

**2003 DRAFTING REQUEST**

**Senate Amendment (SA-SSA1-SB197)**

Received: **06/24/2003**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Judith Robson (608) 266-2253**

By/Representing: **Kathy**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax (indiv) - deduct/subtract**

Extra Copies: **JK**

Submit via email: **YES**

Requester's email: **Sen.Robson@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Individual income tax exemption for wages received by a respite care worker

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**Instructions:**

See Attached. Exempt from taxation respite care income received by a respite care worker

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

<END>

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Individual income tax exemption for wages received by a respite care worker

Instructions:

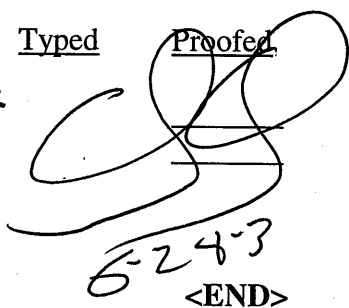
See Attached. Exempt from taxation respite care income received by a respite care worker

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/1	mshovers	/1 Wlj 6/24					

11 MES 6/24/03

FE Sent For:



6-24-03  
<END>

6-23-03

Kelly — Sen Robson

AB 413 — Foster families

(SB197)?  
SSA1# respite care income is taxable.

exempt respite care income from the income  
tax

IRC 131(h) — Foster parents who pay someone  
3506 to provide respite care

that income is taxable

HSF - 38.08

qualification and responsibilities

## 26 USCS § 130

## INTERNAL REVENUE

The determination for purposes of this chapter of when the recipient is treated as having received any payment with respect to which there has been a qualified assignment shall be made in the same manner as if the recipient were a creditor, except that the recipient's rights shall be greater than those of a general creditor.

**(d) Qualified funding asset.** For purposes of this section, the term "qualified funding asset" means any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if—

- (1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment,
- (2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates,
- (3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and
- (4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment.

### HISTORY; ANCILLARY LAWS AND DIRECTIVES

#### Amendments:

**In 1997, P.L. 105-34, Sec. 962(a)** (applicable to claims under workmen's compensation acts filed after 8/5/97, as provided by Sec. 962(b), which appears as a note to this section), amended subsec. (c) by inserting "or as compensation under any workmen's compensation act," in the introductory matter, inserting "or the workmen's compensation claim," in para. (1), and substituting "paragraph (1) or (2) of section 104(a)" for "section 104(a)(2)" in para. (2)(D).

**In 1988, P.L. 100-647, Sec. 6079(b)(1)(A)**, deleted subpara. (c)(2)(C) and redesignated subpara. (c)(2)(D) and (c)(2)(E) as subparas. (c)(2)(C) and (c)(2)(D) . . . Sec. 6079(b)(1)(B), added the last sentence to subsec. (c), effective for assignments made after 11/11/88.

Prior to amendment, subpara. (c)(2)(C) read as follows:

"(C) the assignee does not provide to the recipient of such payments rights against the assignee which are greater than those of a general creditor."

**In 1986, P.L. 99-514, Sec. 1002(a)**, added "(in a case involving physical injury or physical sickness)" after "injury or sickness", in subsec. (c), effective for assignments entered into after 12/31/86, in tax. yrs. end. after 12/31/86.

**In 1983, P.L. 97-473, Sec. 101(b)(1)**, added new Code Sec. 130, effective for tax. yrs. end. after 12/31/82.

#### Other provisions:

**Application of Aug. 5, 1997 amendments.** Act Aug. 5, 1997, P. L. 105-34, Title IX, Subtitle G, § 962(b), 111 Stat. 892, provides: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall apply to claims under workmen's compensation acts filed after the date of the enactment of this Act."

### CROSS REFERENCES

Exclusion from gross income of certain compensation for injuries or sickness, 26 USCS § 105.

### RESEARCH GUIDE

#### Am Jur:

33A Am Jur 2d, Federal Taxation (2002) § 13207.

#### Forms:

5 Am Jur Legal Forms 2d (1997), Compromise and settlement §§ 63:61-64.

7 Am Jur Pl & Pr Forms (2002), Compromise and Settlement, §§ 14, 18, 26.

#### Law Review Articles:

Henry. "Torts and Taxes, Taxes and Torts: The Taxation of Personal Injury Recoveries." 23 Hous L Rev 701, May, 1986.

### § 131. Certain foster care payments.

**(a) General rule.** Gross income shall not include amounts received by a foster care provider during the taxable year as qualified foster care payments.

**(b) Qualified foster care payment defined.** For purposes of this section—

**(1) In general.** The term "qualified foster care payment" means any payment made pursuant to a foster care program of a State or political subdivision thereof—

- (A) which is paid by—
- (i) a State or political subdivision thereof, or
  - (ii) a qualified foster care placement agency, and

## COME TAXES

(B) which is—

- (i) paid to the foster care provider's home, or
- (ii) a difficulty of care p

**(2) Qualified foster individual who is living in a foster family**

- (A) an agency of a State or  
(B) a qualified foster care p

**(3) Qualified foster care placement agency** means any placement

- (A) a State or political subc  
(B) an entity designated by

for the foster care program of :  
to providers of foster care.

**(4) Limitation based on number of foster care payments.** The number of foster care payments in which there is a qualified foster care payment shall not be excludable from gross income if such payments are made for more than 5 such

**(c) Difficulty of care payments.** 1

**(1) Difficulty of care payments.** Individuals which are not descri

(A) are compensation for pr  
is—

- (i) required by reason o  
with respect to which  
compensation, and

(ii) provided in the hom

(B) are designated by the p

**(2) Limitation based on number of foster care payments.** The number of foster care payments for any period to income under subsection (a) to

(A) 10 qualified foster indiv

(B) 5 qualified foster indivi

### HISTORY;

#### Amendments:

**In 2002, P.L. 107-147, Sec. 40-** as provided by Sec. 404(d) of I subsec. (b) by substituting the paragraph for:

"(1) In general. The term '

"(A) which is paid by a  
which is described in sec

substituting subpara. (B) of par has not attained age 19, an org thereof) as a placement agency tax under section 501(a)." red

**In 1986, P.L. 99-514, Sec. 170** 12/31/85.

Prior to amendment, Code Sec.

"Sec. 131. CERTAIN FOSTER CARE

"(a) General rule.

"Gross income shall not inc as qualified foster care payn

"(b) Qualified foster care paym

"For purposes of this sectio

"(1) In general. The term "

"(A) which is paid by  
agency which is describe  
and

"(B) which is—

- (i) paid to reimbur  
foster child in the fo

(B) which is—

- (i) paid to the foster care provider for caring for a qualified foster individual in the foster care provider's home, or
- (ii) a difficulty of care payment.

(2) **Qualified foster individual.** The term "qualified foster individual" means any individual who is living in a foster family home in which such individual was placed by—

- (A) an agency of a State or political subdivision thereof, or
- (B) a qualified foster care placement agency.

(3) **Qualified foster care placement agency.** The term "qualified foster care placement agency" means any placement agency which is licensed or certified by—

- (A) a State or political subdivision thereof, or
- (B) an entity designated by a State or political subdivision thereof,

for the foster care program of such State or political subdivision to make foster care payments to providers of foster care.

(4) **Limitation based on number of individuals over the age of 18.** In the case of any foster home in which there is a qualified foster care individual who has attained age 19, foster care payments (other than difficulty of care payments) for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than 5 such qualified foster individuals.

(c) **Difficulty of care payments.** For purposes of this section

(1) **Difficulty of care payments.** The term "difficulty of care payments" means payments to individuals which are not described in subsection (b)(1)(B)(i), and which—

- (A) are compensation for providing the additional care of a qualified foster individual which is—
  - (i) required by reason of a physical, mental, or emotional handicap of such individual with respect to which the State has determined that there is a need for additional compensation, and
  - (ii) provided in the home of the foster care provider, and
- (B) are designated by the payor as compensation described in subparagraph (A).

(2) **Limitation based on number of individuals.** In the case of any foster home, difficulty of care payments for any period to which such payments relate shall not be excludable from gross income under subsection (a) to the extent such payments are made for more than—

- (A) 10 qualified foster individuals who have not attained age 19, and
- (B) 5 qualified foster individuals not described in subparagraph (A).

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Amendments:**

In 2002, P.L. 107-147, Sec. 404(a)-(c) (applicable to taxable years beginning after 12/31/2001, as provided by Sec. 404(d) of P.L. 107-147, which appears as a note to this section), amended subsec. (b) by substituting the introductory matter of para. (1) and subpara. (A) of such paragraph for:

"(1) In general. The term 'qualified foster care payment' means any amount—  
 "(A) which is paid by a State or political subdivision thereof or by a placement agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and",  
 substituting subpara. (B) of para. (2) for one which read: "(B) in the case of an individual who has not attained age 19, an organization which is licensed by a State (or political subdivision thereof) as a placement agency and which is described in section 501(c)(3) and exempt from tax under section 501(a).", redesignating para. (3) as para. (4), and inserting a new para. (3).

In 1986, P.L. 99-514, Sec. 1707(a), amended Code Sec. 131, effective for tax. yrs. begin. after 12/31/85.

Prior to amendment, Code Sec. 131 read as follows:

"SEC. 131. CERTAIN FOSTER CARE PAYMENTS.

"(a) *General rule.*

"Gross income shall not include amounts received by a foster parent during the taxable year as qualified foster care payments.

"(b) *Qualified foster care payment defined.*

"For purposes of this section—

"(1) In general. The term "qualified foster care payment" means any amount—

"(A) which is paid by a State or political subdivision thereof or by a child-placing agency which is described in section 501(c)(3) and exempt from tax under section 501(a), and

"(B) which is—

- (i) paid to reimburse the foster parent for the expenses of caring for a qualified foster child in the foster parent's home, or

nstr. Co. of NSB, Inc. (1978, CAS Fla 2, 78-1 USTC ¶ 9423, 41 AFTR 2d 78-

Contractor is liable for subcontractor's taxes where general contractor arranged payroll of subcontractor knowing that contractor was not paying its withholding taxes. *Clayton-Kent Builders, Inc.* (1974, F Supp 1109, 74-2 USTC ¶ 9631, 32-5766, affd without op (CAS La) 510 F2d

Contractor who loaned money to its subcontractor for specific purpose of paying wages and fringe benefits is liable for withholding taxes. *States v Terry P. Smith, Inc.* (1975, ND SDC ¶ 9710, 36 AFTR 2d 75-5739.

Contractor who has right and authority to control funds from bank account and who makes every effort to see that wages are paid from bank account is third party paying contractor and is liable for payment of employment taxes. *Houston v United States* (1987, CD Cal) 492 F Supp 574, 80-1 USTC ¶ 9710, 36 AFTR 2d 80-1672.

Contractor who prepared individual payroll for each employee made direct payments of taxes to employees within meaning of 26 USC § 3505(a) and is liable for withholding taxes on subcontractors to whom checks were delivered free to deliver checks or not. *Derr v United States* (1980, WD Wis) 498 F Supp 337, 80-2 USTC ¶ 9631, 36 AFTR 2d 80-5632.

Contractor was not liable for its subcontractor's withholding tax on wages paid to its employees working on general construction project, where government directed general contractor with notice of assessment to pay contractor's unpaid withholding tax. *United States v Messina Builders Co.* (1985, WD Mo) 86-1 USTC ¶ 9431, 58 AFTR 2d 86-802 (disapproved United States v Messina Builders Co. (CA9 Mo) 86-1 USTC ¶ 9431, 58 AFTR 2d 86-5841 (disapproved United States v Messina Builders Co. (CA8 Mo) 801 F2d 1029, 86-1 USTC ¶ 9691, 58 AFTR 2d 86-5841 (disapproved United States v Messina Builders Co. (US) 80, 107 S Ct 782, 87-1 USTC ¶ 9131, 87-413) and vacated (US) 94 L Ed 2d 1560, 87-1 USTC ¶ 9233 and vacated (US) 7 F2d 1327, 87-2 USTC ¶ 9577, 59-1 USTC ¶ 9481, 33 AFTR 2d 1078) and cert den (US) 93 L Ed 2d 948).

**PARTY'S RIGHT OF RECOVERY**

Contractor's liability for taxes made by surety on behalf of and at the request of contractor to whom it had furnished performance bonds, with understanding that contractor would reimburse it, where contractor was volunteer and has no valid claim against contractor for recovery of amount of taxes paid. *Fidelity & Casualty Co. v United States* (1974) 203 Ct Cl 486, 74-1 USTC ¶ 9194, 33 AFTR 2d 74-

Contractor's liability for taxes made by IRS agents to surety-plaintiff's contractor who had authority to pay on behalf of bonded contractor and who refused to

Contractor could be personally liable for taxes and could not claim defense of duress for return of taxes paid for contractor where surety's attorney was available to said personnel and inquiry would have revealed that since they had no authority to make tax payments, they could not be personally liable. *Fidelity & Casualty Co. v United States* (1974) 203 Ct Cl 486, 74-1 USTC ¶ 9194, 33 AFTR 2d 74-621.

**IV. PRACTICE AND PROCEDURE**

**3505. Notice and demand.**  
Government is not required to provide notice on demand for payment to lender under 26 USCS § 6303 before bringing civil suit to collect funds for which lender is liable under § 3505; compliance with notice and demand would have little meaning to lenders since amount stated and demanded could include amounts for which lender is not liable, would equal lender's liability only if lender provided payroll financing throughout period covered by assessment, and would rarely be accurate because of maximum exposure of lender is 25 percent of funds loaned to employer. *Jersey Shore State Bank v United States* (1987, 479 US 442, 93 L Ed 2d 800, 107 S Ct 782, 87-1 USTC ¶ 9131, 59 AFTR 2d 87-413.

**3506. Jurisdiction.**  
Failure to provide notice of tax liability within 60 days after making assessment will not bar suit under

26 USCS § 3506. **Individuals providing companion sitting placement services.**

(a) **In general.** For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters, or the persons who employ them on a fee basis.

(b) **Definition.** For purposes of this section, the term 'sitters' means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) **Regulations.** The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**Amendments:**  
In 1977, P.L. 95-171, Sec. 10(a), added Code Sec. 3506, effective for remuneration received after 12/31/74. Sec. 10(d) of this Act provides:  
“(d) The amendments made by this section shall not be construed as affecting (1) any individual's right to receive unemployment compensation based on services performed before the date of the enactment of this Act, or (2) any individual's eligibility for social security benefits to the extent based on services performed before that date.”

**RESEARCH GUIDE**

**Am Jur:**  
35 Am Jur 2d, Federal Tax Enforcement § 163.  
33A Am Jur 2d, Federal Taxation (2002) §§ 9156, 9502, 9806.  
70C Am Jur 2d, Social Security and Medicare §§ 256, 338.

**INTERPRETIVE NOTES AND DECISIONS**

Individuals engaged to perform sitting services for clients of babysitting agency that receives fixed percentage of fee collected by sitters are not employees of agency with respect to remuneration received after 1974; general rule for determining employee status set forth in Rev Rule 56-502 only applies to sitting services if agency pays sitters directly. *Rev Rul 80-365, 1980-2 CB 300.*

**3507. Advance payment of earned income credit.**  
(a) **General rule.** Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

26 USCS § 3505, where IRS provided complete notice of tax liability shortly before making assessment. *United States v Friedman* (1984, CA7 Ill) 739 F2d 252, 84-2 USTC ¶ 9639, 54 AFTR 2d 84-5562.

Bankruptcy court lacks jurisdiction to determine liability of third party lender under 26 USCS § 3505. *United States v Huckabee Auto Co.* (1986, CA11 Ga) 783 F2d 1546, 14 CBC2d 483, 86-1 USTC ¶ 9268, 57 AFTR 2d 86-987.

In action by payment and performance bond surety to recover federal taxes it paid as credit against contractor's tax indebtedness, Court of Claims will assume jurisdiction under 28 USCS § 1491 on basis of possible contract implied in fact based on dealings between IRS and plaintiff, and decide case on merits, even though government may ultimately prevail; fact that plaintiff is nontaxpayer does not, without more, serve to delimit court's jurisdiction. *Fidelity & Casualty Co. v United States* (1974) 203 Ct Cl 486, 490 F2d 960, 74-1 USTC ¶ 9194, 33 AFTR 2d 74-621.

**12. Right to jury trial**

In action under 26 USCS § 3505(a) against general contractor to collect withholding and FICA taxes which its subcontractor failed to pay on behalf of its employees, contractor was entitled to trial by jury. *United States v Fred A. Arnold, Inc.* (1978, CA9 Cal) 573 F2d 605, 78-1 USTC ¶ 9384, 41 AFTR 2d 78-1351.



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBa0746/1  
MES.../.....  
Wlj

SENATE AMENDMENT ,  
TO SENATE SUBSTITUTE AMENDMENT 1,  
TO 2003 SENATE BILL 197

NOW

DN Otl

- 1 At the locations indicated, amend the substitute amendment as follows:
- 2 **1.** Page 1, line 8: after “purposes” insert “creating an individual income tax  
3 deduction for certain wages received by a respite care worker,”.
- 4 **2.** Page 7, line 2: after that line insert:
- 5 “SECTION 13m. 71.05 (6) (b) 34. of the statutes is created to read:
- 6 71.05 (6) (b) 34. Any amount of income received by an individual for companion  
7 sitting services if all of the following apply:
- 8 a. The individual is a sitter as that term is defined in 26 USC 3506.
- 9 b. The individual is hired and paid by an individual who is a foster care provider  
10 whose income is exempt from taxation under 26 USC 131 (a).”.
- 11 **3.** Page 16, line 13: after that line insert:

(5)

1 “(2m) Income tax exemption; companion sitters. The treatment of section 71.05  
2 (6) (b) 34. of the statutes first applies to taxable years beginning on January 1 of the  
3 year in which this subsection takes effect, except that if this subsection takes effect  
4 after July 31, this act first applies to taxable years beginning on January 1 of the year  
5 following the year in which this subsection takes effect.”

6

(END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa0746/1dn

MES.....

W LJ

Senator Robson:

Please review this amendment carefully to ensure that it applies only to the individuals whose income you'd like to exempt from taxation.

You should know that under senate rule 50, this amendment could be challenged as not being germane to SSA 1 to SB<sup>1</sup>197. In particular, please see senate rule 50 (6) (b).

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa0746/1dn  
MES:wlj:rs

June 24, 2003

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