

The following REPLACES page 115 of the ProSeries Manual

Medicaid Waiver Payments (and Qualified Foster Care Payments)

The IRS has updated Publication 4491-X, VITA Alert 2020-03, and the Form 1040 Instructions to account for the Feigh decision.

The following instructions for ProSeries have been modified to incorporate the May 15, 2019 Tax Court Decision of Feigh v. Commissioner 152 T.C. No. 15. In that decision, the Tax Court ruled that the Feighs were allowed to exclude their difficulty of care / Medicaid waiver payments from gross income, but they could be includible as earned income for the Earned Income Tax Credit and the Child Tax Credit.

Note 1: If taxpayer received Medicaid Waiver payments, volunteers should ask whether they received payments in prior years. If so, they **may** want to amend their tax returns. But to receive any refund for the 2016 tax year, the taxpayer generally must file the amendment before April 15, 2020.

Note 2: No taxpayer is required to add their Medicaid-waiver payment to their AGI for purposes of claiming EITC or the child tax credit. However, some taxpayers may be helped and some may be hurt by this adjustment. The taxpayer has the right to do their return the way that is best for them as long as it is lawful.

Background: Taxpayers who provide home-based healthcare for a family member and receive payment from the state as Medicaid Waiver difficulty-of-care payments may benefit from a recent court ruling (Feigh v Cmmr, 152 T.C. No.15). Pursuant to Notice 2014-7, some taxpayers who receive Medicaid-waiver payments for home health care provided to an individual under a state Home and Community-Based Services Waiver program may exclude such payments from their gross income. However, the same taxpayer may choose to add their Medicaid-waiver payments back into their AGI as earned income for the purpose of EITC and/or child tax credit eligibility and calculation.

As a result of this ruling, taxpayers in this situation may:

1. Exclude the qualified Medicaid-waiver payments from their gross income; and/or
2. Include the qualified Medicaid-waiver payments in their earned income for tax-credit purposes.

Choosing to include the Medicaid-waiver payments as earned income may:

- Enable the child tax credit and additional child tax credit to be claimed for taxpayers who have no other earned income;
- Provide the EITC to taxpayers who have no other earned income;
- Increase EITC for other taxpayers.

However, choosing to include the Medicaid-waiver payments may also **decrease** the amount of EITC in some instances. These taxpayers may choose **not** to add the payments for EITC calculation. However, if payments are included as earned income, they must be included in full (the client is not allowed to include only part of the payments).

Taxpayers who are otherwise ineligible for the EITC – for instance, married taxpayers who file separately or taxpayers without an SSN – will still not be able receive EITC under this provision.

Qualified Medicaid waiver payments are:

1. Provided by the State (or Political subdivision of a state) either directly or indirectly through an agency under contract with the state
2. To certified individuals and entities as Medicaid providers
3. For nonmedical support services provided under a plan of care to an individual (whether related or unrelated)

Additionally, for a taxpayer to qualify for the Section 131 exclusion from gross income subject to Notice 2014-7:

4. The eligible individual receiving care must live in the individual care provider's home.

Since clients who meet these criteria may choose to include the payments as gross income and/or as earned income, it may be necessary to run several different scenarios in ProSeries and explain the results to the client.

If a client receives Medicaid Waiver payments from the state, they must bring their W-2 or 1099-MISC to the tax preparer to be included on the return. The process for entering these payments depends on how they have been reported. The client may have received:

- A Form 1099-MISC reporting these payments in Box 3: Other Income.
- A Form 1099-MISC reporting these payments in Box 5: Non-employee compensation
- A Form W-2 reporting these payments in Box 1 (perhaps with other boxes completed)
- A Form W-2 reporting not including these payments in Box 1

Income reported on either Line 1 of the 1040 (Wages, salaries, tips, etc.) or on Line 3 of Schedule 1 (Business Income or (loss)) will be considered earned income for EIC and ACTC. In addition, the income may be excluded from gross income on Line 8 of Schedule 1 as a negative "Other income". So, the following instructions describe how to either add or remove the Medicaid waiver payments from either earned income or gross income.

Note: *Do NOT use Line 6 of the EIC Worksheet.* By adding the payments on this line it will add the income to earned income for EIC but not for the child tax credit (or additional child tax credit). As of March 4, 2020, this leads to an incorrect tax return.

Payments are reported on W-2 in Box 1:

- Enter the W-2 as normal. This will include the waiver payments both as earned income and part of gross income.
- If taxpayer wishes to exclude the waiver payments from gross income (optional), the payment will be entered **as a negative** amount on the other income Liine 24 of the “Other Income Statement” by going to Forms and typing “OTH” (for other). For the description type: “MEDICAID WAIVER PAYMENT: NOTICE 2014-7”

Other Income Statement			
c	Section 245A eligible dividends		
d	Factoring income		
22	Income from passive foreign investment company or qualified electing fund (Form 8621)		
a	Income From a Qualified Electing Fund		
b	Gain from PFIC stock		
c	Loss from PFIC stock		
d	Gain from disposition of section 1296 stock		
e	Loss from disposition of section 1296 stock		
23	Unemployment income and repayment		
a	Union unemployment benefits		
b	Private fund unemployment benefits		
c	State employee unemployment benefits		
d	Repayment of non-government unemployment benefits		
24	Other taxable income:		
	MEDICAID WAIVER PAYMENTS: NOTICE 2014-7	-8,000.	

In ProSeries software for tax year 2016 and 2017, this is Line 18 of the Other Income Statement.

In ProSeries software for tax year 2018, it is Line 21 of the Other Income Statement.

- If the taxpayer wishes to exclude the QUALIFIED Medicaid waiver payments from earned income (optional) for EIC and CTC, then go to the EIC Worksheet (from Forms in Use or go to Forms and type “EICW” for EIC Worksheet).
- In the box under Line 2a, enter the waiver payment amounts on Line A or Line B so that it carries over to Line 2b: Other income entered as wages that is not considered earned income.

Note: Line A and Line B are not printed as part of the tax return, so the entries there are more as a work-around.

Earned Income Credit Worksheet		Refund:
1	Enter the amount from Form 1040 line 1 less amounts considered not earned for EIC purposes	1 8,000.
2	Adjustments to line 1 amount:	
a	Income reported as wages and as self-employment income	2 a

**Amounts that are Not Earned Income for the Earned Income Credit
and the Additional Child Tax Credit Smart Worksheet**

Caution: Only enter **A** or **B** if the amount is included as wages.

A If married, and filing as Head of Household, any amount earned by your spouse that is treated as belonging to you, due to community property laws ... 8,000.

B Amounts earned as an inmate, in a work release program or a halfway house:

Taxpayer

Spouse, if married filing joint

Payments are reported on W-2, but not included in Box 1:

- Enter the W-2 as normal. This will report the W-2 as a document received, but waiver payments are not reported either as part of gross income or earned income.
- To include as earned income (optional) AND as gross income, go to the Wages, Salaries, & Tips Worksheet by typing into Forms "WA" for wages.
- Then on Line 9b (Other earned income), enter the waiver payment amount and as the description "MEDICAID WAIVER PAYMENT: FEIGH 152 TC NO15"

Wages, Salaries, & Tips Worksheet		Refund: \$0
9	Other earned income:	
a	Non-gov unemployment received/repaid 2019	
b	MEDICAID WAIVER PAYMENT: FEIGH 152 TC NO. 15	8,000.
		8,000.

- If taxpayer wishes to exclude the QUALIFIED Medicaid waiver payments from gross income (optional), the payment will be entered **as a negative** amount on the other income line 24 of the "Other Income Statement" by going to Forms and typing "OTH" (for other). For the description type: "MEDICAID WAIVER PAYMENT: NOTICE 2014-7"

Note: Tax return cannot be electronically filed with a W-2 that has Box 1 empty or less than zero. If the taxpayer has no other W-2 forms to report, their return must be paper filed.

