Guidance under Section 132(g) for the Exclusion from Income of Qualified Moving Expense Reimbursements

Notice 2018-75

PURPOSE

This notice provides guidance on the application of section 132(g)(2) of the Internal Revenue Code (Code) to employer reimbursements in a taxable year beginning after December 31, 2017, for qualified moving expenses incurred in connection with a move that occurred prior to January 1, 2018. Specifically, this notice provides that the suspension of the exclusion from income provided by section 132(a)(6) under section 132(g)(2) does not apply to amounts received directly or indirectly by an individual in 2018 from an employer for expenses incurred in connection with a move occurring prior to January 1, 2018, that would have been deductible as moving expenses under section 217 of the Code if they had been paid directly by the individual prior to January 1, 2018, and that otherwise satisfy the requirements under section 132(g)(1). Such amounts will be qualified moving expense reimbursements under section 132(g)(1) that are excludable under section 132(a)(6).

BACKGROUND

Section 132(a)(6) provides that gross income does not include qualified moving expense reimbursements. Section 132(g)(1) defines a “qualified moving expense reimbursement” as any amount directly or indirectly received by an individual from an

employer as payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if such expenses were directly paid or incurred by the individual. The term qualified moving expense reimbursement does not include any payment for (or reimbursement of) an expense that was actually deducted by the individual in a prior taxable year. Qualified moving expense reimbursements are also excludable from wages and compensation for employment tax purposes. See sections 3121(a)(20), 3231(e)(5), 3306(b)(16), and 3401(a)(19).

Section 11048(a) of the Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2088 (2017) (the "Act"), amended section 132(g) by adding paragraph 132(g)(2). Section 132(g)(2) provides that section 132(a)(6) does not apply to taxable years beginning after December 31, 2017, and before January 1, 2026, except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station. Section 11048(b) of the Act provides that this amendment applies to taxable years beginning after December 31, 2017.[1]

The Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) have received questions concerning the applicability of section 132(a)(6) to payments or reimbursements received after December 31, 2017, for

[1] Similarly, section 11049(a) of the Act enacted section 217(k), which suspended the deduction for certain moving expenses provided by section 217 of the Code for any taxable year beginning after December 31, 2017, and before January 1, 2026, except for individuals who are members of the Armed Forces of the United States on active duty and meet the requirements of section 217(g).

expenses resulting from moves that occurred prior to January 1, 2018.[2] Specifically, the questions concern the following two situations:

(1) An employer pays a third party moving service provider after December 31, 2017, for moving services provided to an individual prior to January 1, 2018; or

(2) An employer reimburses an individual after December 31, 2017, for expenses incurred in connection with a move by the individual prior to January 1, 2018.

In inquiring whether, with respect to employment-related moves occurring in 2017, the change made by section 132(g)(2) prohibits an exclusion from income for payments for moving services made to third parties or reimbursements for moving services made to individuals on or after January 1, 2018, stakeholders noted that given the time of the year when the TCJA was passed, individuals who relocated in 2017 but who did not receive payment or reimbursement until 2018 would not have anticipated that the expected payment or reimbursement could become taxable if received in 2018 rather than 2017.

DISCUSSION

The exclusion from income provided in section 132(g)(1) applies if, among other things, the expenses being paid or reimbursed (1) would be deductible under section 217 if directly paid or incurred by the individual, and (2) the expenses were not deducted by the individual. Section 11048(b) of the Act, providing the effective date for the suspension of the exclusion from income for qualified moving expense reimbursements, does not specify whether the suspension applies to all payments or

[2] Since individual taxpayers generally have the calendar year as their taxable year and employers report income and wages to employees on a calendar year basis, as a practical matter, section 132(g)(2) is generally effective on January 1, 2018. Accordingly, this notice generally refers to moving expenses paid or incurred in 2017 and payments or reimbursements received in 2018.

reimbursements received after December 31, 2017, irrespective of when the move occurred, or, alternatively, only to payments or reimbursements for expenses incurred for moves that occurred after December 31, 2017.

This notice provides that the suspension of the exclusion in section 132(a)(6) applies only to payments or reimbursements for expenses incurred in connection with moves that occurred after December 31, 2017. Thus, if an individual moved in 2017 and the expenses for the move would have been deductible by the individual under section 217 as in effect prior to the amendments made by the Act if they had been paid directly by the individual in 2017, and the individual did not deduct the moving expenses, then the amount received (directly or indirectly) in 2018 by the individual from an employer as payment for or reimbursement of the expenses will be a qualified moving expense reimbursement under section 132(g)(1). As such, the payment or reimbursement of the expenses is excludable from income as a qualified moving expense reimbursement under section 132(a)(6), and the amount is both excludable from wages under sections 3121(a)(20), 3306(b)(16), and 3401(a)(19) and excludable from compensation under section 3231(e)(5).[3]

Employers that have included such amounts in individuals' wages or compensation for purposes of federal employment taxes and have withheld and paid federal employment taxes on these amounts may use the adjustment process under section 6413 or the refund claim process under section 6402 to correct the overpayment of federal employment taxes on these amounts (for information on these adjustment

[3] Some of the employer payments covered by this Notice may also be excludable from the general definition of "compensation" under section 3231(e).

and refund claim processes see the regulations under these sections, Rev. Rul. 2009-39, 2009-52 I.R.B. 951 (2009), Publication 15 (Circular E), Employer's Tax Guide, and the Instructions for Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund).

DRAFTING INFORMATION

The principal author of this notice is Andrew K. Holubeck, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. Holubeck at (202) 317-4774 (not a toll-free number).