Internal Revenue Service

memorandum

CC:TL-N-9021-86
Br3:PSHorn

date: OCT 03 1986

to: Regional Counsel CC:C
Central Region

from: Director, Tax Litigation Division CC:TL

subject: [redacted]

This is in response to your request for technical advice dated August 25, 1986, with regard to the following issue in the above-captioned case.

ISSUE

Whether periodic subsistence payments received by taxpayers from the Railroad Retirement Board constitute gross income under section 61(a)? 0061.21-00.

CONCLUSION

The payments received constitute gross income.

FACTS

The statement of facts set forth in your request is incorporated herein by reference.

DISCUSSION

Your request for technical advice was occasioned by petitioners' statement to the Court regarding the IRS concession of the same issue in Littleboy v. Commissioner. Since this case was conceded subsequent to PLR 8411063, which holds that these subsistence payments on this issue are income, you inquire whether the IRS has changed its position.

The Appeals Officer involved in the Littleboy case was contacted as to the circumstances surrounding the concession of that case. It was learned that taxpayer received his statutory notice of deficiency via a Service Center program dealing with individuals receiving these Railroad Retirement Board payments rather than after an examination audit. After the petition was filed in the Tax Court, the case was referred to Appeals. In the absence of any developed case file or other background information, taxpayer's representations in its protest were accepted as true by Appeals and the case was conceded. These events indicate, and both this office and the Appeals Officer involved concur, that the consession of the Littleboy case in no way reflects any change in IRS position from that set forth in the prior ruling. Therefore the amounts received by taxpayers herein are to be treated as income in accordance with the standards set forth in the ruling.

For your information we have also attached an earlier letter from the IRS to the Railroad Retirement Board regarding this issue. That letter in all likelihood was the basis for PLR 8411063. Finally, we are aware of at least one refund case raising this issue, Herbert v United States, TL-R-1092-86, pending in the Southern District of New York. Ray Canals, FTS 264-3062, is the attorney in Manhattan District Counsel responsible for that case.

ROBERT P. RUWE
Director

By: DANIEL J. WILES
Chief, Branch 3
Tax Litigation Division

Attachments:
As stated.