

Released: November 19, 2021

CALIFORNIA DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT

CALIFORNIA ARREARAGE PAYMENT PROGRAM (CAPP)

CAPP PROGRAM NOTICE NO. 2021-09

The purpose of this official correspondence is to provide implementation information and guidance to the general public and state energy utility service providers regarding the California Arrearage Payment Program (CAPP) administered by the Department of Community Services and Development (CSD).

## **CAPP PROGRAM NOTICE NO. 2021-09**

TO: ALL ENERGY UTILITY COMPANIES

SUBJECT: CALIFORNIA ARREARAGE PAYMENT PROGRAM (CAPP)  
TAXABILITY OF ALLOCATIONS AND BENEFITS

DATE: November 19, 2021

REFERENCE: Government Code Section 16429.5  
Assembly Bill 135 (Chapter 85, Statutes of 2021)  
[CAPP-PN 2021-07](#)  
[IRS FS-2021-16, November 2021](#)

The purpose of this CAPP Program Notice (CAPP-PN) is to provide further guidance to state energy utility companies regarding the taxability of CAPP Benefits issued to eligible utility customers. Specifically, this CAPP-PN details the guidance issued on November 17, 2021 by the Internal Revenue Service (IRS) pursuant to FS-2021-16, November 2021, as it relates to the tax implications of the use of Coronavirus State and Local Fiscal Recovery Funds (SLFR Funds) established by the American Rescue Plan Act to pay past due utility bills on behalf of eligible utility customers.

### **BACKGROUND**

On November 8, 2021, the Department of Community Services and Development (CSD) released the CAPP Application that state energy utility companies may submit to request CAPP funds. Included with the CAPP Application are the CAPP General Terms and Conditions, which require the signature of a utility applicant's authorized representative in order to bind the utility applicant to terms and conditions associated with the administration of CAPP funds by state energy utility companies.

The CAPP General Terms and Conditions outline responsibilities of state energy utility companies related to the administration of CAPP funds, including tax obligations and responsibilities associated with CAPP Allocations to state energy utility companies and CAPP benefits issued to pay past due customer utility bills. Specifically, the CAPP General Terms and Conditions at Article 1.4, Tax Application to CAPP Benefits, state:

“Utilities should consult with tax professionals regarding potential tax liability and reporting requirements. CSD does not have the authority to provide federal or state tax advice to Utilities. A Utility's tax liability will depend on various factors and current federal and state tax laws. CSD will issue a Program Notice if the Department receives additional guidance from the Internal Revenue Service regarding the taxability of CAPP Allocations and benefits.”

On November 17, 2021, the IRS released Frequently Asked Questions (FAQs), FS-2021-16, November 2021, to clarify instances where SLFR funds may be defined as qualified disaster relief payments that are nontaxable and excluded from a recipient's gross income. CAPP is funded through SLFR Funds established under the American Rescue Plan Act. In response to IRS FS-2021-16, November 2021, CSD is releasing this CAPP-PN to communicate IRS tax guidance that pertains to the issuance of CAPP Benefits to eligible state energy utility customers.

## **GENERAL OVERVIEW OF IRS CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS GUIDANCE**

The following excerpt is from IRS FS-2021-16, November 2021:

“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. [...]

*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 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).” (Emphasis added.)

Per the guidance outlined above, CAPP benefits issued to assist the payment of past due utility bills incurred by *individuals* during the COVID-19 pandemic are considered disaster relief payments under section 139 of the Internal Revenue Code, and thus are

nontaxable. However, the receipt of a CAPP Allocation by a *state energy utility company* and the receipt of a CAPP Benefit by *commercial customers* may trigger tax consequences. State energy utility companies should consult with tax professionals to confirm any tax liability and applicable reporting requirements associated with the receipt of a CAPP Allocation and issuance of CAPP Benefits to commercial customers.

## **RECEIPT OF A CAPP BENEFIT BY INDIVIDUALS WILL NOT RESULT IN A TAXABLE EVENT PURSUANT TO IRS FS-2021-16, NOVEMBER 2021**

The relevant FAQs from IRS FS-2021-16, November 2021 are quoted in their entirety below, but the following conclusions are evident:

1. The receipt of a CAPP Benefit by individual utility customers will not be considered gross income for tax purposes; and
2. A Form 1099-MISC or other information return does not need to be filed with the IRS or furnished to individual CAPP Beneficiaries by either CSD or state energy utility companies.

**“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)**

A11: No, this payment is not included in gross income. These payments are made by a state/local government on behalf of individuals to pay for personal expenses incurred during 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 of [sic] 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).

**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)**

A12: No. A Form 1099-MISC reporting the payment would be required if the payment constituted income to the beneficiary. 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 beneficiary.

**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)**

A13: No, this payment is not included in gross income. These payments are made by a state/local government on behalf of individuals to pay for personal expenses incurred during 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).

**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)**

A14: No. A Form 1099-MISC reporting the payment would be required if the payment constituted income to the beneficiary. 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 beneficiary.”

Per the guidance outlined above, the receipt of a CAPP Benefit by an individual is excluded from the recipient’s gross income as it is considered a “qualified disaster relief payment” under section 139 of the IRS Code. Furthermore, CSD and state energy utility companies that receive a CAPP Allocation will not issue individual CAPP beneficiaries a Form 1099-MISC or file Form 1099-MISC or other information with the IRS. Individuals receiving a CAPP Benefit shall not include the amount received as gross income in accordance with section 139 of the IRS Code.

However, the question remains as to whether the receipt of a CAPP Allocation by CAPP Applicants, i.e., state energy utility companies, and a CAPP Benefit by Priority Group 4 Commercial Customers are excluded as gross income pursuant to section 139 of the IRS Code.

**APPLICATION OF SECTION 139 OF THE IRS CODE IS UNCLEAR FOR CAPP APPLICANTS AND PRIORITY GROUP 4 COMMERCIAL CUSTOMERS**

At the time of this CAPP-PN’s release, CSD has not received clarification from the IRS as to whether the use of the term “individuals” throughout IRS FS-2021-16, November 2021 applies to Commercial Customers. Therefore, it is unclear whether a state energy utility company that receives a CAPP Allocation or commercial customers receiving CAPP Benefits will face tax liabilities. State energy utility companies should consult with tax professionals to confirm any tax liability and applicable reporting requirements

associated with the receipt of a CAPP Allocation and issuance of CAPP Benefits to commercial customers.

Based on the foregoing, CSD finds Article 1.4 of the CAPP General Terms and Conditions applies at this time for both state energy utilities and commercial customers. For reference purposes, Article 1.4 provides the following:

“Utilities should consult with tax professionals regarding potential tax liability and reporting requirements. CSD does not have the authority to provide federal or state tax advice to Utilities. A Utility’s tax liability will depend on various factors and current federal and state tax laws. CSD will issue a Program Notice if the Department receives additional guidance from the Internal Revenue Service regarding the taxability of CAPP Allocations and benefits.”

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All CAPP-PNs, along with release dates of crucial CAPP implementation phases and state energy utility responses are posted on CSD’s public-facing [website](#).

If you have questions or need additional guidance regarding CAPP, please contact CSD at [CAPP@csd.ca.gov](mailto:CAPP@csd.ca.gov).

Sincerely,



DAVID SCRIBNER  
Director