

MEMORANDUM

State of Alaska

Department of Law

TO: Michael Buller
Deputy Executive Director
Alaska Housing Finance Corp.

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FILE NO.: 66010276

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FROM: Mary Ellen Beardsley
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SUBJECT: Taxability of payments
made under the Energy
Rebate Program

You have inquired whether payments made to participants in AHFC's Energy Rebate Program are exempt from federal taxation and whether AHFC is required to issue a Form 1099-G to individuals who receive payments under this program. The answer to the first issue is no and the answer to the second issue is yes.

The Sixteenth Amendment to the US Constitution provides that "incomes, from whatever source derived" may be taxed. Congress adopted Section 61(a) of the Internal Revenue Code (I.R.C.) in furtherance of the Sixteenth Amendment. Section 61(a) provides that gross income includes "all income from whatever source derived."

Therefore, the starting point is that payments to individuals by AHFC under the Energy Rebate Program will be considered income unless they fall within one of the exceptions or exclusions established by the Internal Revenue Service. *See*, I.R.C. §§ 101-139. One such exclusion is the "general welfare exclusion." This exclusion will allow payments to individuals by governmental units to be excluded from gross income for federal tax purposes if the payments are made under legislatively provided "social benefit programs for the promotion of the general welfare."

To qualify under the "general welfare exclusion," the payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (based on need), and (iii) not represent compensation for services. *See*, *Rev. Rul. 75-246*, 1975-1 C.B. 24; *Rev. Rul. 82-106*, 1982-1 C.B. 103. For example, governmental payments to help individuals meet disaster-related expenses are based on need and will fall within the exclusion. However, governmental payments made without regard to financial status, health, educational background, or employment status are not considered need based and, therefore, will not qualify under the general welfare exclusion. *See*, *Rev. Rul. 76-131*, 1976-1 C.B. 16; -1 C.B. 16; *Rev. Rul. 85-39*, 1985-1 C.B.21. Permanent Fund Dividends are a good example of governmental payments that are not covered by the

exclusion for they are payable regardless of financial status, health, educational background or employment status.

In the case of the energy rebate payments by AHFC, they are not based on need for the program is open to any person who applies. The program is not limited to low and moderate income individuals. In addition, the payments are not in the nature of relief payments made for the promotion of the general welfare. Finally, the payments to the individuals are in the nature of compensation for services rendered to the individual. Therefore, the energy rebate payments paid by AHFC are considered income for purposes of § 61(a) do not fall within any exception or exclusion. If the program was limited to low-income persons for the purpose of reducing the cost of energy consumption, then, under Revenue Ruling 78-170, 1978-1 C.B. 24, the payments would be considered relief payments and not includible in the gross income of the recipient.

Under § 6041 of the I.R.C., governmental benefits of more than \$600 in any calendar year are subject to information reporting by the payor (AHFC) if they are not covered by the general welfare exclusion or some other exclusion. The applicable form to be prepared by AHFC is Form 1099-G, Certain Government Payments. This form requires the reporting of taxable grants from a federal, state or local government.

In conclusion, it appears that payments by AHFC to participants of the Energy Rebate Program are taxable income to the recipient. If the amount paid by AHFC exceeds \$600, then AHFC is required to issue a Form 1099-G to the recipient.

If you have any questions or need further assistance please do not hesitate to contact me.

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