

[Date]

[Address]

Re: Formal Ruling 19-05

Dear [Deleted]:

This is a formal ruling for your client, [Taxpayer], regarding inclusion in “household income” of payments he received for respite care. This ruling is based upon representations in your letter dated [Date].

FACTS

[Taxpayer], Taxpayer, received income from [Corporation], for respite care provided by Taxpayer. The income is for care for individuals who do not live in the Taxpayer’s home. It is paid through a Medicaid Waiver. In your letter, you describe the income as payment for “respite care of difficulty of care adult individuals.”

You have asked whether these payments are included in or excluded from “household income” for purposes of the Vermont property tax rebate and renter rebate programs.

General

Vermont’s property tax adjustment and renter-rebate programs reduce property tax obligations for income-eligible claimants. Title 32, Chapter 154. Income eligibility is determined by the level of the claimant’s “household income” (HHI), which is the Federal adjusted gross income (with certain further adjustments) of all members of the claimant’s

household. 32 V.S.A. §§ 6061(4), (5); 6066. Generally, the lower the HHI, the greater the reduction in property tax obligation.

Statutory Construction and Burden of Proof

Because the property tax adjustment lowers a homeowner's property tax obligation (or lowers the renter's portion of rent which represents property taxes on the rental unit), it thereby relieves the claimant of a property tax burden he would otherwise bear. Tax exemptions are strictly construed. Hopkinton Scout Leaders Ass'n v. Town of Guilford, 2004 VT 2, ¶ 6 (“[T]ax exemption statutes are strictly construed by confining their meaning to the express letter or necessary scope of their language.”). Any doubts about application of an exemption “will be interpreted against the exemption.” *Id.*

In addition, the taxpayer must prove eligibility for the tax reduction beyond a reasonable doubt. World Publications, Inc. v. Vermont Dept. of Taxes, 2012 VT 78, ¶ 8 (2012) (“Any tax exemption provision must be strictly construed against the exemption, and to doubt is to deny the exemption; the taxpayer has the burden of clearly establishing the exemption beyond a reasonable doubt.”); *see also* Bell Atlantic NYNEX Mobile, Inc. v. Commissioner of Revenue Services, 273 Conn. 240, 251-252 (2005) (“[B]ecause [a tax credit] operates in a manner analogous to a tax exemption in that it relieves potential taxpayers of a tax burden that they would otherwise bear, we must construe it strictly against the party claiming the credit . . . it is well settled that the burden of proving entitlement to a claimed tax exemption rests upon the party claiming the exemption.”); INDOPCO, Inc. v. Comm’r, 503 U.S. 79, 84 (1992) (A “deduction is a matter of legislative grace and . . . the burden of clearly showing the right to the claimed deduction is on the taxpayer.”).

Certain Social Security payments added back for household income

When calculating HHI, one of the adjustments to Federal adjusted gross income (AGI) is the add-back of “payments received under the [F]ederal Social Security Act . . . to the extent not included in adjusted gross income.” 32 V.S.A. § 6061(5)(B).

You state that the respite care payments are through a Medicaid waiver. If the payments are made through the Social Security program, they are either already in AGI or, to the extent they are not, must be added back for calculation of HHI.

Certain foster care and family care payments excluded from household income

If, however, the respite care payments are included in AGI, they may be subtracted when calculating HHI if they are for “adult foster care” or are made “to a family” for support of certain disabled persons:

[P]ayments made by the State pursuant to 33 V.S.A. chapters 49 and 55 for foster care, or payments made by the State or an agency designated in 18 V.S.A. § 8907 for adult foster care or to a family for the support of a person who is eligible and who has a developmental disability.

32 V.S.A. § 6061(5)(C).

Title 33 contains human services laws. Chapter 49 payments are for foster care for child welfare, and Chapter 55 of Title 33 is repealed. Neither of these Title 33 provisions would apply to adult respite care payments.

Title 18 contains health laws. Section 8907 is titled “Designation of agencies to provide mental health and developmental disability services.” This section provides only that the relevant Commissioners will “ensure that community services . . . throughout the State are provided” to certain disabled persons, and that the Commissioners “shall designate public or private nonprofit agencies to provide or arrange for the provision of these services.” Section 8907 does not mention “respite care” or “difficulty of care” payments.

The payments you describe are for “respite care.” As noted, respite care payments are not mentioned in Section 8907. They are also not within the express letter of payments for “adult foster care” as required by the HHI exclusion statute. You also state that the payments to Taxpayer are for “individuals” who “do not live in [Taxpayer’s] home.” This statement implies that Taxpayer is not related to the “individuals” for whom he provides respite care, and thus raises reasonable doubt as to whether the payments to Taxpayer are payments “to a family” of the disabled person, as required by the HHI exclusion statute.

Conclusion

Since the claimant bears the burden of proving that he is eligible for the property tax adjustment or renter rebate benefit, he bears the burden of proving that he is income-eligible for the benefit. Income eligibility is measured by household income, and the claimant thus has the burden of proving that an item of income he received is not part of household income. Here, the respite care payment you describe does not meet the literal statutory requirements for exclusion from household income, and you have provided no other evidence that the payment is excludable. For these reasons, the respite care income must be included in household income in calculating the allowable benefit.

GENERAL PROVISIONS

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.

Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

This ruling will be made public after deletion of the taxpayer's name and any information which may identify the taxpayer. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further

information that might identify the taxpayer. The final discretion as to deletions rests with the Commissioner.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Commissioner signed the original ruling on May 13, 2019.

Kaj Samsom
Commissioner of Taxes

Date