

ACF

Administration
for Children
and Families

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration for Children, Youth and Families**

1. Log No: ACYF-IM-83-8

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4. Key Words: Tax Treatment of Foster Care Payments: Special Foster Care

INFORMATION MEMORANDUM

TO: STATE ADMINISTRATORS OF STATE PUBLIC WELFARE AGENCIES, CHILD WELFARE SERVICES STATE GRANT PROGRAMS, TITLE IV-E FOSTER CARE MAINTENANCE PAYMENTS PROGRAMS; STATE FOSTER CARE PROGRAMS.

SUBJECT: Exclusion From Gross Income (for Federal Income tax Purposes) of Certain Foster Care Maintenance payments.

LEGAL AND RELATED REFERENCES: Section 102 of Public Law 97-473; Section 130, 131 and 132 of the Internal Revenue Code of 1954, as amended.

INFORMATION: New statutory provisions governing the Federal income tax treatment of certain foster care maintenance payments and "difficulty of care" enacted as section 102 of the Periodic Payments Settlement Act of 1982, P.L. 97-473. These new provisions resolve several long standing questions regarding the treatment of foster care payments as income to the care provider. Until passage of this new law, the issue of how to handle foster care payments under the Internal Revenue Code's definition and tax treatment of "income" was unclear. Federal statutory language now clearly establishes the definitions, exclusions and policy necessary to resolve this matter. A copy of the new law is attached for your reference and use. The section references in the statutory language are to sections of the Internal Revenue Code of 1954, as amended by P.L. 97-473.

INQUIRIES TO: Regional Program Directors, ACYF.

Signed: Clarence E. Hodges Commissioner

[Attachment](#) - Public Law 97-473

Attachment

PUBLIC LAW 97-473

Section I. Amendment of 1954 Code

Whenever in Title I or II an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

TITLE I - INCOME TAX PROVISIONS

SEC. 102. Exclusion from gross income for certain foster care payments

- a. In General - Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) as amended by section 101(b), is amended by redesignating section 131 as section 132 and by inserting after section 130 the following new section:

Section 131. Certain Foster Care Payments

- a. General Rule - Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.
- b. Qualified Foster Care Payment Defined - For purposes of this section -
 1. In General - The term "qualified foster care payments" means any amount -
 - A. which is paid by a State of political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and
 - B. which is
 - i. paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or
 - ii. an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).
 2. Qualified Foster Child - The term "qualified foster child" means any individual who -
 - A. has not attained age 19, and
 - B. is living in a foster family home in which such individual was placed by -
 - i. an agency of a State or political subdivision thereof, or
 - ii. an organization which is licensed by a State (or political subdivision thereof) as a child-placing agency and which is described in section 501(c)(3)

and exempt from tax under section 501(a).

- c. Difficulty of Care payments - For purposes of this section
 - 1. Difficulty of Care Payments - The term "difficulty of care payments" means payments to individuals which are not described in subsection (b)(1)(B)(i), and which -
 - A. are compensation for providing the additional care of a qualified foster child which is -
 - i. required by reason of a physical, mental, or emotional handicap of such child with respect to which the State has determined that there is a need for additional compensation, and
 - ii. provided in the home of the foster parent, and
 - B. are designated by the payor as compensation described in subparagraph (A).
 - 2. Limitation based on number of children - In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 10 qualified foster children.

- b. Clerical Amendment. - The table of sections for part III of subchapter B of chapter 1 is amended by striking out the item relating to section 131 and by inserting in lieu thereof the following items:
 - Sec. 131 Certain foster care payments.
 - Sec. 132 Cross references to other Acts.

- c. Effective Date. - The amendments made by this section shall apply to taxable years beginning after December 31, 1978.