

# Insights

## IRS Adds Frequently Asked Questions Addressing Taxation of Provider Relief Payments

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Late last week, the Department of Health and Human Services (“HHS”) updated its Frequently Asked Questions (“FAQ”) webpage to provide guidance on the tax treatment of payments received under the Public Health and Social Services Emergency Fund (the “Provider Relief Fund”). The new FAQ makes it clear that a payment received from the Provider Relief Fund is includable in gross income of for-profit providers. However, Provider Relief Fund payments received by tax-exempt health care providers are not subject tax, unless the payment relates to an unrelated trade or business activity.

### **Background**

The Provider Relief Fund provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) created a \$100 billion fund to reimburse eligible health care providers for health care-related expenses or lost revenues attributable to the COVID-19 pandemic. An additional \$75 billion was appropriated to the Provider Relief Fund under the Paycheck Protection Program and Health Care Enhancement Act. In early April, the HHS began issuing Provider Relief Fund payments to selected health care providers.

### **Tax Treatment of Provider Relief Fund Payments**

In enacting the CARES Act, Congress did not address the tax treatment of the Provider Relief Fund payments. Many providers and practitioners were hopeful that the IRS and HHS might determine that the Provider Relief Payments constituted qualified disaster relief payments, excludable from income under section 139 of the Internal Revenue Code (the “Code”). However, without much fanfare, both the IRS (on July 6) and HHS (on July 10), in updates to existing FAQ’s, made clear this would not be the case. Both stated that “[a] payment to a business, even if the business is a sole proprietorship, does not qualify as a qualified disaster relief payment under section 139.” Instead, payments from the Provider Relief Fund are includable in gross income under section 61 of the Code.

However, both the IRS and the HHS distinguished payments made to tax-exempt health care providers, described in section 501(c) of the Code. Provider Relief Fund payments made to these tax-exempt providers are not subject to federal income tax unless the payments reimburse the provider for expenses or lost revenue attributable to an unrelated trade or business, as defined in section 513 of the Code.

If you have any questions regarding the Provider Relief Fund payments, or any other tax issue impacting health care organizations, please contact **Kendall A. Schnurpel, Brian M. Heaton**, or your regular Krieg Devault attorney.