

OneMoreThingAboutthe GeneralWelfareException

To the Editor:

I recently wrote about the general welfare exception (GWE) from gross income, updating *Tax Notes* readers with the last four years worth of GWE authorities. See Wood, "Updating General Welfare Exception Authorities," *Tax Notes*, June 22, 2009 p. 1443, *Doc 2009-11813*, or *2009 TNT 118-6*. Since it may be at least a few more years before there is sufficient additional discussion of the GWE to prompt a further catalog of authorities, and since notable new authority was just released, I want to offer one more thing.

With propitious timing, just as my last article was published, the IRS issued Rev. Rul. 2009-19, 2009-28 IRB

COMMENTARY/LETTERSTOTHEEDITOR

1, *Doc 2009-14273, 2009 TNT 119-5*. This is an important ruling, allowing an exemption from income under the auspices of the GWE for certain Pay-for-Performance Success Payments benefiting homeowners under the Home Affordable Modification Program (HAMP).

In our current economic slump, with particular pain in the housing market, the government announced the Homeowner Affordability and Stability Plan. Given our current penchant for acronyms, it is now known as HASP. This plan helps at-risk homeowners modify their mortgages to avoid foreclosure. HAMP is a key component.

HAMP allows homeowners who make timely payments on their modified loans to have incentive payments made on their behalf to their lenders or investors. It is a kind of pay and play as you go arrangement. Each month that a homeowner makes a mortgage payment on time, the homeowner accrues an amount toward a Pay-for-Performance Success Payment.

You might think of it as green stamps for your home mortgage. A payment of the accrued amounts is made

annually, reducing the principal balance on the homeowner's mortgage loan. Homeowners are allowed to receive principal reductions of up to \$1,000 per year for up to five years (subject to a de minimis threshold).

The IRS has ruled that this Pay-for-Performance Success Payment arrangement made under HAMP promotes the general welfare. It helps homeowners who are at risk of losing their homes pay the mortgage loans on their primary residences. Notably, it does not involve any payment for services. As a result, the Service concluded that the payments meet the requirements of the GWE and can therefore be excluded from the homeowner's gross income.

As our economy continues to struggle, we might expect to see additional applications of the GWE in the future.

Very truly yours,

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