

# IRS/DPA Tax Implications

## **MassHousing**

Legislative Advocacy: Federal Advocacy

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**MassHousing**  
**Treasury Guidance - Federal Tax Implications**  
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In December of 2021, the Massachusetts Legislature directed \$65 million in state ARPA (American Rescue Plan Act) funds to MassHousing and another housing agency in Massachusetts to be used to for a homebuyer assistance program. Specifically, the line-item allocation established a reserve to:

*“create and maintain opportunities for homeownership for residents of communities disproportionately impacted by the 2019 novel coronavirus pandemic; provided, that funds shall be expended to create and enhance access to homeownership in order to foster a strong, inclusive and equitable recovery with long-term benefits for housing security, health and economic outcomes and to address a systemic homeownership gap that contributed to more severe impacts of the 2019 novel coronavirus pandemic in socially disadvantaged communities and among targeted populations; provided further, that funds shall be expended to create opportunities for first-time homebuyers; provided further, that funds may be expended for down payment assistance programs, mortgage insurance programs and mortgage interest subsidy programs administered by the Massachusetts Housing Finance Agency and the Massachusetts Housing Partnership; provided further, that funds may be expended to first-time homebuyer counseling and financial literacy programs.”*

MassHousing viewed this fund as an opportunity to think big – and to develop a program that went well beyond anything we had done before in terms of down payment assistance. Given the opportunity to develop the specific parameters of the program, MassHousing created a new program which came to be known as MassDREAMS (Delivering Real Equity and Mortgage Stability).

MassDREAMS offered a grant of up to \$50,000 for down payment, closing cost and mortgage insurance assistance for borrowers at 100% or less of AMI and \$35,000 for borrowers between 101% - 135% of AMI.

The program was targeted for the state’s Gateway Cities, which under Massachusetts General Laws are municipalities with populations greater than 35,000 and less than 250,000, a median household income below the Commonwealth’s average and a rate of educational attainment of a bachelor’s degree or above that is below the Commonwealth’s average.

Importantly, the 1.8 million residents who live in the Gateway Cities represent about one-quarter of the state’s population and include: 37% of the state's foreign-born residents; 44% of the state's population living in poverty; 47% of the state's population without a high school credential; and 51% of the state's linguistically isolated residents.

When the program was designed – there was one challenge that proved vexing – and this was the matter of the tax implications of offering this benefit as a grant. However, the Agency felt it was critical to the program’s success and reach that it be offered as a grant rather than a loan to have the biggest benefit for borrowers who needed this opportunity the most.

The challenge was that there was no way to communicate to a borrower definitively what their tax liability would be – because each person’s tax situation is unique to them. And if we couldn’t communicate this



effectively to the homebuyers – then how could they be sure to plan for it – so that they wouldn't be faced with a big tax bill that they weren't expecting when tax time came around?

MassHousing decided that we first needed to pursue a state legislative fix for this challenge. We went back to the Senate Committee on Ways and Means – as the Chairman of this powerful committee had played a critical role in the creation of the fund that established MassDREAMS. And this, in turn, was a result of MassHousing's solid and long-standing working relationship with the Chairman and his committee staff and also a result of our education and advocacy surrounding the need for a more generous down payment assistance pool of funds.

In March of 2022, a supplemental budget began to move in the Senate and MassHousing saw its chance. We approached the committee's General Counsel and pitched him specific language to exclude any "MassDREAMS" benefit from a borrower's taxable income. The pitch was that these federal ARPA funds were intended to serve a specific purpose. This helped the Committee get over the "policy hump" of making what could be a wide-ranging tax decision because they targeted it only to the MassDREAMS program funds. In turn, they set a clock that would expire in December of 2024 for this tax benefit because that is the date by which ARPA funds must be expended.

It became Chapter 42 of the Acts of 2022 in Massachusetts:

*SECTION 72. Notwithstanding any general or special law to the contrary, for taxable years beginning on or after January 1, 2022 and ending on or before December 31, 2024, any amount received from a down payment assistance program administered by the Massachusetts Housing Finance Agency or the Massachusetts Housing Partnership Fund Board, including grants and any portion of a loan forgiven during the taxable year, shall be deducted from federal gross income for the purpose of determining Massachusetts gross income under section 2 of chapter 62 of the General Laws.*

The next, and perhaps even more important, hurdle, was trying to figure out how we could ever get Treasury to exclude these funds from a borrower's taxable income for the purposes of their federal income tax liability. The door cracked open in March of 2022 when our Director of Government Affairs was attending NCSHA's Legislative Conference (LegCon) in Washington, D.C. One of the panelists who spoke was Ellen Lurie Hoffman. Ellen is a long-time contributor in the affordable housing industry – but as she was introduced on her panel at LegCon – they noted that she was now working at Treasury! This was our chance.

MassHousing's Government Affairs Director, who had met and worked with Ellen in the past, approached her immediately following her panel and explained what MassHousing was hoping to accomplish and asked for her strategic advice.

In a follow-up E-mail we explained that with assistance in the range of \$50,000 – there could be a tax liability for the borrower that could serve to diminish the effectiveness of this program at best and at worst prove to be a financial burden to the borrower.

We believed that the change we sought at the federal level would not require Congressional action – but rather a change in the formal "guidance" that Treasury published for the IRS relative to the use of ARPA



funds. In this way, our strategy was to suggest to Treasury that it made sense to make this change because it was consistent with the treatment of rental assistance funds and homeowner assistance funds which are also not added to taxable income.

MassHousing then engaged NCSHA on this issue as we believed that potential Treasury guidance would have broader implications than just MassHousing's program. We learned through Jennifer Schwartz that nine states reported that they intended to use fiscal recovery funds for down payment assistance including: Colorado, Delaware, Michigan, Nevada, New Mexico, Rhode Island, South Carolina, and Vermont.

Our next play was to engage the House Committee on Ways and Means, which at that time was chaired by Massachusetts Congressman Richard Neal. Through MassHousing's connection with Congressman Neal's personal staff in Washington, the Agency was able to secure a meeting with two staffers who worked on housing-related tax issues for Chairman Neal on the committee side. They agreed to set up a meeting with us to discuss guidance on the tax treatment of certain ARPA funds used for down payment assistance. The Director of Government Affairs and MassHousing's General Counsel met with them to explain the challenge and to ask them directly for their help in contacting Treasury on this matter and advocating for a change in the guidance.

MassHousing provided details on our contact at Treasury – Ellen Lurie Hoffman – to the Ways and Means Committee staffers and then working cooperatively with them and with Ellen directly – set up a Zoom call for a larger discussion.

We continued to stay in touch with Ellen at Treasury – over the next few weeks – and we learned that the Office of Tax Policy was actively considering the question that we had raised. They requested a Zoom call follow-up to discuss the issue in more detail. This call was scheduled in mid-June and offered MassHousing the opportunity to pitch our recommendation directly to Treasury about the need for guidance on the use of ARPA funds for DPA. We set out a description of how this lined up with the treatment of emergency rental funds and that it would be consistent with the goals of the program.

Days dragged into weeks through the summer and the Agency tried to find a balance between checking back in with Treasury periodically to ask if there was any additional information they needed to help in their decision making – while at the same time – not wanting to apply too much pressure and frustrate the staff at Treasury.

Finally, on September 28, 2022, MassHousing received an E-mail notifying us that Treasury had issued guidance that day to clarify that down payment assistance, closing costs and “some or all of the mortgage premium insurance” would NOT be considered part of gross income for a filer's federal tax obligation.

This was the best of all possible outcomes. This guidance meant that low-and moderate-income homebuyers in Massachusetts who qualified for a grant under MassDREAMS would not owe federal taxes on the benefit they received. As importantly, this guidance was wide-reaching as it helps not just Massachusetts – but all of the other state housing finance agencies who have also developed homebuyer assistance programs using state and local fiscal recovery funds.





Link to: IRS FAQs September, 2022  
Please see questions 15, 16 and 17.

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# IRS updates frequently asked questions for states and local governments on taxability and reporting of payments from Coronavirus State and Local Fiscal Recovery Funds

FS-2022-36, September 2022

This Fact Sheet updates frequently asked questions (FAQs) related to the Coronavirus State and Local Fiscal Recovery Funds established under the American Rescue Plan Act (SLFR Funds) (FS-2021-16). These funds give eligible state and local governments a substantial infusion of resources to meet pandemic response needs.

This update adds new frequently asked questions 15 through 17.

*These FAQs are being issued to provide general information to taxpayers and tax professionals as expeditiously as possible. Accordingly, these FAQs may not address any particular taxpayer's specific facts and circumstances, and they may be updated or modified upon further review. Because these FAQs have not been published in the Internal Revenue Bulletin, they will not be relied on or used by the IRS to resolve a case. Similarly, if an FAQ turns out to be an inaccurate statement of the law as applied to a particular taxpayer's case, the law will control the taxpayer's tax liability. Nonetheless, a taxpayer who reasonably and in good faith relies on these FAQs will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax. Any later updates or modifications to these FAQs will be dated to enable taxpayers to confirm the date on which any changes to the FAQs were made. Additionally, prior versions of these FAQs will be maintained on IRS.gov to ensure that taxpayers, who may have relied on a prior version, can locate that version if they later need to do so.*

More information about [reliance is available](#). These FAQs were announced in IR-2022-165.

The Coronavirus State and Local Fiscal Recovery Funds (SLFR Funds) provide eligible state and local governments with a substantial infusion of funds to meet pandemic response needs and rebuild a stronger and more equitable economy as the country recovers. The SLFR Funds provide substantial flexibility for each government to meet local needs—including support for households and individuals hardest hit by the crisis. More information about the uses of SLFR Funds may be found in the [Interim Final Rule](#) PDF.

Some uses of SLFR Funds may trigger tax consequences. In general, individuals must include in gross income any payment or accession to wealth from any source unless an exclusion applies. One exclusion is for qualified disaster relief payments under section 139 of the Internal Revenue Code (Code). Under section 139 of the Code, certain payments made by a state or local government

## Current and prior updates to FAQs

- [FS-2022-36, September 2022](#)
- [FS-2021-16, November 2021](#)



to individuals in connection with the COVID-19 pandemic may be qualified disaster relief payments that are excluded from the recipient's gross income. A payment by a state or local government generally will be treated as a qualified disaster relief payment under section 139 if the payment is made to or "for the benefit of" an individual to (1) reimburse or pay reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a qualified disaster, or (2) promote the general welfare in connection with a qualified disaster. See section 139(b)(1) and (4). As a federally declared disaster, the COVID-19 pandemic is considered a qualified disaster for purposes of section 139. See section 139(c). However, payments are not treated as qualified disaster relief payments if the payments are in the nature of compensation for services performed by the individual. Additionally, payments made to or for the benefit of an individual are not treated as qualified disaster relief payments to the extent the expense of the individual compensated by such payment is otherwise compensated for by insurance or otherwise. See section 139(b).

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Legislative Advocacy-Federal Advocacy

**+ Q1: My state/local government is offering premium pay for the work I perform as an eligible worker during the COVID-19 pandemic. Premium pay is an amount up to \$13 per hour in addition to the wages or remuneration a worker otherwise receives and in an aggregate amount not to exceed \$25,000 per eligible worker. If I receive such a payment, must I include the amount in my gross income? (added November 17, 2021)**

**+ Q2: My employer received a grant from my state/local government to be used to provide premium pay to eligible workers during the COVID-19 pandemic. If I receive such a payment from my employer, must I include the amount in my gross income? (added November 17, 2021)**

**+ Q3: I am an employer who received a grant from my state/local government to be used to provide premium pay to eligible workers during the COVID-19 pandemic. If I make such a payment to my employees, must I withhold income and employment taxes on that payment? (added November 17, 2021)**

**+ Q4: My state/local government is offering a one-time payment to individuals receiving unemployment compensation who accept an offer of employment within the particular state or local jurisdiction, in any industry, and discontinue claiming unemployment benefits. The payment is meant to encourage individuals to return to work after state/local COVID-19 restrictions lapse. The payment is available to an eligible individual after he or she completes four weeks of paid employment. If I receive such a payment, must I include the amount in my gross income? (added November 17, 2021)**



**+ Q5: My employer received a grant from my state/local government to be used to pay new employees a cash bonus. If my employer pays me such a cash bonus, must I include the amount in my gross income? (added November 17, 2021)**

**+ Q6: I am an employer who received a grant from my state/local government to be used to pay new employees a cash bonus. If I pay such a cash bonus to my employees, must I withhold income and employment taxes on that payment? (added November 17, 2021)**

**+ Q7: My state/local government is using SLFR Funds to provide a direct cash transfer to families. The payment is intended to assist with childcare costs resulting from the COVID-19 pandemic. To qualify for the payment, a family must only show that it has a child under 18. Each qualifying family receives a flat amount under the program. If I receive a payment under this program, must I include it in my gross income? (added November 17, 2021)**

**+ Q8: We are a state/local government that uses SLFR Funds to provide a direct cash transfer to families. The payment is intended to assist with childcare costs resulting from the COVID-19 pandemic. To qualify for the payment, a family must only show that it has a child under 18. Each qualifying family receives a flat amount under the program. Do we have an obligation to file a Form 1099 or other information return with respect to the payment? (added November 17, 2021)**

**+ Q9: My state/local government is using SLFR Funds to provide a direct cash transfer to individuals for use in paying their utility bills. If I receive such a payment under this program, must I include it in my gross income? (added November 17, 2021)**

**+ Q10: We are a state/local government that uses SLFR Funds to provide a direct cash transfer to individuals for use in paying their utility bills. Do we have an obligation to file a Form 1099 or other information return with respect to the payment? (added November 17, 2021)**

**+ Q11: I am an individual and my state/local government is using SLFR Funds to pay utility bills on**



**behalf of individuals in the state or local jurisdiction. If the state/local government makes a payment directly to a utility company on my behalf, must I include the amount of the payment in my gross income? (added November 17, 2021)**

**+ Q12: We are a state/local government that uses SLFR Funds to pay utility bills on behalf of individuals. Do we have an obligation to file a Form 1099 or other information return with respect to the payment? (added November 17, 2021)**

**+ Q13: I am an individual and SLFR Funds are being used to pay my overdue utility balance with my utility company. Must I include the amount of the payment in my gross income? (added November 17, 2021)**

**+ Q14: We are a utility company that uses SLFR Funds to pay overdue utility balances on behalf of individuals. Do we have an obligation to file a Form 1099 or other information return with respect to the payment? (added November 17, 2021)**

**- Q15: I am an individual and my state/local government is using SLFR Funds to pay some or all of the down payment and closing costs associated with my purchase of a home under a program to support those negatively impacted by the COVID-19 pandemic. If I receive such assistance under this program, must I include it in my gross income? (added September 28, 2022)**

A15: No, the amount of this assistance is not included in gross income. These payments using SLFR Funds are made by a state/local government to individuals to promote the general welfare of qualifying individuals who are negatively impacted by the COVID-19 pandemic, a qualified disaster. As such, they are considered qualified disaster relief payments under section 139 of the Code and are excluded from gross income. However, payments made to or for the benefit of an individual are not treated as qualified disaster relief payments to the extent the expense of the individual compensated by such payment is otherwise compensated for by insurance or otherwise. See section 139(b).

**- Q16: I am an individual and my state/local government is using SLFR Funds to pay some or all of the premium mortgage insurance (PMI) with my purchase of a home. If I receive such assistance under this program, can I deduct the PMI costs paid through this program? (added September 28, 2022)**



A16: No, the PMI costs are not deductible for the individual. An individual cannot take a deduction or credit for expenses that are excluded under section 139. See section 139(h).

⊖ **Q17: We are a state/local government using SLFR Funds to pay some or all of the down payment and closing costs associated with individuals' purchases of homes. Do we have an obligation to file a Form 1099 or other information return with respect to these payments? (added September 28, 2022)**

A17: No. A Form 1099-MISC reporting the payment would be required if the payment constituted income to the recipient. In this case, because the payment is not income, no Form 1099-MISC or other information return is required to be filed with the IRS or furnished to the recipient.

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IRS-FAQ

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