

Excluded Difficulty of Care Payments are Earned Income for EIC

Notice 2014-7 permits taxpayers who receive Medicaid waiver payments pursuant to a state Medicaid waiver program for the care of the taxpayer's disabled children as foster care payments. If the conditions are met, these payments may be excluded from income.

Mary Feigh received these kinds of payments to care for her disabled adult child. She excluded the payments from income as foster care payments based on Notice 2014-7. However, she included the payments as nontaxable earned income for purposes of the Earned Income Tax Credit and the Additional Child Tax Credit producing almost \$4,000 of refundable credits.

IRS denied this treatment stating the payments were not "earned income" for these credits since the amounts were not "includible in gross income" as required by IRC section 32. IRS appears to have no problem with these payments being "earned income" if they are taxable, but denied this treatment when they were excludible under Notice 2014-7.

Mrs. Feigh argued there was nothing in the code, regulations, or judicial authority that stated these were not "includible in gross income" except for Notice 2014-7.

Tax Court had to decide if Notice 2014-7 made the payments were "includible in gross income". Part of the Court's focus is on the difference between the words "includible" and "included". The Court determined the payments may not be "included" in the taxpayer's gross income, but they are "includible". Therefore, Tax Court stated these payments are considered "earned income" for purposes of these credits. This means they could help or hurt the taxpayers. In the case of Mary & Edward Feigh, the inclusion of these amounts helped them obtain larger credits.

This case is appealable.

Mary K. & Edward M. Feigh, 152 TC No. 15 (May 15, 2019). This case can be found at ustaxcourt.gov by clicking on Opinion Search and entering FEIGH in the Case Name box.

This text has been shared by David & Mary Mellem, EAs & Ashwaubenon Tax Professionals.

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