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NOTICE 15-16

NO WITHHOLDING ON CERTAIN MEDICAID WAIVER PAYMENTS
(DECEMBER 23, 2015)

Advice has been requested regarding whether Kansas withholding is required on certain Medicaid waiver payments. This Notice addresses that topic.

On February 23, 2015, the IRS issued a Question and Answer document under the caption "Certain Medicaid Waiver Payments May Be Excludable From Income". In that document the IRS stated:

> On January 3, 2014, the Internal Revenue Service (Service) issued Notice 2014-7, 2014-4 I.R.B. 445. Notice 2014-7 provides guidance on the federal income tax treatment of certain payments to individual care providers for the care of eligible individuals under a state Medicaid Home and Community-Based Services waiver program described in section 1915(c) of the Social Security Act (Medicaid Waiver payments). Section 1915(c) enables individuals who otherwise would require care in a hospital, nursing facility, or intermediate care facility to receive care in the individual care provider's home. The notice provides that the Service will treat these Medicaid waiver payments as difficulty of care payments excludable from gross income under § 131 of the Internal Revenue Code.

The Notice (https://www.irs.gov/irb/2014-4_IRB/ar06.html) and Questions and Answers (https://www.irs.gov/Individuals/Certain-Medicaid-Waiver-Payments-May-Be-Excludable-From-Income) prepared by the IRS address a variety of situations concerning payments for care of an individual, including whether the care provider is an employee of an agency, an employee of the individual care recipient, or an independent contractor. They also address the question of when a payment is exempt from federal income tax as a Medicaid waiver payment, and when a payment is subject to federal income tax withholding. Understanding how payments are treated for federal income tax purposes is essential in deciding whether the payments are subject to Kansas income tax withholding.

If a care provider is an employee of an agency or of the individual care recipient a payment made to such person is considered to be wages. Kansas law provides that withholding on wages is required only when those wages are subject to federal income tax withholding. The controlling statute, K.S.A. 79-3296, provides, in pertinent part:

(a) Every employer who is required under federal law to withhold upon wages pursuant to the federal internal revenue code shall, whenever the wage recipient is a resident of Kansas or the wages shall be paid on account of personal service performed in Kansas, withhold and deduct from such wages an amount to be determined in accordance with 79-32,100d.

Under the terms of IRS Notice 2014-7, and the Questions and Answers which explain it, certain Medicaid Waiver payments are not subject to federal income tax withholding. As a result, in accordance with Kansas law, these payments are not subject to Kansas income tax withholding.

As a general rule, an employer with multiple employees, such as an agency, will register with the Department of Revenue so it can report and remit withholding tax. This is because employers with multiple employees typically pay at least some wages that are subject to federal and state income tax withholding. In other words, while Medicaid Waiver payments made by the employer may be exempt from Kansas income tax withholding other payments made to the same employee, or other employees, may be subject to Kansas withholding.

On the other hand, when an individual care recipient is considered an employer for purposes of Medicaid Waiver payments there is no need for such person to register with the Department. This is because the only wages the individual care recipient / employer pays to the employee(s) are not subject to federal or Kansas withholding tax. Since there is no requirement to withhold federal or Kansas income tax in this situation there is no need for the individual care recipient to register for Kansas income tax withholding.

TAXPAYER ASSISTANCE

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