



STATE OF MAINE  
DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES  
BURTON M. CROSS BUILDING, 3<sup>RD</sup> FLOOR  
78 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0078

SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

JANET T. MILLS  
GOVERNOR

KIRSTEN LC FIGUEROA  
COMMISSIONER

December 12, 2023

William M. Paul, Acting Chief Counsel  
Office of the Chief Counsel, Internal Revenue Service  
1111 Constitution Avenue  
Washington, DC 20224

**Via E-mail and USPS Regular Mail**

Dear William M. Paul:

At the direction of Governor Janet Mills, I write today to express the State of Maine's concern and deep disappointment over the Internal Revenue Services' (IRS's) apparent reversal of its position concerning the Federal taxation of the \$450 Winter Energy Relief Payments passed by the State Legislature and distributed to 880,000 Maine taxpayers from January through March 2023. The purpose of this program was to provide relief to Maine taxpayers with the lingering effects of the pandemic, not to provide an additional Federal revenue source. Therefore, Maine designed this Winter Energy Relief Payment Program to be excluded from Federal income either through the (1) Federal disaster relief exemption under Internal Revenue Code Section 139 and/or (2) general welfare exclusion.

On March 13, 2023, at the direction of the Governor and urging of the State Legislature, Maine Revenue Services (MRS) submitted Ruling Requests to the IRS to receive a determination about whether Maine's Winter Energy Relief Payments would be exempt from Federal taxation, as were the similar Maine Covid Pandemic Relief Payments issued in 2022. MRS submitted its Ruling Requests through a consolidated and coordinated program facilitated by the Federation of Tax Administrators (FTA), along with many other states with similar questions on relief payments.

On August 30, 2023, the IRS held a joint conference call with FTA and state tax officials, including from MRS, to discuss IRS's guidance. Shortly after the call, the IRS published [IRS Notice 2023-56](#), titled Federal Income Tax Consequences of Certain State Payments. In this updated guidance, on pages 14 and 15, the IRS outlines state payments made for the promotion of general welfare "are not includable in an individual's Federal gross income." Further, in the paragraph that follows, the guidance provides a specific example of "State G" that details a program similar to Maine's Winter Energy Relief Payment Program, "State payments to eligible residents under an 'Energy Relief Payment Program' to help those low-income residents who may not otherwise be able to afford to pay their heating bills."

At the conclusion of this example, the IRS guidance concludes “State payments that State G makes under its Energy Relief Payment Program are made for the promotion of general welfare and are excluded from Federal gross income under the general welfare exclusion.”

Other than the identification of the State and the payment amount, the example cited in IRS Notice 2023-56 is a close description of Maine’s Winter Energy Relief Payment program. Further, the IRS does not define in the guidance what constitutes “low-income” for purposes of the general welfare example. MRS then followed up with its IRS Liaison for clarification and to confirm how the guidance applied to Maine. In a written email response, dated September 5, 2023, the IRS Liaison confirmed that Maine’s Ruling Requests were part of the IRS Notice 2023-56 and that it appeared that Maine’s question for its Winter Energy Relief Payment program was covered by the example noted.

Based on what appeared to be final guidance from the IRS, the State of Maine informed its taxpayers – as did many other states, [most notably Minnesota](#) – that it was reasonable to conclude that the payments received under Maine’s Winter Energy Relief Payment Program were also not taxable for Federal income tax purposes.

However, during a scheduled phone call on December 7, 2023 between the IRS and MRS, the IRS indicated that Maine’s Winter Energy Relief Payments would be subject to Federal tax – an apparent reversal of the IRS’s position. To make matters worse, the IRS then confirmed they were not revising or updating their previously issued guidance to reflect this newfound and questionable position. Despite its apparent change in position, when asked by MRS to provide its decision in writing, along with its justification for the position, the IRS declined.

In addition to the IRS’s new position on the application of the general welfare conclusion, the IRS communicated in the December call that the payments were not exempt disaster relief payments, having been enacted too late in the pandemic, despite the still ongoing Federal disaster and public health emergency declarations. Specifically, MRS noted to the IRS that the Winter Energy Relief Payment program was signed by the Governor on January 4, 2023, well before the end of the federal COVID emergency on May 11, 2023. Further, over 99 percent of payments were issued prior to the end of the COVID emergency, by March 31, 2023.

This verbal guidance by the IRS is not supported by the written guidance published by the IRS and results in arbitrary and unnecessary confusion for the taxpayers of our state. We are concerned that Maine taxpayers and practitioners may not get this update in a timely manner, and that the IRS will hold taxpayers responsible for a decision the IRS is not even willing to put in writing or publicly announce.

In our view, and as was previously communicated to MRS by the IRS Liaison, the official guidance as written and issued earlier this year fully supports the contention that the State of Maine’s Winter Energy Relief Payments are exempt from Federal tax. On behalf of the taxpayers of the State of Maine, I am deeply disappointed by this apparent reversal – which comes right on the eve of tax season and the cold winter months in Maine – and I remain frustrated with the lack of clarity from the IRS.

We respectfully ask that the IRS follow its own guidance from earlier this year and not Federally tax Maine's \$450 Energy Relief Payments.

Sincerely,



Kirsten LC Figueroa, Commissioner  
Department of Administrative and Financial Services  
State of Maine

CC: Courtney Kay-Decker, Deputy Chief, Taxpayer Experience Office, Internal Revenue Service  
Angella Warren, Branch Manager, Internal Revenue Service  
Lily Batchelder, Assistant Secretary of Tax Policy, Dept. of the Treasury  
U.S. Senator Susan Collins  
U.S. Senator Angus King  
U.S. Representative Chellie Pingree  
U.S. Representative Jared Golden  
Scott Ogden, Communications Director, Governor's Office  
Anya Trundy, Director of Legislative Affairs, Dept. of Administrative and Financial Services