STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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March 5, 2009

ALL COUNTY INFORMATION NOTICE NO. I-19-09

REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[X] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHILD CARE COORDINATORS

SUBJECT: CHILD CARE PROGRAMS - INTERNAL REVENUE SERVICE (IRS) INQUIRIES AND DETERMINATION OF EMPLOYMENT STATUS FOR CHILD CARE PROVIDERS, FEDERAL EMPLOYMENT TAXES, AND EMPLOYER RESPONSIBILITIES

REFERENCE: ALL COUNTY LETTER (ACL) NO. 87-23; ACL NO. 98-32

The purpose of this notice is to provide County Welfare Departments (CWDs) with information regarding inquiries from the IRS to counties, alternative payment programs (APPs), and child care providers to determine the employment relationship of these entities for federal tax purposes.

The IRS has issued several letters to CWDs and APPs wherein they found the CWDs and/or APPs to be the employer of the child care provider. These determinations cause the CWDs or APPs to be responsible for satisfying employment tax reporting, filing, and payment obligations for federal employment taxes [i.e., Federal Insurance Contributions Act (FICA) tax, Federal Unemployment Tax Act (FUTA), etc.]. In other cases, the IRS issued determinations that found the CWDs and/or APPs were not the employer. If a notice is received from the IRS, CWDs, APPs, and/or child care providers should respond to the IRS as soon as possible to address all points outlined in the IRS determination letter. Counties are advised to consult with their county counsel when responding to IRS inquiries and letters of determination.

It is recommended that CWDs and APPs advise the IRS that they administer a federal grant program under the Personal Responsibility and Work Opportunity Reconciliation Act, Temporary Assistance for Needy Families (TANF) and/or Child Care and Development Fund (CCDF). These federal funds provide block grants to each state. In California, the TANF grant is administered through the California Work Opportunity and

Responsibility to Kids (CalWORKs) Program. The CCDF grant is administered by the California Department of Education (CDE) through contracts with APPs. Under the CalWORKs Program, CWDs and APPs administer, calculate, and reimburse allowable child care expenses to low-income recipients of state aid for child care expenses for parents who attend school and/or work. The child care provider is selected by the parent of the child and paid by the CWD or APP on behalf of the recipient; the subsidy follows the child, not the provider.

It is important to clarify to the IRS that the parent receiving a child care subsidy under CalWORKs is free to select a child care provider of his or her choice. All assignments received by the child care provider are from the parent. The parent has the ability to direct the individual who performs the services, determine the hours of care, how it is to be done, and dictate other conditions related to the care provided. Moreover, a child care provider can set his or her own fee; and, if this amount exceeds the amount approved on a voucher, the parent is required to pay the difference.

The determinations rendered by the IRS are based upon information discovered by or provided to the IRS by the CWD, APP, and/or provider. We believe the above information will be beneficial for establishing the type of relationship that exists between the parent and the caregiver. However, the final call is made by the IRS. For more information on how the IRS makes a determination on the type of relationship that exists, please visit their website at www.irs.gov.

Finally, while CDSS is unable to provide CWDs with guidance regarding tax and labor laws, the Department strongly encourages CWDs to work closely with their county counsel to determine the best way to respond to IRS inquiries. Questions regarding this letter may be directed to Ms. Cora Myers, Bureau Chief, Child Care Programs Bureau, at (916) 657-2144 or Cora.Myers@dss.ca.gov.

Sincerely,

Original Document Signed By:

VENUS GARTH, Chief
Child Care and Refugee Programs Branch

c: CWDA
CAPPA