

**Observations by Brian Rubin, a former IRS Agent and Former IRS Attorney** (*prior to my life taking a fork in the road with the birth of Mitchell Jay Rubin, 33 years ago*):

1. The notice is stating that the IRS is reversing its long standing position on these payments by “stretching” (for lack of a better term) the language in IRS Code Section 131 which relates to “foster care” payments to Medicaid waiver payments. The notice concludes that if the services are provided in the home of the care provider, it doesn’t matter if the care provider is related or not related to the individual. The notice also stretches to reach the conclusion that the notice would apply to what is commonly referred to as the “agency model” where, as an example, the parent is the care provider.
2. Be aware that just because the IRS excludes the payments from “federal” Income Tax does **not** preclude the State from electing to include them, tax them for State Income Tax. Since the Illinois tax return starts with the Federal Adjusted Gross Income (AGI), it would have to be “added back”, as other federal not taxable income, but state taxable income, are already done. I believe this would require Illinois legislation.
3. If the payments are subject to FICA (Social Security Tax) and/or FUTA (Federal Unemployment Tax) was specifically **not** addressed in the notice. The notice states: “*This notice does not address whether qualified Medicaid payments excluded from income under this notice may be subject to tax under the Federal Insurance Contributions Act (FICA) or the Federal Unemployment Tax Act (FUTA) in certain circumstances*”. Further, the notice obviously does **not** address State Income Tax or State Unemployment Tax.
4. While the notice is “effective” for payments received after January 3, 2014, the notice specifically provides that “taxpayers may apply this notice in taxable years for which the period of limitation on claims for credit or refund under IRS Section 6511 has not expires.” That is generally three years.

## **Brian Rubin**

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