

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

Number: **201147001**

Release Date: 11/25/2011

CC:ITA:B05:MFSchmit

FILES-117962-11

UILC: 108.00-00, 108.05-00

date: August 15, 2011

to: SB/SE: Attn: Martha Boykin  
Stakeholder Liaison, AUS:CLD  
Austin, TX

from: Associate Chief Counsel (Income Tax & Accounting)  
CC:ITA:05 Attn: William A. Jackson

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subject: Tax Treatment of Loan Repayments Made Pursuant to Program M

This Chief Counsel Advice responds to your April 18, 2011, request for assistance regarding the above matter. This advice may not be used or cited as precedent.

LEGEND:

State A =

Agency A =

Agency B =

Agency C =

Program M =

Group M =

Year 1 =

## ISSUES

(1) Whether loan repayments made to participants in State A's Program M are excludable from their gross incomes under section 108(f)(4) of the Internal Revenue Code (the "Code") ?

(2) What, if any, are the reporting requirements and withholding obligations attendant such loan repayments ?

## CONCLUSIONS

(1) Loan repayments received by participants in State A's Program M, as more fully described herein, are excludable from recipients' gross incomes under section 108(f)(4) of the Code.

(2) The repayment amounts made under Program M are not wages, are not subject to withholding for income taxes at source, are excluded from employment (FICA and FUTA) taxes, and are not subject to wage (Form W-2) or any other information (Form 1099 series) reporting under section 6041 of the Code.

## FACTS

State A has in effect a number of programs, including Program M, designed to attract health care professionals to perform services in health care shortage, rural, low-income, and other medically underserved areas of the State.

State A Agencies A, B, and C implemented Program M in 2010 to increase the availability of medical and dental services to a recognized medically underserved, at-risk segment of the State A population, namely Group M. State A has determined that there is a generalized shortage of health services providers for this group across all geographic distributions of the State, in both primary and specialty medical and dental care. Program M allows State A to target this underserved population across all needs areas of the state.

FILES-117962-11

Participants in Program M commit to providing primary and specialized services to the target Group M population for a number of consecutive years, and to meet target numbers of visits of such populations for each 12-month period thereof. State A has established needs-based guidelines for selecting participant health care providers as well as identifying perceived need sites. These criteria allow the Program to target the subject at-risk population across all needs areas of State A.

The goal of Program M is increasing medical and dental services access to target Group M populations, not student loan repayment. Loan repayment funds are provided after each year of satisfactory service levels to Group M populations, and are paid by State Agency C. State Agency B monitors both participation compliance and effectiveness of the Program. Analysis of available Program follow-up data indicates that the geographic distribution of Program M participants effectively addresses the State-wide geographic distribution of the underserved Group M population.

Loan repayments under Program M are limited to educational loans that were made for undergraduate, graduate, medical or dental education at an accredited institution in the United States. Loans consolidated with non-educational loans or with loans obtained by someone other than the service-commitment provider, are not eligible for repayment. Other limitations also apply.

### LAW AND 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, including income from compensation for services, and income from the discharge of indebtedness. 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.

Section 108(f)(4), prior to its recent amendment by the Patient Protection and Affordable Care Act of 2010 (the "Act"), provided for the exclusion from income and employment taxes, of payments received under the National Health Service Corps Loan Repayment Program, and certain State loan repayment programs qualifying under section 338I of the Public Health Service Act.

Section 10908 of the Act amended section 108(f)(4) to expand the exclusion to include amounts received by individuals under "any other State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by such State)." This provision is effective for amounts received by individuals in taxable years beginning on or after December 31, 2008.

FILES-117962-11

Our review of the purposes and operations of Program M shows that the Program is one described in newly amended section 108(f)(4) of the Code. As such, amounts received under Program M are amounts received under a State loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in underserved or health professional shortage areas (as determined by State A), within the intentment of section 108(f)(4) of the Code.

Code sections 3121(a) and 3306(b) define the term “wages” for FICA and FUTA purposes, respectively, as all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specified exceptions. Code sections 3121(a)(2), 3306(b)(16), and 3401(a)(19) provide for purposes of FICA, FUTA, and federal income tax withholding, respectively, that the definition of “wages” does not include any benefit provided to or on behalf of an employee if, at the time such benefit is provided, it is reasonable to believe that the employee will be able to exclude such benefit from income under Code section 108(f)(4). Thus, the repayment amounts are excludible from wages for FICA, FUTA, and federal income tax withholding purposes under Code sections 3121(a)(20), 3306(b)(16), and 3401(a)(19), respectively, and are not subject to wage reporting on Form W-2. Additionally, such repayments do not constitute “discharges of indebtedness” subject to information reporting under section 6050P of the Code (Forms 1099-C), and not being includable in participants’ gross incomes under section 61(a), are also not subject to any other information (Form 1099 series) reporting under section 6041 of the Code.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Thank you for soliciting our views in this matter. If you have any questions concerning

This advice, please contact Michael Schmit or William Jackson, at (202) 622-4960.

Associate Chief Counsel  
Income Tax and Accounting

/s/ William A. Jackson

By \_\_\_\_\_  
William A. Jackson  
Chief, Branch 5  
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Attachment:

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