



January 18, 2024

Daniel Werfel, Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Dear Commissioner Werfel:

We write regarding the federal tax treatment of premiums and benefits under state paid family and medical leave programs. As states operating these programs, we urge the Internal Revenue Service to provide clarifying guidance in this area, specifically regarding the taxability of these benefits and premiums, and to prevent the risk of double taxation.

Since 2004, over a dozen states have enacted state paid family and medical leave laws to fill an important gap in our national safety net. In general, these programs operate as social insurance programs, with premium contributions from both employers and employees, and benefits disbursed at a fixed rate relative to base wages. However, the details of these programs vary substantially from state to state. For example, in Colorado the premiums are imposed upon the employer, who then has discretion to deduct some of the premium (based on the size of the employer) from the employee.

All state programs nonetheless must address the issue of the tax treatment of premiums and benefits under both federal and state law. The current ambiguity generates confusion and is poor public policy. Unfortunately, the most recent publicly-available guidance on this matter is the IRS' Chief Counsel Memorandum from 2005, which predates most state programs and is not especially definitive. As more states continue to adopt similar programs, the IRS should issue clarifying and current guidance on how both employers and employees should treat these premiums and benefits, including whether taxability hinges on the taxpayer itemizing deductions and claiming the SALT deduction, and what to do if the amount of the benefit exceeded the amount of premiums paid.

The current absence of guidance from the IRS on the tax treatment of these programs creates a substantial risk of an unexpected and large tax liability for those who rely on these

programs to take family leave, deal with a personal illness, or take care of vulnerable family members. This creates particular challenges for low and moderate income individuals, who would be adversely impacted by taxing these benefits. As states cannot provide residents instruction in the absence of clear federal guidance, these individuals are left without clarity as to whether they will face a tax obligation after utilizing these programs - a tax obligation that could be thousands of dollars for a single beneficiary. Employers also face uncertainty regarding the proper calculation of payroll taxes with respect to and the reporting of premiums withheld from employees. In addition, states themselves are left without clarity on questions such as whether 1099s should be issued.

Additionally, because these programs generally operate as social insurance programs, not allowing a deduction for premiums and taxing benefits effectively represents double taxation. While taxation of wage replacement is consistent with IRS' treatment of other programs, in its clarifying guidance, the IRS should ensure that program participants are not taxed on both mandatory premiums paid and benefits received. In general taxation on benefits received makes more sense than taxation on monthly premiums, which should not be considered taxable income.

We urge you to issue clarifying and appropriate guidance on these important state programs.

Sincerely,



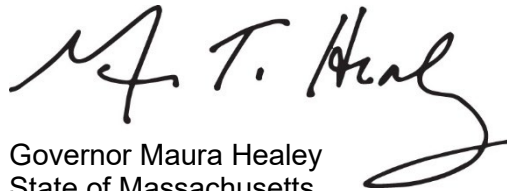
Governor Jared Polis
State of Colorado



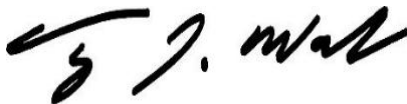
Governor Ned Lamont
State of Connecticut



Governor Wes Moore
State of Maryland



Governor Maura Healey
State of Massachusetts



Governor Tim Walz
State of Minnesota



Governor Phil Murphy
State of New Jersey

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Governor Kathy Hochul
State of New York

Handwritten signature of Tina Kotek in black ink.

Governor Tina Kotek
State of Oregon

Handwritten signature of Jay Inslee in blue ink.

Governor Jay Inslee
State of Washington