



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Attention:
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Dear :

This letter responds to your request for information regarding payments made to volunteer firefighters and emergency medical responders. In your letter, you detailed payment plans for volunteer firefighters that include an annual stipend, and a length of service award plan defined under section 457(e)(11)(B) of the Internal Revenue Code (Code). Your request asked whether either of these types of payments are qualified payments under section 139B(a). Additionally, you asked whether qualified payments must be reported to the IRS.

In general, section 61 of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived. Under section 61, Congress intends to tax all gains and undeniable accessions to wealth, clearly realized, over which taxpayers have complete dominion. Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 75 S. Ct. 473, 99 L. Ed. 483, 1955-1 C.B. 207 (1955), 1955-1 C.B. 207; Rev. Rul. 2005-46, 2005-2 C.B. 120.

Section 139B(a) of the Code provides that, for any member of a qualified volunteer emergency response organization, gross income shall not include any qualified payment. Section 139B(c)(2)(A) defines a qualified payment as any payment, whether reimbursement or otherwise, provided by a State or political division thereof on account of the performance of services as a member of a qualified volunteer emergency response organization. Section 139B(c)(2)(B) provides a limitation on the amount that

may be excluded from gross income. The amount excluded from gross income is limited to \$50 for each month that the taxpayer performed such volunteer services during that tax year. If a taxpayer does not provide any volunteer services during any month for a taxable year, any payments that taxpayer receives would not be a qualified payment under section 139B(a).

If a taxpayer receives more than the maximum amount allowed under section 139B(a), the excess is taxable. For example, if a taxpayer provides services for 12 months during the taxable year and receives \$700 in payments for those services, the maximum amount of the exclusion would be \$600 and the remaining \$100 would not be considered a qualified payment.

You asked whether section 139B would exclude payments under the annual stipend plan. If a taxpayer performs services for a qualified volunteer emergency response organization during the taxable year, they can exclude payments for those services subject to the limitations described above.

You also asked whether section 139B would exclude payments under length of service award plans defined under section 457(e)(11)(B). Section 457(e)(11)(A)(ii) provides that a plan paying solely length of service awards to bona fide volunteers or their beneficiaries on account of qualified services performed by such volunteers is treated as not providing for the deferral of compensation under section 457. Section 457(e)(11)(C) defines qualified services as fire fighting and prevention services, emergency medical services, and ambulance services. Section 457(e)(11)(B) provides special rules applicable to a length of service award plan. Section 457(e)(11)(B)(i) defines a bona fide volunteer to include only persons whose only compensation received for performing qualified services are reimbursements for (or reasonable allowances for) reasonable expenses incurred in performing such services or reasonable benefits (including length of service awards) and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers. Sections 457(e)(11)(B)(ii) and (iii) limit the aggregate amount of length of service awards accruing with respect to any year of service by any volunteer. Payments under a length of service award plan for a taxable year are generally provided for qualified services performed prior to the taxable year.

You also asked whether qualified payments must be reported to the IRS. Qualified payments are excluded from income and are not reportable to the IRS. If the firefighters are employees, employers should report payments that are not qualified payments, including the amount of stipends in excess of \$50 per month, on Form W-2, Wage and Tax Statement. If the firefighters are independent contractors, payors should report payments that are not qualified payments, including the amount of stipends in excess of \$50 per month, on Form 1099-NEC, Nonemployee Compensation. Employment tax regulations provide, in general, that when the service recipient has the right to direct and control the worker who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which the result is

accomplished, the worker is considered an employee for employment tax and related information reporting purposes.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2021-1, § 2.04, 2021-1 IRB 1. If you have any additional questions, please contact _____ at _____.

Sincerely,

Christina M. Glendening
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Office of Associate Chief Counsel
(Income Tax & Accounting)