

Federal Tax Treatment of Benefits Received Under the Smallpox Emergency Personnel Protection Act of 2003

Notice 2004-17

I. PURPOSE

This notice provides guidance regarding the Federal income and employment tax treatment of benefits received under the Smallpox Emergency Personnel Protection Act of 2003 (SEPPA).

II. BACKGROUND

On December 13, 2002, the President announced that, in light of the threat of bioterrorism, a smallpox vaccine would be made available on a voluntary basis to medical professionals, emergency personnel, and others who may be first responders in a smallpox emergency. To implement that decision, the Secretary of Health and Human Services (the Secretary), on January 24, 2003, issued a Declaration Regarding Administration of Smallpox Countermeasures. The Declaration provides that certain countermeasures should be taken for the prevention or treatment of smallpox, or to control or treat the adverse effects of smallpox vaccination. The Declaration recommends the administration of the smallpox vaccine, on a voluntary basis, to specified categories of individuals.

The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Pub. L. No. 108-20, 117 Stat. 638, authorizes the Secretary, through the Smallpox Vaccination Injury Compensation Program, to provide benefits to eligible individuals who sustain covered injuries as a result of the administration of covered countermeasures (including the smallpox vaccine) or as a result of accidental contact with such persons. In general, SEPPA authorizes the payment of or a reimbursement for medical items and services as reasonable and necessary to treat a covered injury, the payment of employment income lost as a result of a covered injury, and the payment of a death benefit with respect to

an eligible individual whose death results from a covered injury.

III. FEDERAL TAX TREATMENT OF BENEFITS

Payments received under SEPPA by eligible individuals for covered injuries are excluded from gross income for Federal income tax purposes (except for amounts attributable to, and not in excess of, deductions allowed under § 213 (relating to medical, etc. expenses) for any prior taxable year). Additionally, such payments do not constitute wages and are not subject to withholding for FICA, FUTA, and Federal income tax withholding purposes, and do not constitute net earnings from self-employment for SECA purposes.

In addition, a payor is not required to issue Forms 1099 and Forms W-2 under §§ 6041 and 6051 for SEPPA payments it makes to eligible individuals (or their survivors, in the case of death benefits).

DRAFTING INFORMATION

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