payments ("general welfare exclusion"). For example, Rev. Rul. 98-19, 1998-1 C.B. 840, concludes that a relocation payment, authorized by the Housing and Community Development Act of 1974 and funded under the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, made by a local jurisdiction to an individual moving from a flood-damaged residence to another residence, is not includible in the individual's gross income. Likewise, Rev. Rul. 76-144, 1976-1 C.B. 17, concludes that grants received under the Disaster Relief Act of 1974 by individuals unable to meet necessary expenses or serious needs as a result of a disaster are in the interest of general welfare and are not includible in the recipients' gross income.

Section 102(a) provides that the value of property acquired by gift is excluded from gross income. Under § 102(a) a gift "must proceed from a 'detached and disinterested generosity,' ... 'out of affection, respect, admiration, charity or like impulses.'" *Commissioner v. Duberstein*, 363 U.S. 278, 285 [5 AFTR 2d 1626] (1960), 1960-2 C.B. 428, 431. In general, a payment made by a charity to an individual that responds to the individual's needs, and does not proceed from any moral or legal duty, is motivated by detached and disinterested generosity. Rev. Rul. 99-44, 1999-2 C.B. 549. Section 102(c) provides that § 102(a) shall not exclude from gross income any amount transferred by or for an employer to, or for the benefit of, an employee. Governmental grants in response to a disaster generally do not qualify as gifts because the government's intent in making the payments proceeds from its duty to relieve the hardship caused by the disaster. *Kroon v. United States*, Civ. No. A-90-71 [34 AFTR 2d 74-5531] (D. Alaska 1974).

The Victims of Terrorism Tax Relief Act of 2001, Pub. L. No. 107-134, 115 Stat. 2427 (2001), added § 139 to the Code. Section 139(a) provides that gross income does not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides, in part, that the term "qualified disaster relief payment" means any amount paid to or for the benefit of an individual:

- (1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster (§ 139(b)(1));
- (2) to reimburse or pay reasonable and necessary expenses incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement, is attributable to a qualified disaster (§ 139(b)(2)); or
- (3) by a Federal, State, or local government, or agency or instrumentality thereof, in connection with a qualified disaster in order to promote the general welfare (§ 139(b)(4)).

Thus, § 139(b)(4) codifies (but does not supplant) the administrative general welfare exclusion with respect to certain disaster relief payments to individuals. Section 139(b) also provides that the exclusion from income applies only to the extent any expense compensated by such payment is not otherwise compensated for by insurance or otherwise.

Section 139(c) provides that the term "qualified disaster" means:

- (1) a disaster that results from a terroristic or military action (as defined in § 692(c)(2));
- (2) a Presidentially declared disaster as defined in § 1033(h)(3) (generally, a disaster in an area that has been subsequently determined by the President to warrant federal assistance under the Disaster Relief and Emergency Assistance Act);
- (3) a disaster resulting from any event that the Secretary determines to be of a catastrophic nature; or
- (4) with respect to amounts described in § 139(b)(4), a disaster that is determined by an applicable Federal, State, or local authority (as determined by the Secretary) to warrant assistance from the Federal, State, or local government or an agency or instrumentality thereof.

Because "of the extraordinary circumstances surrounding a qualified disaster, it is anticipated that individuals will not be required to account for actual expenses in order to qualify for the [§ 139] exclusion, provided that the amount of the payments can be reasonably expected to be commensurate with the expenses incurred." Joint Committee on Taxation Staff, Technical Explanation of the "Victims of Terrorism Tax Relief Act of 2001," as Passed by the House and Senate on December 20, 2001, 107th Cong., 1st Sess. 16 (2001). As under § 139, the Service will not require individuals to account for actual disaster-related expenses for governmental payments to qualify under the administrative general welfare exclusion if the amount of the payments is reasonably expected to be commensurate with the expenses incurred.

The grants that individuals receive from ST, O, and R, and the payments that the employees receive from their employer in Rev. Rul. 131, are accessions to wealth clearly realized over which the recipients have complete dominion, and therefore come within the concept of gross income under § 61 as described in *Glenshaw Glass*. Thus, these amounts are included in gross income unless specifically excluded by another provision of law. Accordingly, Rev. Rul. 131 is

modified to the extent that it holds that the payments received by the employees from their employer do not come within the concept of gross income.

In Situation 1, the grants made by ST are reasonably expected to be commensurate with the unreimbursed reasonable and necessary medical, temporary housing, or transportation expenses individuals incur as a result of the flood. These expenses are personal, living, or family expenses within the meaning of § 139. Moreover, they are paid to compensate individuals for expenses that are not compensated for by insurance or otherwise. Thus, the grants are in the nature of general welfare and are, therefore, excluded from the recipients' gross income under the general welfare exclusion. The payments also qualify for exclusion from gross income under § 139. Because ST's intent in making the grants proceeds from its duty to relieve the hardship caused by the disaster, not from a detached and disinterested generosity, the grants made by ST do not qualify for exclusion from income as gifts under § 102.

In Situation 2, the grants made by O are designed to help distressed individuals with unreimbursed medical, temporary housing, or transportation expenses they incur as a result of the flood. Under these facts, O's grants are made out of detached and disinterested generosity rather than to fulfill any moral or legal duty. Thus, the grants are excluded from the gross income of the recipients as gifts under § 102. Because payments by non-governmental entities are not considered payments for the general welfare, the grants made by O are not excluded from the recipients' gross income under the general welfare exclusion. Rev. Rul. 82-106, 1982-1 C.B. 16. It is not necessary to reach the question of whether § 139 applies to the grants.

In Situation 3, the grants made by R to its employees do not qualify as gifts under § 102. Also, because payments by non-governmental entities are not considered payments for the general welfare, the grants made by R are not excluded from the recipients' gross income under the general welfare exclusion. The grants, however, are reasonably expected to be commensurate with the unreimbursed reasonable and necessary personal, living, or family expenses that R's employees incur as a result of a flood that is a qualified disaster as defined in § 139(c). Moreover, they are paid to compensate individuals for expenses that are not compensated for by insurance or otherwise. Therefore, R's grants are qualified disaster relief payments that are excluded from the gross income of R's employees under § 139. Similar to the grants in Situation 3, the payments made by the employer described in Rev. Rul. 131 do not qualify as gifts under § 102 and are not excluded from the employees' gross income under the general welfare exclusion. Whether the payments described in Rev. Rul. 131 are included in an employee's gross income depends on whether the payments qualify for exclusion under § 139.

Holdings

Under the facts of this ruling:

(1) Payments individuals receive under a state's program to pay or reimburse unreimbursed reasonable and necessary medical, temporary housing, or transportation expenses they incur as a result of a flood are excluded from gross income under the general welfare exclusion. Such payments also qualify for exclusion under § 139.

(2) Payments that individuals receive under a charitable organization's program to pay or reimburse unreimbursed medical, temporary housing, or transportation expenses they incur as a result of a flood are excluded from gross income under § 102. (3) Payments that employees receive under an employer's program to pay or reimburse unreimbursed

reasonable and necessary medical, temporary housing, or transportation expenses they incur as a result of a flood are excluded from gross income under § 139.

Amounts that are excluded from gross income under this revenue ruling are not subject to information reporting under § 6041.

Effect On Other Documents

Rev. Rul. 131 is modified.

Prospective Application

Pursuant to the authority contained in § 7805(b), this revenue ruling will not apply adversely to payments received on or before January 21, 2003.

Drafting Information

The principal author of this revenue ruling is Sheldon A. Iskow of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling contact Mr. Iskow on (202) 622-4920 (not a toll-free call).