April 22, 2011

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 11-17
ALL COUNTY WELFARE ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS
ALL COUNTY MEDS LIAISONS

Subject: 2010 INCOME TAX CREDIT/REFUND PROVISIONS FROM THE TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION AND JOB CREATION ACT OF 2010 (P.L. 111-312).

The purpose of this All County Welfare Director Letter (ACWDL) is to provide instruction to counties regarding treatment of federal tax credits and refunds subsequent to passage of H.R. 4853, Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act, Public Law No. 111-312.

H.R. 4853, effective December 17, 2010, amends the Internal Revenue Code of 1986 by providing tax provisions intended to stimulate the American economy. Section 728 of H.R. 4853 disregards federal tax refunds or advance payments, with respect to a refundable tax credit for purposes of determining eligibility for all federal or federally-assisted programs, including Medicaid programs. These provisions apply only to federal income tax refunds and credits; they do not apply to state tax refunds or credits. Under prior law, tax refunds and certain refundable tax credits (e.g. Income Tax Refund [ITR], Earned Income Tax Credit [EITC], Make Work Pay Credit [MWPC], and other tax refunds/credits) were disregarded as income and property under rules that varied from one program to another.

Background

Under current Medi-Cal rules, gross income and property are used as the bases for determining Medi-Cal eligibility and share-of-cost (SOC). Federal and state income taxes withheld are included in gross income. Therefore, when income taxes are refunded, they are exempt from consideration as income, and they are considered as property. Tax credits, including EITCs, MWPCs, and Child Tax Credits (CTCs), are handled similarly.

The changes under H.R. 4853 are discussed in greater detail in subsequent paragraphs below.

Section 728, of H.R. 4853, includes two changes that affect eligibility and SOC determinations for Medi-Cal:

- The total amount of any federal tax refund or credit (e.g. ITR, EITC, CTC, MWPC, or any other federal tax refunds/credits) received after December 31, 2009, (regardless of whether the refund is the result of over-withholding, a refundable credit, or both) is disregarded as income; and

- The total amount of any federal tax refund or credit is disregarded as property for 12 months from the date of receipt. This property exclusion applies to federal refunds and/or credits received between December 31, 2009, and December 31, 2012.

The following summarizes current law for respective federal refunds and credits and changes resulting from H.R. 4853:

ITR

Under current rules, for the purposes of determining Medi-Cal eligibility and SOC, ITRs are exempt from consideration as income in the month of receipt and included in the property reserve in the month of receipt (California Code of Regulations [C.C.R.], Title 22, Division 3 § 50454).

Under H.R. 4853, ITRs received between December 31, 2009, and December 31, 2012, remain exempt from consideration as income indefinitely. If the funds are saved, they are disregarded as property for 12 months from the date received. Any portion of the funds remaining after the expiration of the 12-month period is considered countable property.

This applies to an individual and persons within the Medi-Cal Family Budget Unit (MFBU).

EITC

Under current rules, for the purposes of determining Medi-Cal eligibility and SOC, EITCs are exempt from consideration as income indefinitely (C.C.R. Title 22, Division 3 § 50543.5). If the funds are saved, they are exempt as property in the month received and the following month (C.C.R. Title 22, Division 3 § 50449).

Under H.R. 4853, EITCs received between December 31, 2009, and December 31, 2012, remain exempt from consideration as income. If the funds are saved, they are disregarded as property for 12 months from the date received. Any portion of the funds remaining after the expiration of the 12-month period is considered countable property.

This applies to an individual and persons within the MFBU.

CTC

Under current rules, there are no provisions for CTCs.

Under H.R. 4853, CTCs received between December 31, 2009, and December 31, 2012, are exempt from income indefinitely. If the funds are saved, they are disregarded as property for 12 months from the date received. Any portion of the funds remaining after the expiration of the 12-month period is considered countable property.

This applies to an individual, to a spouse, and to other family members within the MFBU.

MWPC

Under current rules, for the purposes of determining Medi-Cal eligibility and SOC, MWPCs are exempt from income in the month of receipt and exempt property in the following two months. See All County Welfare Directors Letter No.: 09-57.

Under the Act, MWPCs received between December 31, 2009 and December 31, 2012, remain exempt from income indefinitely and if the funds are saved, they are disregarded as property for 12 months from the date received. Any portion of the funds remaining after the expiration of the 12-month period is considered countable property.

This applies to an individual and persons within the MFBU.

Transfer of Assets/Treatment of Trusts

H.R. 4853 also prohibits use of ITRs, or credit from consideration, in determining the amount or extent of Medi-Cal benefits or assistance. As such, penalties cannot be imposed upon long term care applicants for disposal or transfer (for less than fair market value) of all or part of a refund and/or credit received between December 31, 2009, and December 31, 2012.

Similarly, a refund and/or credit received between December 31, 2009, and December 31, 2012, held for 12 months or less and placed in a trust fund, may not be counted as available, and no transfer of asset penalties may apply. If a refund and/or credit received between December 31, 2009, and December 31, 2012, is held for more than 12 months, then placed in a trust or disposed of, the transaction would be subject to transfer penalties and counted as available under Medi-Cal trust provisions.

Post-Eligibility Treatment of Income

ITRs and credits are not considered income for purposes of the post-eligibility treatment of income provisions, which apply to institutionalized individuals and certain individuals eligible for services under a home and community-based waiver.

To comply with the requirements of H.R. 4853, all application and eligibility procedures must include methodology to identify any potential federal tax refund and/or credit that may have been received by the applicant or beneficiary. Thus, it is important for counties to ensure that applicants or beneficiaries have the opportunity to provide information about any federal tax refund and/or credit received by the household, if receipt of such a refund may affect the household's eligibility for Medi-Cal or SOC amount.

Eligibility should not be denied or terminated on the basis of excess property unless the applicant or beneficiary has been asked whether he/she (or anyone in the applicant's or beneficiary's MFBU) has received a federal tax refund and/or credit in the last 12 months, during the exemption period (December 31, 2009, to December 31, 2012) and those refunds or credits have been appropriately disregarded.

Effective immediately, the applicant, beneficiary, or his/her representative shall provide verification of the respective tax credit and/or tax refund to the county in order to receive the appropriate exemption.

Counties shall rescind any discontinuance or denial issued for excess property, which may have resulted from a federal tax refund and/or credit, as they become aware of any case that was adversely affected due to the delay in implementing these provisions of H.R. 4853. Counties shall then retroactively redetermine eligibility as appropriate.

If you have any questions, please contact Ms. Wendy Digiorno at (916) 327-0408 or via e-mail at wendy.digiorno@dhcs.ca.gov.

Original signed by:

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