CANCEL THE DEBT, CANCEL THE TAX: EXCLUDE STUDENT LOAN DEBT RELIEF FROM GROSS INCOME USING THE GENERAL WELFARE EXCLUSION

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INTRODUCTION

The mounting student loan crisis is seriously encumbering this country's upcoming generation with approximately one in four borrowers struggling to repay or already in default.[1] The cumulating federal student loan debt surpassed $1.6 trillion in 2022 and seriously impaired the younger generation's ability to save after entering the job market.[2] The effects of debt are even more crushing for the nearly one-third of the forty-five million borrowers that have debt but no post-secondary degree.[3] Many could not complete their degree because the cost of attendance was too high.[4] The high monthly payments and ballooning balances make it harder for borrowers to build wealth through buying a house or saving for retirement.[5]

As the mounting debt grows, so does the outcry for government intervention.[6] Most notably, calls for policies that would provide for broader scale student loan debt relief—including cancellation of all student loan debt—have gained considerable attention in recent years.[7] But legal scholars in favor of student loan cancellations are also concerned about the potential tax implications in the form of "tax bombs."[8] The term tax bomb refers to

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1. Jeffrey P. Naimon, Sasha Leonhardt & Sarah B. Meehan, *School of Hard Knocks: Federal Student Loan Servicing and the Looming Federal Student Loan Crisis*, 72 ADMIN. L. REV. 259, 260–61, 264 (2020) (noting that student loan borrowers are at least ninety days behind on repayment of $160 billion worth of federal student loans and pointing out that the administrative system is falling short of its goal to address the growing student loan crisis and the high default rates).

2. Press Release, White House, *Fact Sheet: President Biden Announces Student Loan Relief for Borrowers Who Need It Most* (Aug. 24, 2022) [hereinafter *2022 Student Loan Relief Press Release*], https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/24/fact-sheet-president-biden-announces-student-loan-relief-for-borrowers-who-need-it-most/; ALEXANDRA HEGJI, KYLE D. SHOHFI & RITA R. ZOTA, CONG. RSCH. SERV., R47196, FEDERAL STUDENT LOAN DEBT CANCELLATION: POLICY CONSIDERATIONS 1 (2022).

3. *2022 Student Loan Relief Press Release*, *supra* note 2.

4. *Id.*

5. *Id.*; Naimon, Leonhardt & Meehan, *supra* note 1, at 262 ("Unable to pay their federal loans and unable to discharge them in bankruptcy, these borrowers are postponing key wealth-building activities such as saving for retirement and building equity in real property.").

6. *See* Dalié Jiménez & Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 HARV. C.R.-C.L.L. REV. 131, 166–68, 171 (2020) (arguing that the highly-demanded cancellation of student debt would be an effective governmental policy intervention plan).

7. HEGJI, SHOHFI & ZOTA, *supra* note 2.

8. *See, e.g.*, Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 402 (2020) (raising concern for the tax implications for the canceled debts and that the intended benefit would be worse off without the Department of Treasury's cooperation);

the "sudden large tax obligation that will be imposed on income that is attributed to but not actually received by a relatively small group of taxpayers."[9] The conventional rule is that a cancellation of any debt generates taxable income for the borrower at the time of cancellation unless the Internal Revenue Code (IRC) specifically exempts it.[10] The logic is that debt cancellation occurs when the creditor forgoes the right to collect the full repayment amount.[11] As a result of enrichment in the form of lessened liability, taxpayers with forgiven loans could end up with a surprise income tax bill after the joy of debt relief.[12]

The tax implications of student debt relief have hindered many past governmental attempts to make education more affordable.[13] For example, in 1973, the Internal Revenue Service (IRS) held that a state's Medical Education Loan Scholarship Program produced taxable income for program participants.[14] The program, designed to improve rural access to medical care, provides up to $10,000 in medical school loans to qualified residents.[15] Recipients must repay the amount in five annual installments starting one

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John R. Brooks, *The Tax Treatment of Student Loan Discharge and Cancellation*, *in* STUDENT BORROWER PROT. CTR., DELIVERING ON DEBT RELIEF 166, 167 (2020), https://protectborrowers.org/wp-content/uploads/2020/12/Delivering-on-Debt-Relief.pdf (noting that potential tax issues arising out of cancelling student debt could undermine the benefit of the cancellation); John R. Brooks, Commentary, *Treasury Should Exclude Income from Discharging of Student Loans*, 152 TAX NOTES 751, 751 (2016).

9. Gregory Crespi, *Should We Defuse the 'Tax Bomb' Facing Lawyers Who Are Enrolled in Income-Based Student Loan Repayment Plans?*, 68 S.C.L. REV. 117, 117 (2016).

10. I.R.C. § 61 ("Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: . . . (11) Income from discharge of indebtedness . . . ."); *see also* § 108(f) (excluding certain types of discharge of student loan indebtedness); Treas. Reg. § 1.61-12(a) ("The discharge of indebtedness, in whole or in part, may result in the realization of income.").

11. *See, e.g.*, United States v. Kirby Lumber Co., 284 U.S. 1, 3 (1931) (finding that the company had an income for the buyback of its bonds at discounted prices).

12. *See* Crespi, *supra* note 9.

13. *See, e.g.*, Peter J. Eglick, *Taxation of Forgiven Student Loans*, 62 GEO. L.J. 1243, 1243, 1248 (1974) (critiquing the IRS's ruling that a state's Medical Education Loan Scholarship Program is taxable income). *Compare* Crespi, *supra* note 9, at 135–36 (arguing the installment method should be made available for one's tax liability under the income-based-repayment plan and opposing tax exemption for the debt cancelled under the plan), *with* Jonathan M. Layman, *Forgiven but Not Forgotten: Taxation of Forgiven Student Loans Under the Income-Based-Repayment Plan*, 39 CAP. U.L. REV. 131, 132 (2011) (presenting multiple theories that would exempt student loan cancellation under the income-based-repayment plan).

14. Rev. Rul. 73-256, 1973-1 C.B. 56.

15. *Id.*

year after graduation.[16] However, the program waives the installment due for each year the recipient practices medicine in a rural area of the state.[17] The IRS reasoned that the non-taxable scholarship under Section 117 of the IRC must be "no strings" educational grants; the program's rural practice requirement is a substantial quid pro quo, and thus, the canceled amount is not a scholarship but a taxable income.[18]

The concern of tax bombs has resurfaced as President Joe Biden tries to deliver his campaign promise on providing student debt relief.[19] Most recently, the Biden Administration announced its pursuit of "an alternative path to debt relief for as many working and middle-class borrowers as possible," just hours after the Supreme Court struck down the Administration's original debt relief plan utilizing the Secretary of Education's authority in a national emergency.[20] The original plan, announced in August 2022, would have canceled up to $20,000 in federal student loans for borrowers whose incomes are below the published thresholds.[21] The new plan cites to the Secretary of Education's power to "compromise, waive, or release any right, title, claim, lien, or demand" under

16. *Id.*

17. *Id.*

18. *Id.*

19. *See 2022 Student Loan Relief Press Release*, *supra* note 2 ("During the campaign, [President Biden] promised to provide student debt relief. Today, the Biden Administration is following through on that promise . . . ."); Danielle Douglas-Gabriel, *These States Could Tax Biden's Student Debt Relief*, WASH. POST. (Sept. 10, 2022), https://www.washingtonpost.com/education/2022/09/10/state-taxes-student-loan-forgiveness/.

20. Press Release, White House, *Fact Sheet: President Biden Announces New Actions to Provide Debt Relief and Support for Student Borrowers* (June 30, 2023) [hereinafter *2023 Student Loan Relief Press Release*], https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/30/fact-sheet-president-biden-announces-new-actions-to-provide-debt-relief-and-support-for-student-loan-borrowers/; *see* Biden v. Nebraska, No. 22-506, slip op. at 1, 13–14 (U.S. June 30, 2023) (holding that the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act) does not authorize the Secretary of Education to cancel roughly $430 billion of federal student loan balances); Joe Biden, President, Remarks by President Biden on the Supreme Court's Decision on the Administration's Student Debt Relief Program (June 30, 2023) [hereinafter President Biden's Remarks], https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/30/remarks-by-president-biden-on-the-supreme-courts-decision-on-the-administrations-student-debt-relief-program/ ("[T]oday's decision has closed one path. Now we're going to pursue another.").

21. *See 2022 Student Loan Relief Press Release*, *supra* note 2 (providing up to $20,000 in debt relief to qualified borrowers); *The Biden-Harris Administration's Student Debt Relief Plan Explained*, FED. STUDENT AID, https://studentaid.gov/debt-relief-announcement (providing up to $20,000 to Pell Grant recipients and up to $10,000 to non-Pell Grant recipients).

the Higher Education Act of 1965 (HEA).[22] The Secretary of Education must engage in a negotiated rulemaking process in order to exercise this authority.[23] While the Biden Administration promises to move as fast as possible on its new plan,[24] there will be some time before the delivery of any student loan debt relief, even without any legal challenges after the promulgation.[25]

In anticipation of possible student loan cancellations, Congress incorporated a clause in the American Rescue Plan Act of 2021 to exempt all student loan debt cancellations from federal income tax until 2026.[26] This

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22. Higher Education Act of 1965 § 432(a)(6), 20 U.S.C. § 1082(a)(6); *see* Negotiated Rulemaking Committee, 88 Fed. Reg. 43,069 (proposed July 6, 2023) (to be codified at 34 C.F.R. ch. VI) (proposing to establish a negotiated rulemaking committee on topics in the title IV of the Higher Education Act (HEA) relating to the "modification, waiver, or compromise of [f]ederal student loans"); *see also* Letter from Eileen Connor, Deanne Loonin & Toby Merrill, Legal Servs. Center of Harvard L. Sch., to Senator Elizabeth Warren (Sept. 14, 2020), https://policymemos.hks.harvard.edu/files/policymemos/files/2-17-21-ltr_to_warren_re_admin_debt_cancellation.pdf?m=1613667682 (analyzing Secretary of Education's legal authority to cancel student loan debts under the HEA).

23. *See* 20 U.S.C. § 1098a(b)(2) (requiring all regulations promulgated under the subchapter to undergo a negotiated rulemaking process "unless the Secretary [of Education] determines that applying such a requirement . . . is impracticable, unnecessary, or contrary to the public interest . . . and publishes the basis for such determination in the Federal Register . . . ."); Negotiated Rulemaking Committee, 88 Fed. Reg. at 43,069 (initiating the process by announcing a public hearing on the establishment of a negotiated rulemaking committee).

24. *See* President Biden's Remarks, *supra* note 20 ("We're not going to waste any time on [pursuing student loan debt relief under HEA]. We're getting moving on it. It's going to take longer, but we're getting at it right away."); *2023 Student Loan Relief Press Release*, *supra* note 20 ("The Department [of Education] will complete this rulemaking as quickly as possible.").

25. *See The Negotiated Rulemaking Process for Title IV Regulations—Frequently Asked Questions*, U.S. DEP'T OF EDUC., https://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html (May 25, 2021) (suggesting that the negotiated rulemaking process can be time-consuming). The Department of Education anticipates holding three two-day negotiation sessions—with roughly four-week intervals each—once it successfully establishes a negotiated rulemaking committee after the initial public hearing on July 18, 2023. Negotiated Rulemaking Committee, 88 Fed. Reg. at 43,069.

26. American Rescue Plan Act of 2021 § 9675(a)(5), I.R.C. § 108(f)(5); *see* 167 CONG. REC. S1510 (daily ed. Mar. 15, 2021) (statement of Sen. Chuck Schumer) ("The American Rescue Plan also sets the stage for President Biden to deliver incredibly meaningful student loan forgiveness by making all types of student loan forgiveness tax free . . . ."); Danielle Douglas-Gabriel, *Congress Makes Student Debt Forgiveness Tax-Free, Limits Revenue That For-Profit Colleges Get from Enrolling Veterans*, WASH. POST (Mar. 10, 2021), https://www.washingtonpost.

temporary provision protects borrowers from federal income tax liabilities should there be successful execution of a plan to relieve student debt.[27] However, this temporary rule does not resolve the troubling possibility that the IRS could collect income tax from student borrowers on belated debt cancellations.[28] If Congress cannot reach a consensus to renew the exemption, future government efforts to provide student loan debt relief could once again create tax bombs for borrowers.[29]

The general welfare exclusion, a little-known administrative doctrine articulated by the IRS, perhaps could "defuse" the tax bomb.[30] This Comment begins by introducing the history, qualification, and legal force of the general welfare exclusion.[31] Further, this Comment presents relevant information regarding the Biden Administration's original one-time student loan debt relief plan and its new relief plan along with some of the legal challenges.[32] With many of the details on the Biden Administration's new relief plan dependent on the ongoing negotiated rulemaking, this Comment limits the discussion to the tax implication should there be a successful debt relief program with the same or similar terms as its original plan after the temporary exemption expires in 2026. This Comment concludes by recommending that the IRS use the general welfare exclusion as a way to defuse any potential tax bomb in the event of a government-provided student loan debt relief plan based on an individual's income level.[33]

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com/education/2021/03/10/student-debt-forgiveness-for-profit-colleges-stimulus/ (stating that the $1.9 trillion stimulus package gave congressional leaders "an opportunity to . . . eliminat[e] the tax burden many student loan borrowers would face if any portion of their debt was discharged.").

27. I.R.C. § 108(f)(5).

28. Section 108(f)(5) excludes only qualified student loan cancellations after December 31, 2020, and before January 1, 2026. *See id.*

29. *See* § 108(a)(1), (f)(5).

30. Of many papers that have argued student loan forgiveness under various legal theories, only a few mention the general welfare exclusion as a possible argument. *See, e.g.*, Luke Herrine, *The Law and Political Economy of a Student Debt Jubilee*, 68 BUFF. L. REV. 281, 404 (2020); Brooks, *supra* note 8, at 177–78; ALEXANDRA HEGJI, CONG. RSCH. SERV., R44737, THE CLOSURE OF INSTITUTIONS OF HIGHER EDUCATION: STUDENT OPTIONS, BORROWER RELIEF, AND OTHER IMPLICATIONS 24 n. 151 (2020); *see generally* Robert W. Wood & Richard C. Morris, *Discovering (or Revisiting) the General Welfare Exception from Gross Income*, 83 TAXES 39 (2005) (observing that many practitioners are simply not aware of the general welfare exclusion doctrine).

31. *See infra* Part I.

32. *See infra* Part II.

33. *See infra* Part III.

I. THE GENERAL WELFARE EXCLUSION AND ITS FORCE OF LAW

A. The Evolution of the General Welfare Exclusion

The definition of "gross income" has been a central question of federal income tax since its conception.[34] The IRS frequently issues administrative guidance or decisions attempting to draw a clear line between gross income subject to taxation and transactions that produced no income for tax purposes.[35] As early as 1938, the IRS started to administratively exclude certain government-provided, need-based welfare assistance to individual taxpayers from the gross income calculation.[36] Several courts have either acknowledged or recognized the general welfare exclusion since then.[37] A successful application of the general welfare exclusion would exempt an income-producing transaction from the gross income calculation, and therefore, exclude the transaction from an individual's federal income tax.[38]

The application of the exclusion avoids the circular logic of "giving with

34. I.R.C. § 61(a) ("Except as otherwise provided in this subtitle, gross income means all income from whatever source derived . . . ."); *see, e.g.*, Old Colony Tr. Co. v. Comm'r, 279 U.S. 716, 729 (1929) (finding that when an employer pays an employee's income tax on the employee's behalf, the payment is taxable as income to the employee); Eisner v. Macomber, 252 U.S. 189, 212 (1920) (determining that pro rata stock dividend that does not alter the shareholder structure or shareholder rights are not income).

35. *See, e.g.*, O.D. 15, 1919-1 C.B. 71 (announcing that "[c]ompensation received by Federal reserve agents and their assistants, as well as other employees of Federal reserve banks, is subject to the income tax"); O.D. 265, 1919-1 C.B. 71 (determining that "[b]oard and lodging furnished seamen in addition to their cash compensation is held to be supplied for the convenience of the employer and the value thereof is not required to be reported in such employees' income tax returns.").

36. *See* I.R.S. Gen. Couns. Mem. 36,470 (Oct. 31, 1975) (attributing the 1938 Income Tax Ruling that excluded social security payments from income calculation as the origin of what later became the general welfare exclusion); *see also* I.T. 3194, 1938-1 C.B. 114 (stating that social security payments are not subjected to income tax).

37. *See, e.g.*, Ginsburg v. United States, 136 Fed. Cl. 1, 5 (2018), *aff'd*, 922 F.3d 1320 (Fed. Cir. 2019); Graff v. Comm'r, 74 T.C. 743 (1980), *aff'd*, 673 F.2d 784, 785 (5th Cir. 1982) (per curiam); Maines v. Comm'r, 144 T.C. 123, 138 (2015); Bannon v. Comm'r, 99 T.C. 59, 65 (1992); Bailey v. Comm'r, 88 T.C. 1293, 1300–01 (1987).

38. *See, e.g.*, *Graff*, 673 F.2d at 785 (affirming the Tax Court's distinction of the interest deduction payments under section 236 of the National Housing Act from the mortgage assistance payments under section 235 of the Act that qualify as a non-taxable direct general welfare benefits to the recipients), *aff'g* 74 T.C. 743; *see also* Rev. Rul. 75-271, 1975-2 C.B. 23 (applying the general welfare exclusion to the mortgage assistance payments under section 235 of the National Housing Act).

one hand and taking away with the other."[39] Many general welfare programs, like social security benefits and Medicare, rely heavily on revenue collected from payroll, income, and excise taxes.[40] While not every government-funded program is tax exempt,[41] many governmental benefits for the promotion of general welfare have been excluded from taxable income either by Congress using statutes or by the IRS using the general welfare exclusion doctrine.[42] After all, taxing the benefit in the hands of recipients causes economic inefficacies as the IRS essentially reclaims funds that were just distributed through government welfare programs.[43]

B. Qualifications for the General Welfare Exclusion

The IRS first formulated the requirements for which payments would qualify for the general welfare exclusions in the 1970s.[44] The IRS stated it had "consistently held that payments made under legislatively provided social benefit programs for promotion of the general welfare are not

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39. 167 CONG. REC. S1510 (daily ed. March 15, 2021) (statement of Sen. Chuck Schumer); *see* Samuel D. Brunson & Christian A. Johnson, *Good Intentions: Administrative Fiat and the General Welfare Exclusion*, 100 WASH. U.L. REV. 1411, 1449 (2023) ("[I]t makes little sense to require a taxpayer to pay taxes on welfare benefits that she is receiving because the taxpayer lacks the resources to pay for the benefits in the first place.").

40. In fiscal year 2021, the federal personal income tax collection contributed to about 30% of the total budget; payroll taxes like social security and Medicare tax contributed about 19%; and excise, customs, estate, gift, and miscellaneous taxes contributed for about 5%. Meanwhile, about 29% of the total fiscal year 2021 budget was spent on Social Security, Medicare, and other retirement programs; 22% was spent toward Medicaid, Supplemental Nutrition Assistance Program (formerly food stamps), Temporary Assistance for Needy Families (TANF), and other social programs; 13% was on physical, human, and community development programs, including job trainings programs. INTERNAL REVENUE SERV., CAT NO. 24811V, TAX YEAR 2022: 1040 (AND 1040-SR) INSTRUCTIONS 108 (2022).

41. *See, e.g.*, I.R.C. § 85 (including unemployment compensation by a government as taxable income); § 86 (including payments under Title II of the Social Security Act and tier 1 railroad retirement benefits in taxable income).

42. *See, e.g.*, I.R.C. § 138 (excluding payments under Medicare Advantage MSA plans); § 139 (excluding disaster relief payments); § 139A (excluding federal subsidies for prescription drug plans); Rev. Rul. 63-136, 1963-2 C.B. 19 (excluding payments under a work-training program).

43. Brunson & Johnson, *supra* note 39, at 1450 (illustrating the discount effects if the IRS collects tax on government benefits and the potential burden to both the taxpayer and the IRS).

44. Rev. Rul. 74-205, 1974-1 C.B. 21; *see also* I.R.S. Gen. Couns. Mem. 36,470 (Oct. 31, 1975) (reciting the earlier IRS determinations that ultimately became precedents for the formulation of the general welfare exclusion).

includible in a recipient's gross income."[45] The IRS later developed three prongs to determine if a payment qualifies under the general welfare exclusion: "To qualify under the general welfare exclusion, payments must (i) be made from a governmental fund, (ii) be for the promotion of the general welfare (i.e., generally based on individual or family needs), and (iii) not represent compensation for services."[46] A payment is excludable from gross income if it meets all three criteria.[47]

1. From a Governmental Fund

The first prong requires the payment to be made from a governmental fund.[48] The IRS provides little to no guidance on the first requirement.[49] Past applications of the general welfare exclusion suggest that cancellation of one's repayment liability to the government qualifies as a payment from a government fund for the general welfare exclusion purpose.[50]

For example, in 1978, the IRS concluded that when the Law Enforcement Assistance Administration waives repayment of interim benefit payments to surviving dependents of a public safety officer, the discharge of the liability for repayment qualifies for the general welfare exclusion.[51] Under Section

45. Rev. Rul. 74-205, 1974-1 C.B. 21 (excluding replacement housing payments to individuals or families who were displaced from their home or property by federal or federally funded program).

46. Rev. Rul. 2005-46, 2005-2 C.B. 120 (disallowing the application of the general welfare exclusion for grants paid to qualified businesses that agreed to sustain operations in a disaster-affected area for five years; explaining that payments to businesses generally do not qualify under the general welfare exclusion because they are not based on individual or family needs); *see also* Bailey v. Comm'r, 88 T.C. 1293, 1294, 1300–01 (1987) (rejecting the application of the general welfare exclusion for payments made by the Urban Redevelopment Authority of Pittsburgh to rehabilitate the history facade of petitioner's property because the facade grant is not need-based—it requires only ownership of the property and compliance with the building code).

47. *See, e.g.*, Rev. Rul. 2005-46, 2005-2 C.B. 120; *see also* Robert W. Wood & Richard C. Morris, *The General Welfare Exception to Gross Income*, TAX NOTES, Oct. 10, 2005, at 203–04 (summarizing the three requirements of the general welfare exclusion).

48. *See* Rev. Rul. 2005-46, 2005-2 C.B. 120.

49. Wood & Morris, *supra* note 47, at 204 ("[T]he fact that a payment originates in the general welfare fund appears to be assumed (or at least the IRS must believe it is easy to determine), and therefore the first prong is not discussed. That suggests that the determination of whether a payment is made from a governmental general welfare fund is mechanical, and has not been subject to interpretive differences for which taxpayers would need guidance.").

50. *See* Rev. Rul. 78-46, 1978-1 C.B. 22.

51. *See id.*

701(a) of the Public Safety Officers' Benefits Act of 1976,[52] the Law Enforcement Assistance Administration shall pay a benefit to certain surviving dependents if the agency determines that the public safety officer's death was the direct and proximate result of a personal injury sustained in the line of duty.[53] Section 701(b) of the program allows the agency to pay an interim benefit to the surviving dependents prior to the agency's final determination upon a showing of need and if the agency believes a benefit will probably be paid.[54] However, the recipients of the interim benefit must repay the amount if the agency ultimately determines that they were ineligible for the benefit in the first place.[55] The statute also allows the agency to waive all or some of the repayment liability if the repayment would result in a hardship to the dependent.[56] The IRS held that "because of a showing of an economic hardship, *the discharge of the liability for repayment is in the nature of a relief payment made for the promotion of the general welfare*, and is not includible in the gross income of the recipient for Federal income tax purposes."[57] The 1978 revenue ruling meant that the cancellation of an individual's debt liability to the government qualifies as a payment from a governmental fund.[58]

2. For the Promotion of the General Welfare

The second prong of the test inquires into the purpose of the payment—specifically whether it was based on an individual's needs.[59] Government programs to mitigate individual hardships generally qualify for the exception; however, government incentive payments are likely disqualified from the general welfare exclusion because these payments are often based on the individual's status without considering the individual's needs.[60] The IRS's determination of what constitutes a need-based payment varies "depending on the need for which the payment is being made."[61] In the past, the IRS

52. Pub. L. No. 94-430, 90 Stat. 1346 (current version at 34 U.S.C. § 10281).

53. *See* § 3796(a).

54. *See* § 3796(b)

55. *See* § 3796(c), (d).

56. *See* § 3796(d).

57. Rev. Rul. 78-46, 1978-1 C.B. 22 (emphasis added).

58. *See id.*

59. *See supra* text accompanying note 46.

60. *Compare* Rev. Rul. 98-19, 1998-1 C.B. 840 (holding that disaster relocation payments qualify for the general welfare exclusion), *with* Rev. Rul. 85-39, 1985-1 C.B. 21, 21–22 (rejecting the application of the general welfare exclusion to Alaska's dividend payment program that would incentivize continuous residencies in the state).

61. Wood & Morris, *supra* note 47, at 205–06.

granted the exclusion for government programs targeting an individual's financial needs based on the person's income level.[62] The IRS also stated that programs based on other needs—such as financial status, health, educational background, or employment status—could satisfy the second requirement.[63] Payments to businesses, however, do not satisfy the second general welfare exclusion requirement because they are not based on individual or family needs.[64]

Agency-determined eligibility for a benefit meets the need-based test.[65] In 1975, the IRS ruled that assistance payments by the Department of Housing and Urban Development (HUD) under Section 235 of the National Housing Act qualified for the general welfare exclusion.[66] Section 235 of the National Housing Act authorizes the HUD Secretary to assist lower-income families in acquiring home ownership by making periodic assistance payments under contracts between the Secretary and mortgagees when the mortgage meets specific requirements.[67] Homeowners must periodically recertify their income with HUD, and the agency then determines the payment amount based on the individual's income level.[68] The IRS held that the housing program was based on need since the assistance payments would vary

62. *See, e.g.*, Rev. Rul. 78-170, 1978-1 C.B. 24 (allowing general welfare exclusion for Ohio's program that reimburses propane costs for disabled or elderly individuals with lower income during winter months); Rev. Rul. 73-87, 1973-1 C.B. 39, 39–40 (allowing the general welfare exclusion for experimental antipoverty program funded by the Office of Economic Opportunity).

63. *See* Rev. Rul. 85-39, 1985-1 C.B. 22 (finding that Alaska's dividend payment to residents "is distinguishable from general welfare program payments because the bonus is payable to a State resident regardless of financial status, health, educational background, or employment status"); Rev. Rul. 80-330, 1980-2 C.B. 29 (disallowing payments made under the National Historic Presentation Act of 1966 and explaining that "the payments are not based on an individual recipient's personal financial status, health, educational background, or employment status, nor are they intended to improve the living conditions of low-income homeowners"), *rev'd on other grounds*, Rev. Rul. 82-195, 1982-2 C.B. 34.

64. *See* Rev. Rul. 2005-46, 2005-2 C.B. 120; I.R.S. Gen. Couns. Mem. 37,920, 12 (Apr. 5, 1979) (citing Baboquivari Cattle Co. v. Comm'r, 135 F.2d 114 (9th Cir. 1943)) (reaffirming the IRS's previous determinations that general welfare exclusion does not apply to payments made to a trade or business).

65. *See supra* text accompanying notes 56–57 (finding that discretionary benefits granted by the agency based on the determination of a likely hardship are general welfare benefits); Rev. Rul. 75-271, 1975-2 C.B. 23.

66. *See* Rev. Rul. 75-271, 1975-2 C.B. 23.

67. *See* 12 U.S.C. § 1715z(a), (b).

68. *See* § 1715z(f), (q).

depending on the person's income level and risk factors.[69]

In contrast, benefits that are solely based on one's status do not qualify for the general welfare exclusion.[70] For example, in 1976, the IRS disallowed the state of Alaska's monthly "Longevity Bonus" to anyone who had resided in the state for at least twenty-five years and was sixty-five years or older.[71] The IRS distinguished the $100 monthly bonus from general welfare payments: "[T]he benefits are payable to any Alaskan meeting the age and residency requirements regardless of financial status, health, educational background, or employment status."[72]

Similarly, in 1985, the IRS again declined to apply the general welfare exclusion to Alaska's "dividend payments" program.[73] The Alaska state legislature enacted the program to equally distribute a portion of the state's mineral income to its adult residents each year.[74] Interested residents were required to apply for the benefit and must have resided in the state for at least six consecutive months immediately preceding the date of applications.[75] The IRS distinguished the Alaska statute from a general welfare program because the state paid the dividend to residents "regardless of financial status, health, educational background, or employment status" to incentivize residency.[76]

3. Not Representing Compensation for Services

The third prong limits the scope of the general welfare exclusion by disallowing the exclusion of compensatory payments for the recipient's service.[77] But not all payments with service requirements are compensatory in nature.[78] The IRS explicitly distinguished payments under work-training

69. *See* Rev. Rul. 75-271, 1975-2 C.B. 23 ("The housing program is based on need, and payments thereunder, computed in accordance with the Act, will vary under determinations by the Department of Housing and Urban Development according to the income of the homeowner.").

70. *See, e.g.*, Rev. Rul. 76-131, 1976-1 C.B. 16, 16–17; Bailey v. Comm'r, 88 T.C. 1293, 1301 (1987) (denying the general welfare exclusion for payments from a facade grant to rehabilitate taxpayer's property when the taxpayer only had to show ownership and building code compliance).

71. *See* Rev. Rul. 76-131, 1976-1 C.B. 16, 16–17.

72. *Id.* at 17.

73. *See* Rev. Rul. 85-39, 1985-1 C.B. 21, 21–22.

74. ALASKA STAT. § 43.23.005 (1985).

75. § 43.23.015(b).

76. Rev. Rul. 85-39, 1985-1 C.B. 21, 22.

77. *See supra* note 46 and accompanying text.

78. *See, e.g.*, Rev. Rul. 72-340, 1972-2 C.B. 31; Rev. Rul. 63-136, 1963-2 C.B. 19.

programs that qualified for the general welfare exclusion from government employment.[79] In 1963, the IRS ruled that payments made to individuals undergoing training or retraining under either the Area Redevelopment Act or the Manpower Development and Training Act of 1962 qualify for the general welfare exclusion.[80] Both Acts provide funds to states to address unemployment and underemployment issues.[81] Individuals selected to undergo trainings or retrainings receive weekly payments equal to the amount of the average unemployment payment of that state.[82] Participants under the Manpower Development and Training Act of 1962 could also receive on-the-job trainings as well as a paycheck from the training employer.[83] In such cases, the participant's benefit payment from the government would be reduced by the hourly wage.[84] Based on these features, the IRS concluded that programs under both Acts are "intended to aid the recipient in their efforts to acquire new skills that will enable them to obtain better employment opportunities," and therefore qualify for the general welfare exclusion.[85]

In contrast, the IRS later declined to apply the general welfare exclusion when a state used the fund under the same Manpower Development and Training Act of 1962 to employ individuals to assist with the state's disaster relief effort.[86] The IRS first found the existence of an employer-employee relationship between the state and the participant, based on the fact that the state has the "right to control and direct" an individual's work as well as the right to terminate the employment.[87] The IRS then distinguished its 1963 revenue ruling from the instant case where "the overriding purpose of the program [was] to provide the participants with compensation for services and not to provide them with training or retraining . . . ."[88] The IRS also pointed out that disaster cleanup is an outcome that favors the state's interests more than it helps the individuals obtain employable skills.[89] Accordingly,

79. *See* Rev. Rul. 74-413, 1974-2 C.B. 333, 334.

80. Rev. Rul. 63-136, 1963-2 C.B. 19.

81. *Id.* at 20.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* Similarly, in 1972, the IRS held stipends paid by a city to probationers under a project designed to aid probationers in acquiring training in skills for potential gainful employment qualify for the general welfare exclusion. Rev. Rul. 72-340, 1972-2 C.B. at 31–32.

86. Rev. Rul. 74-413, 1974-2 C.B. at 333–34.

87. *Id.* at 334.

88. *Id.*

89. *Id.*

the IRS held that the payments did not qualify for the general welfare exclusion.[90]

In 1999, the IRS proposed a more workable test to determine whether a payment constituted compensation when addressing the tax treatment of the Temporary Assistance for Needy Families (TANF) benefits.[91] The TANF program requires individual recipients to perform some "work activities" to continue to receive public assistance in cash.[92] The notice of proposed rulemaking set forth three conditions that will determine whether a payment is "basically compensation" for the required work:

> (1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);
>
> (2) The determination of the individual's eligibility to receive any payment is based on need and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i)(I) of the Social Security Act)) and the Food Stamp Act of 1977; and
>
> (3) The size of the individual's payment is determined by the applicable welfare law, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable welfare law) divided by the higher of the federal or state minimum wage.[93]

The proposed rule will only exclude certain TANF payments from taxable income if they satisfy all three conditions.[94] If a payment fails to meet these conditions after taking all the facts and circumstances into account, it could be deemed as "basically compensation" for services rendered even if some training was provided in the process, and thus, does not qualify for the general welfare exclusion.[95]

The latest IRS Publication 525—an official publication providing general guidance on taxable and nontaxable income—summarizes many types of payments that qualify for the general welfare exclusion.[96] Payments under a

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90. *Id.*

91. *See* I.R.S. Notice 99-3, 1999-1 C.B. 271.

92. *See* 42 U.S.C. § 607(c)(1)(A), (d) (defining the "work activities" required for Temporary Assistance for Needy Families (TANF) benefits).

93. I.R.S. Notice 99-3, 1999-1 C.B. 271, 272.

94. *Id.* at 271–72. *Contra* INTERNAL REVENUE SERV., PUB. 4012, VITA/TCE VOLUNTEER RESOURCE GUIDE D-2 (2022) (listing all TANF benefits as examples of nontaxable income).

95. *See* I.R.S. Notice 99-3, 1999-1 C.B. at 271.

96. *See* INTERNAL REVENUE SERV., PUB. 525, TAXABLE AND NONTAXABLE INCOME FOR USE IN PREPARING 2022 RETURNS (2023) [hereinafter PUB. 525].

work-training program,[97] various unemployment benefits and reemployment assistance,[98] disaster-related payments or grants,[99] various housing assistance,[100] payments to reduce the cost of winter energy,[101] and various government restitution payments or community development grants[102] are all excludable from income under the general welfare exclusion.[103]

C. The Force of the General Welfare Exclusion

The IRS claimed its authority to exclude general welfare payments from gross income based on its inference that Congress did not intend to tax welfare programs when authorizing federal expenditures for these programs.[104] An IRS general counsel memorandum in 1975 explained that when Congress funds a welfare program, Congress also has the power to make the program free of federal income tax liability.[105] The IRS acts within its authority to exclude federal expenditures from taxation if it bases the exclusion on congressional intent.[106] Though this theory cannot justify the exclusion of state-funded welfare programs since state legislatures lack the power to alter the federal tax code, the IRS nevertheless extends the general

97. *See* Rev. Rul. 63-136, 1963-2 C.B. 19; Rev. Rul. 72-340, 1972-2 C.B. at 31–32; Rev. Rul. 75-246, 1975-1 C.B. 24 (payments to a trainee under the Comprehensive Employment and Training Act of 1973).

98. *See, e.g.*, Rev. Rul. 70-280, 1970-1 C.B. 13; Rev. Rul. 76-229, 1976-1 C.B. 19.

99. *See, e.g.*, Rev. Rul. 76-144, 1976-1 C.B. at 17–18; Rev. Rul. 98-19, 1998-1 C.B. 840; Rev. Rul. 2003-12, 2003-1 C.B. 283, 283–85; *see also* I.R.C. § 139(a) (excluding qualified disaster relief payments to individuals from gross income calculation).

100. *See, e.g.*, Rev. Rul. 74-205, 1974-1 C.B. 21 (discussing "replacement housing payments" under the Housing and Urban Development Act of 1968); Rev. Rul. 75-271, 1975-2 C.B. 23 (finding the mortgage "assistance payments under section 235 of the National Housing Act are in the nature of general welfare" and are excluded from gross income for federal income tax purposes).

101. *See, e.g.*, Rev. Rul. 78-170, 1978-1 C.B. 24.

102. *See, e.g.*, Rev. Rul. 76-373, 1976-2 C.B. 16; Rev. Rul. 76-395, 1976-2 C.B. 16–17; Rev. Rul. 77-77, 1977-1 C.B. 11, 11–12.

103. PUB. 525, *supra* note 96, at 30, 32.

104. I.R.S. Gen. Couns. Mem. 36,470 (Oct. 31, 1975) ("[T]he various nontaxable rulings issued with reference to the Federal Social Security Act were premised on the simple conclusion that Congress intended those particular payments to be tax free."); *see also* Rev. Rul. 57-1, 1957-1 C.B. 15, 16 ("The benefits in [Social Security Act] cases were held not to constitute taxable income because it was believed that Congress intended that such benefits be not subject to tax.").

105. I.R.S. Gen. Couns. Mem. 36,470.

106. *Id.*

welfare exclusion to cover state programs.[107] Therefore, the general welfare exclusion is more than the IRS's interpretation of congressional intent, but a non-statutory exemption for governmental welfare payments based on broader legal theories.[108]

One justification could be that the general welfare exclusion reflects the IRS's exercise of its non-enforcement discretion. The Supreme Court held in *Heckler v. Chaney*[109] that an agency enjoys the discretion not to exercise its enforcement authority.[110] The Court distinguished what constituted an agency's enforcement discretion from a non-discretionary act required by law—whether the statute provides clear guidelines for determining when an agency must act.[111] An agency's decision not to prosecute or enforce "is a decision generally committed to an agency's absolute discretion" absent a statutory mandate.[112] The Court reasoned that an agency's discretion not to enforce a law is rooted in the Executive Branch's prosecutorial discretion under the Take Care Clause of the Constitution.[113] Congress may limit an agency's enforcement power by setting substantive priorities or by circumscribing an agency's ability to discriminate the issues or cases it will pursue.[114] Otherwise, the Administrative Procedure Act (APA) prohibits courts from reviewing an action "committed to agency discretion by law."[115]

Beyond the APA limitations on courts' jurisdiction, the Supreme Court's recent decision in *United States v. Texas*[116] emphasizes that Article III of the Constitution also restricts the federal judiciary from reviewing an agency's enforcement discretion.[117] The case involved the states of Texas and Louisiana

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107. *Id.*

108. *Id.*; *see, e.g.*, PUB. 525, *supra* note 96, at 30–31 (listing various federal and state general welfare payments that are excludable from gross income).

109. 470 U.S. 821 (1985).

110. *See id.* at 837–38; *see also* 5 U.S.C. § 701(a)(2) (limiting judicial review to the extent that "agency action is committed to agency discretion by law"); Cass R. Sunstein, *Reviewing Agency Inaction After* Heckler v. Chaney, 52 U. CHI. L. REV. 653, 665 (1985) ("Judicial control of agency inaction has its origins in the law of mandamus, which allows courts to compel 'nondiscretionary' agency decisions. In an early case, however, the Supreme Court held that the federal courts had no general mandamus authority. That authority has now been conferred on the courts by statute, but 'discretionary' decisions are immunized from judicial review.").

111. *See Heckler*, 470 U.S. at 831.

112. *Id.*

113. *See id.* at 832.

114. *See id.* at 833.

115. *See id.* at 828 (quoting 5 U.S.C. § 701(a)(2)).

116. No. 22-58, slip op. at 1 (U.S. June 23, 2023).

117. *Id.* at 4–9.

alleging that a Department of Homeland Security guideline would underenforce or fail to enforce the statutory mandate to remove noncitizens from the United States.[118] The Court disagreed and explained that the Executive Branch possesses authority to decide "how to prioritize and how aggressively to pursue legal actions against defendants who violate the law."[119] Such prioritization is necessary because "the Executive Branch (i) invariably lacks the resources to arrest and prosecute every violator of every law and (ii) must constantly react and adjust to the ever-shifting public-safety and public-welfare needs of the American people."[120] And "courts generally lack meaningful standards for assessing the propriety of enforcement choices," at least in the context of removing non-citizens from the United States.[121]

Nevertheless, the Court articulated five exceptions where courts can review the Executive Branch's alleged failure to enforce the law: (1) selective prosecution claims under the Equal Protection Clause; (2) claims of statutorily recognized and protected interests even without an injury in fact; (3) claims where "the Executive Branch wholly abandoned its statutory responsibilities to make arrests or bring prosecutions"; (4) claims "involv[ing] both the Executive Branch's arrest or prosecution priorities" and the "provision of legal benefits or legal status"; or (5) claims challenging "policies governing the continued detention of noncitizens who have already been arrested."[122] The Court also cautioned that its decision does not imply that the Executive possess "some freestanding or general constitutional authority to disregard statutes requiring or prohibiting executive action."[123] Moreover, Congress can always influence the Executive's policy choices through oversight, appropriations, Senate confirmations, and other legislative processes.[124]

Under this theory, the general welfare exclusion reflects a policy decision by the IRS to not collect income tax on certain general welfare benefits in the absence of statutory mandates.[125] The doctrine reflects the IRS's considered prioritization balancing both its resource limitations and public-welfare needs without wholly abandoning its duty to maintain the overall integrity of the federal income tax system.[126] Thus, the exclusions would be

118. *Id.* at 4; *see also* 8 U.S.C. §§ 1226(c), 1231(a)(2).
119. *Texas*, slip op. at 6.
120. *Id.* at 7–8.
121. *Id.* at 7.
122. *Id.* at 9–12.
123. *Id.* at 12.
124. *Id.* at 14.
125. *See infra* Section III.A.
126. *See supra* text accompanying notes 120, 122; discussion *infra* Section III.A.

generally immune from judicial review.[127]

Alternatively, the general welfare exclusion could also be an agency interpretation of the statute subject to judicial review. Revenue rulings represent official interpretations issued by the National Office of the IRS and are published in the Internal Revenue Bulletin.[128] They reflect conclusions as to how the law would apply to a specific set of hypothetical facts.[129] The IRS generally does not consider comments or suggestions from taxpayers when formulating a revenue ruling.[130] As such, revenue rulings do not have the same force of law as Treasury regulations that follow the notice-and-comment rulemaking process, or Treasury Decisions.[131]

The interpretive nature of revenue rulings means that they generally do not qualify for the level of judicial deference articulated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*[132] But since revenue rulings represent

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127. *See Texas*, slip op. at 9 (declining to allow suits alleging underenforcement by the Executive Branch).

128. Treas. Reg. §§ 601.201(a)(6) (1967), 601.601(d)(2)(i)(a) (as amended in 1987); *see also* Islame Hosny, *Interpretations by Treasury and the IRS: Authoritative Weight, Judicial Deference, and the Separation of Powers*, 72 RUTGERS U.L. REV. 281, 313–14 (2020) (outlining the legal authority of revenue rulings).

129. Treas. Reg. § 601.601(d)(2)(v)(a) ("The conclusions expressed in Revenue Rulings will be directly responsive to and limited in scope by the pivotal facts stated in the revenue ruling. Revenue Rulings arise from various sources, including rulings to taxpayers, technical advice to district offices, studies undertaken by the Office of the Assistant Commissioner (Technical), court decisions, suggestions from tax practitioner groups, publications, etc.").

130. *See* § 601.601(d)(2)(v)(f). After the Chief Counsel provides written approval of a proposed ruling by the Chief Counsel, the ruling is reviewed in the office of the IRS Commissioner and in Treasury's Office of Tax Policy. *See* Irving Salem, Ellen P. Aprill & Linda Galler, *ABA Section of Taxation Report of the Task Force on Judicial Deference*, 57 TAX LAW. 717, 736 (2004). The finalized Revenue Rulings does not require prior notice to the public nor the signature by the Commissioner or the Assistant Secretary for Tax Policy. *Id.*

131. *See* 5 U.S.C. § 553; Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) ("This Court has long given considerable and in some cases decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin."); Treas. Reg. §§ 601.601(a), (b), (d)(2)(v)(d) (as amended in 1987) ("Revenue Rulings published in the Bulletin do not have the force and effect of Treasury Department Regulations (including Treasury [D]ecisions) . . . ."); *see also* Hosny, *supra* note 128, at 306–07 ("Treasury [r]egulations receive the greatest degree of deliberation by Treasury and the IRS. This process consists of multiple levels of review, including review by high level personnel, as well as consideration of public input via the notice and comment process . . . . Such regulations . . . are generally analyzed for judicial deference under the *Chevron* two step framework.") (internal quotation marks omitted).

132. 467 U.S. 837, 843 (1984); *In re* WorldCom, Inc., 723 F.3d 346, 357 (2d Cir. 2013)

the "official interpretation" of the IRC by the IRS,[133] the Supreme Court and virtually all of the circuits have indicated that revenue rulings are entitled to some level of deference.[134] After *Mayo Foundation for Medical Education & Research v. United States*[135]—a case often viewed as the Supreme Court's rejection of "tax exceptionalism"[136]—many courts now hold that revenue rulings enjoy only "judicial respect" under *Skidmore v. Swift & Co.*[137]

("We now hold, consistent with every other circuit to have addressed the issue since *Mead*, that revenue rulings are not entitled to *Chevron* deference."); *see also* Cass R. Sunstein, Chevron *Step Zero*, 92 VA. L. REV. 187, 191 (2006) (coining the term "Step Zero" as "the initial inquiry into whether the *Chevron* framework applies at all").

133. Treas. Reg. § 601.601(d)(2)(i)(a) (as amended in 1987); *see also* Wing v. Comm'r, 81 T.C. 17, 27 (1983) ("[R]evenue rulings, which merely represent opinions by [the IRS], have been held to be the classic example of an interpretive ruling and exempt from the notice and comment provisions of [the Administrative Procedure Act (APA)] section 553."); Hosny, *supra* note 128, at 313–14 (commenting that "revenue rulings are generally analyzed for deference under the standard established in *Skidmore v. Swift & Co.*" rather than *Chevron*).

134. Mellow Partners v. Comm'r, 890 F.3d 1070, 1077 (D.C. Cir. 2018) (citing Telecom USA, Inc. v. United States, 192 F.3d 1068 (D.C. Cir. 1999)); *see, e.g.*, United States v. Cleveland Indians Baseball Co., 532 U.S. 200, 220 (2001); Johnson City Med. Ctr. v. United States, 999 F.2d 973, 975–76 (6th Cir.1993) (adopting *Chevron*-like deference); First Chicago NBD Corp. v. Comm'r, 135 F.3d 457, 458–59 (7th Cir. 1998) (holding that revenue rulings deserve "some weight" and are "entitled to respectful consideration," but "not . . . the deference that the *Chevron* doctrine requires in its domain"); Gillespie v. United States, 23 F.3d 36, 39 (2d Cir. 1994) ("Revenue rulings issued by the [IRS] are entitled to great deference, and have been said to have the force of legal precedent unless unreasonable or inconsistent with the provisions of the Internal Revenue Code.") (internal quotation marks and citations omitted); Gillis v. Hoechst Celanese Corp., 4 F.3d 1137, 1145 (3d Cir. 1993) (giving "weight" to revenue rulings unless they "conflict with the statute . . . or its legislative history, or if . . . otherwise unreasonable."); Foil v. Comm'r, 920 F.2d 1196, 1201 (5th Cir. 1990) (affording "respectful consideration"); United States v. Howard, 855 F.2d 832, 836 (11th Cir. 1988) (giving "weight" and according "respectful consideration").

135. 562 U.S. 44, 55 (2011) ("The principles underlying our decision in *Chevron* apply with full force in the tax context.").

136. Generally defined as "the perception that tax law is so different from the rest of the regulatory state that general administrative law doctrines and principles do not apply." Stephanie Hoffer & Christopher J. Walker, *The Death of Tax Court Exceptionalism*, 99 MINN. L. REV. 221, 222 (2014).

137. 323 U.S. 134, 139–40 (1944); *see, e.g.*, Grecian Magnesite Mining, Indus. & Shipping Co. v. Comm'r, 926 F.3d 819, 823 (D.C. Cir. 2019) (analyzing a revenue ruling for deference under *Skidmore*); Seaview Trading, LLC v. Comm'r, 858 F.3d 1281, 1284–85 (9th Cir. 2017) (same); Est. of Schaefer v. Comm'r, 145 T.C. 134, 144 (2015) (same); Webber v. Comm'r, 144 T.C. 324, 352–53 (2015) (same); Validus Reinsurance, Ltd. v. United States, 19 F. Supp. 3d

Nevertheless, some courts continue to hold that a revenue ruling that represents a longstanding and reasonable interpretation by the IRS still "attracts substantial judicial deference."[138] The D.C. Circuit further elaborated that it would defer to a revenue ruling's interpretation of the IRC to the extent the ruling has the "power to persuade."[139] A ruling's persuasive force "depend[s] upon the thoroughness evident in its consideration, the validity of its reasoning, [and] its consistency with earlier and later pronouncements."[140]

The above-described frameworks would suggest that the general welfare exclusion could attract some judicial deference.[141] First, there is ample evidence of thorough consideration behind the general welfare exclusion.[142] Several IRS general counsel memoranda presented in-depth legal analysis on the administrative doctrine and documented the history and evolution of the general welfare exclusion.[143]

Second, the reasoning behind the general welfare exclusion has already earned several courts' acknowledgment or recognition.[144] Furthermore, it

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225, 230 n.4 (D.D.C. 2014) ("In this Circuit, courts accord [revenue] rulings with *Skidmore* deference—that is, they are entitled to respect to the extent they have the power to persuade. But courts will not defer when a ruling contrasts with clear statutory language.") (alteration in original) (internal quotations and citations omitted); PSB Holdings, Inc. v. Comm'r, 129 T.C. 131, 142–45 (2007) (performing deference analysis for a revenue ruling under the *Skidmore* framework).

138. United States v. Cleveland Indians Baseball Co., 532 U.S. 200, 220 (2001).

> We need not decide whether the Revenue Rulings themselves are entitled to deference. In this case, the Rulings simply reflect the agency's longstanding interpretation of its own regulations. Because that interpretation is reasonable, it attracts substantial judicial deference. We do not resist according such deference in reviewing an agency's steady interpretation of its own 61-year-old regulation implementing a 62-year-old statute.

Id. (internal citations omitted); *see* Mellow Partners v. Comm'r, 890 F.3d 1070, 1077–78 (D.C. Cir. 2018); Ibrahim v. Comm'r, 788 F.3d 834, 840 (8th Cir. 2015); Sewards v. Comm'r, 785 F.3d 1331, 1335 (9th Cir. 2015).

139. Grecian Magnesite Mining, Indus. & Shipping Co. v. Comm'r, 926 F.3d 819, 823 (D.C. Cir. 2019).

140. *Id.* (alternations in original) (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)).

141. *See supra* note 132 and accompanying text.

142. *See* I.R.S. Gen. Couns. Mem. 36,470 (Oct. 31, 1975) (recounting the history and previous application of the general welfare exclusion).

143. *See, e.g.*, I.R.S. Gen. Couns. Mem. 34,424 (Feb. 8, 1971); I.R.S. Gen. Couns. Mem. 34,957 (1974); I.R.S. Gen. Couns. Mem. 36,470 (Oct. 31, 1975); I.R.S. Gen. Couns. Mem. 37,920 (Apr. 5, 1979); I.R.S. Gen. Couns. Mem. 38,032 (Aug. 1, 1979); I.R.S. Gen. Couns. Mem. 38,237 (Feb. 15, 1980).

144. *See, e.g.*, cases cited *supra* notes 37–38.

likely conforms with Congress's intent to exempt general welfare payments from federal income taxation.[145] In fact, Congress codified the exclusion of payments under tribal governmental programs from gross income in 2014, after the IRS applied the general welfare exclusion in a revenue procedure.[146]

Third, the IRS has "consistently concluded" that general welfare payments are not subject to federal income tax since their conception in 1938.[147] The IRS issued over twenty revenue rulings, either applying or rejecting the general welfare exclusion to various government payments, using the test developed throughout many years.[148] All these facts suggest that the general welfare exclusion has strong persuasive powers as it is backed with thorough evidence of its consideration, valid reasonings, and consistent application by the IRS.

II. BIDEN ADMINISTRATION'S STUDENT LOAN DEBT RELIEF PLANS

In the original plan which the Biden Administration announced in August 2022, the Department of Education would cancel up to $20,000 in federally-held student loan debts for each eligible student borrower, citing the economic impacts of the COVID-19 pandemic.[149] The Department of Education, in a published memorandum by its General Counsel, claimed legal authority to do so under the Higher Education Relief Opportunities for Students Act of 2003 (HEROES Act).[150] The HEROES Act permits the Secretary of Education to "'waive or modify any statutory or regulatory

145. *See, e.g.*, 167 CONG. REC. S1510 (daily ed. March 15, 2021) (statement of Sen. Chuck Schumer) ("The American Rescue Plan also sets the stage for President Biden to deliver incredibly meaningful student loan forgiveness by making all types of student loan forgiveness tax free through December. . . . Crucially, this tax provision would apply to future efforts to forgive student loans as well.").

146. *See* Tribal General Welfare Exclusion Act of 2014, I.R.C. § 139E; Rev. Proc. 2014-35, 2014-26 I.R.B. 1110, 1111.

147. *See* Rev. Rul. 2005-46, 2005-2 C.B. 120 ("The [IRS] has consistently concluded that payments to individuals by governmental units under legislatively provided social benefit programs for the promotion of general welfare are not included in a recipient's gross income ('general welfare exclusion')."); *supra* notes 36–37 and accompanying text.

148. *See, e.g.*, *supra* notes 97–102 (listing past revenue rulings under the general welfare exclusion).

149. *See 2022 Student Loan Relief Press Release*, *supra* note 2*; One-Time Federal Student Loan Debt Relief*, FED. STUDENT AID, https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info [https://web.archive.org/web/20230531231944/https://studentaid.gov/manage-loans/forgiveness-cancellation/debt-relief-info].

150. *See* Notice of Debt Cancellation Legal Memorandum, 87 Fed. Reg. 52,943, 52,943–44 (Aug. 30, 2022); *see also* Higher Education Relief Opportunities for Students Act of 2003, 20 U.S.C. § 1098bb.

provision applicable to the student financial assistance programs' if the Secretary 'deems' such waivers or modifications 'necessary to ensure' at least one of several enumerated purposes,[151] including that borrowers are 'not placed in a worse position financially' because of a national emergency."[152]

The Supreme Court, however, disagreed.[153] A 6–3 majority of the Court did not deny that the COVID-19 pandemic is the type of national emergency that would authorize the Secretary of Education to "waive or modify" student loans.[154] It instead determined that the Biden Administration's plan was beyond the authorization to waive or modify student loan provisions during a national emergency.[155] The majority also defended its statutory interpretations by characterizing the debt relief plan as one with "economic and political significance" under the Court's relatively new "major questions" doctrine.[156]

In the original plan, borrowers would have needed to meet three requirements to qualify for the debt relief on balance accrued before June 30, 2022: (1) the student loan program must be a federal government program or held by the Department of Education, (2) the borrower's income must be below a certain limit, and (3) the borrower must apply for the debt relief.[157] Several loan programs satisfy the first requirement, including the William D. Ford Federal Direct Loan Program, Federal Family Education Loan if held by the Department of Education, and Federal Perkins Loan

151. Notice of Debt Cancellation Legal Memorandum, 87 Fed. Reg. at 52,944 (quoting 20 U.S.C. § 1098bb(a)(1)–(2)(A)). The memorandum cites the Supreme Court's interpretation of § 102(c) of the National Security Act of 1947 that allows the termination of an employee whenever the CIA director "shall *deem* such [action] necessary or advisable" in the interests of the United States "strongly suggests that its implementation was 'committed to agency discretion by law.'" *See id.* (emphasis in original) (citing Webster v. Doe, 486 U.S. 592, 600 (1988)).

152. *Id.*

153. Biden v. Nebraska, No. 22-506, slip op. at 1 (U.S. June 30, 2023).

154. *Id.* at 12 (writing for the majority, Chief Justice Roberts explains that "the [HEROES] Act allows the Secretary to 'waive or modify' existing statutory or regulatory provisions applicable to financial assistance programs . . . , not to rewrite that statute from the ground up").

155. The Court first interpreted the authority to "modify" as "to change moderately or in minor fashion" and must carry "a connotation of increment or limitation." *Id.* at 13. It then rejected the Biden Administration's justification that the term "waive" granted broader authorities than the term modify alone and would authorize the debt relief. *Id.* at 15. It reasoned that the debt relief would require Secretary of Education to add these income eligibilities as "'new and substantially different provisions' that cannot be said to be a 'waiver' of the old in any meaningful sense." *Id.* at 16.

156. *Id.* at 20–21 (citing West Virginia v. EPA, 142 S. Ct. 2587, 2608 (2022)).

157. *One-Time Federal Student Loan Debt Relief*, *supra* note 149.

Program if held by the Department of Education.[158] Defaulted loans under the Federal Family Education Loan, Subsidized Stafford, Unsubsidized Stafford, Parent PLUS, and Graduate PLUS programs were all eligible for debt relief regardless of whether they were held by the federal government or private entities.[159] Consolidation loans qualified for the relief if all of the underlying loans that were consolidated were federally-held loans and were disbursed on or before June 30, 2022.[160] While most of the borrowers would have only received up to $10,000 in cancellation, Federal Pell Grant recipients were eligible for an additional $10,000 of debt relief.[161] Private loan programs were generally ineligible for debt relief.[162]

The original relief plan looked at a borrower's tax filing status and their adjusted gross income (AGI) either in 2020 or 2021.[163] The chart below lists the corresponding AGI threshold based on the borrower's tax filing status. The debt relief did not apply to borrowers whose income exceeded the set thresholds.[164] Borrowers who met the first two requirements then had to submit an application to be issued relief.[165]

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* Consolidation loans comprised of Federal Family Education Loan (FFEL) or Perkins loans held by private lenders, however, would have been eligible for the debt relief if applied for consolidation before September 29, 2022. *See id.*

163. *One-Time Federal Student Loan Debt Relief*, *supra* note 149.

164. *Id.*

165. *Id.; see also* Sequoia Carrillo & Elissa Nadworny, *You Can Now Apply for Biden's Student Loan Relief Plan. Here's How,* NPR (Oct. 17, 2022), https://www.npr.org/2022/10/17/1129528690/biden-student-loans-debt-forgiveness-application (providing further detail on the application process). *But see One-Time Federal Student Loan Debt Relief*, *supra* note 149 (noting that because "[c]ourts have issued orders blocking [the] student debt relief program . . . . [The program is] not accepting applications").

Table 1: Income Requirement for the Original Student Loan Debt Relief Plan[166]

Tax Filing Status	**2020 or 2021 Income (Based on AGI)**
Did not file taxes	Made less than the required income to file federal taxes
Single	Under $125,000
Married, filed taxes separately	Under $125,000
Married, filed taxes jointly	Under $250,000
Head of household	Under $250,000
Qualifying widow(er)	Under $250,000

Under the Biden Administration's new plan, the Secretary of Education would conduct a negotiated rulemaking process to exercise his authority to "compromise, waive, or release any right, title, claim, lien, or demand" under § 432(a) of the HEA.[167] Since the specific outcome of the negotiated rulemaking process is pending, the next Part of this Comment applies previous analysis based on the assumption that the new plan will produce a student loan relief plan with terms similar to the original plan and that the Secretary of Education has the full legal authority under the HEA to do so.

III. RECOMMENDATIONS

A. The IRS Likely Has the Authority to Extend the General Welfare Exclusion to Cover Student Debt Relief

The general welfare exclusion is an administrative doctrine that excludes government-provided welfare benefits from taxable income when the IRC is silent on the treatment of such benefit.[168] This Section will explain that the IRS likely has the authority to apply the general welfare exclusion to government-canceled student loan debts should Congress not renew the temporary statutory provision after 2025.[169]

166. *See One-Time Federal Student Loan Debt Relief*, *supra* note 149

167. *See* Higher Education Act of 1965, Pub. L. No. 89-329, § 432(a)(6), 79 Stat. 1219 (codified as amended at 20 U.S.C. § 1082(a)(6)); Negotiated Rulemaking Committee, 88 Fed. Reg. 43,069 (proposed July 6, 2023) (to be codified at 34 C.F.R. ch. VI); *see also* sources cited *supra* note 22.

168. *See supra* Part I.

169. I.R.C. § 108(f)(5).

The IRS collects federal income tax.[170] Absent statutory mandates, it is well within the IRS's discretion to not collect income tax on general welfare payments.[171] Under this theory, the general welfare exclusion would be presumed unreviewable under Section 701(a)(2) of the APA unless the challenger can prove the agency's inaction contradicts statutory mandates.[172] While the IRC specifically includes and excludes certain transactions in and from the gross income calculation, none of these sections mandate the IRS to collect tax on non-compensatory government benefits based on individuals' needs.[173] Courts only have jurisdiction if a challenger can overcome the presumption of non-review by showing that the IRS's refusal to collect income tax on general welfare benefits contradicts congressional direction.[174]

The IRS could argue that congressional silence is a form of approval. Congress should at least be aware of the general welfare exclusion, as the administrative doctrine has excluded almost all government welfare payments from personal income taxes since 1938.[175] Unlike other areas of the U.S. Code, Congress frequently reviews and updates the IRC.[176] Congress has arguably already acquiesced in the practice of the general

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170. *See* § 7803 (establishing the structure and key positions within the IRS and tasking the Secretary of Treasury to delegate specific duties to the Commissioner for the administration of the Internal Revenue Code); Treas. Reg. §§ 601.101–102 (delegating specific enforcement authorities to the IRS, including the assessment and the collection of income taxes).

171. *See* Comm'r v. Engle, 464 U.S. 206, 227 (1984) (holding that the Commissioner has "broad authority to prescribe all 'needful rules and regulations' for the enforcement of the tax laws" (citing I.R.C. § 7805(a))); Helvering v. R.J. Reynolds Tobacco Co., 306 U.S. 110, 114 (1939) (finding the statutory definition of gross income to be "so general in its terms as to render an interpretative regulation appropriate.").

172. *See* Heckler v. Chaney, 470 U.S. 821, 837–38 (1985).

173. *See* I.R.C. § 61 (gross income defined); §§ 71–91 (items specifically included in gross income); §§ 101–04 (items specifically excluded from gross income).

174. *See Heckler*, 470 U.S. at 832–33 ("[T]he presumption may be rebutted where the substantive statute has provided guidelines for the agency to follow in exercising its enforcement powers.").

175. Brunson & Johnson, *supra* note 39, at 1459; *see also supra* notes 51–58 and accompanying text (detailing the exclusion of waived repayment liability under section 701(d) of the Public Safety Officer's Benefits Act of 1976 from taxable income).

176. *See, e.g.*, Taxpayer Certainty and Disaster Tax Relief Act of 2020, Pub. L. No.116–260, 134 Stat. 3038 (2020) (revising and updating the IRC); Taxpayer Certainty and Disaster Tax Relief Act of 2019, Pub. L. No. 116–94, 133 Stat. 3226 (2019); Tax Cut and Jobs Act of 2017, Pub. L. No. 115–97, 131 Stat. 2054 (2017); Tax Increase Prevention Act of 2014, Pub. L. No. 113–295, 128 Stat. 4010 (2014).

welfare exclusion.[177] After all, the enactment of § 108(f)(5) in 2021 protects the benefited borrowers from potential tax bombs resulting from student loan debt relief,[178] just like the general welfare exclusion doctrine protects other welfare recipients from tax bombs resulting from benefits received.

Even if a court determines that the exclusion of student loan debt relief contradicts the IRC—and is therefore subject to judicial review under the APA[179]—it could be hard for a challenger to obtain standing to sue the IRS for exercising its discretion to not collect tax on canceled student debts. A plaintiff needs three constitutional elements to have standing to sue: (1) "plaintiff must have suffered an 'injury in fact'" that is "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical;'" (2) the injury must be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court[;]" and (3) "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"[180] *Allen v. Wright*[181] illustrates the difficulty of obtaining standing to challenge an IRS decision not to collect tax on certain transactions.[182] Just like benefited student borrowers lack standing to challenge a student loan debt relief plan,[183] a taxpayer most likely cannot sue the IRS for not taxing the

177. *See* United States v. Cleveland Indians Baseball Co., 532 U.S. 200, 220 (2001) ("Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially reenacted statutes, are deemed to have received congressional approval and have the effect of law." (quoting Cottage Savings Assn. v. Comm'r, 499 U.S. 554, 561 (1991))); *see also* Matthew Baker, *The Sound of Congressional Silence: Judicial Distortion of the Legislative-Executive Balance of Power*, 2009 B.Y.U. L. REV. 225, 231 (2009) (explaining that the judicial doctrine of congressional acquiescence generally means "that Congress can impliedly authorize presidential actions or judicial interpretations by failing over time to signal disagreement or opposition").

178. *See* 167 CONG. REC. S1510 (daily ed. Mar. 15, 2021) (statement of Sen. Chuck Schumer) (discussing the rationale behind § 108(f)(5) in the American Rescue Plan Act of 2021: "without this provision, forgiving a student's debt would stick them with a tax bill—giving with one hand and taking away with the other.").

179. A court may nevertheless review an agency inaction if it determines that an agency's inaction is "arbitrary, capricious, . . . or otherwise not in accordance with law." *See* Massachusetts v. EPA, 549 U.S. 497, 534 (2007); 5 U.S.C. § 706(2)(A).

180. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992).

181. 468 U.S. 737 (1984), *abrogated by* Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118 (2014) (adopting the "zone of interest" test for standing determination).

182. *See id.* at 752–53 (denying standing for parents who sued to demand the IRS cease to provide tax exempt status to those private school that discriminated on the basis of race).

183. *See* Dep't of Educ. v. Brown, No. 22-535, slip. op. at 1–2 (U.S. June 30, 2023) (holding that individual borrowers lack standing to sue the Department of Education for the student loan debt relief plan).

cancellation of student loan debts.[184]

It is also unlikely that one could challenge a tax-exempting revenue ruling based on associational standing.[185] State attorneys general could attempt to claim injury for the lost state income tax revenue since many states' income taxes rely on the federal calculation for the taxable income.[186] But the alleged injury cannot be attributed to the IRS as state legislatures have the full control of their respective tax codes.[187]

In summary, the IRS has the authority to issue a revenue ruling on the applicability of the general welfare exclusion in the context of student loan debt relief.[188] The IRS also has the enforcement discretion to exclude student loan debt relief from gross income; if the IRS decides to do so, its non-collection of income tax will likely go unchallenged.[189]

B. The IRS Should Issue a Clear Ruling on the Tax Treatment of Student Loan Cancellation

Clear and consistent rules usually promote the administrability of income tax and avoid creating horizontal disparities for taxpayers.[190] Ambiguity in

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184. *See Allen*, 468 U.S. at 752–53.

185. *See* Simon v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 28 (1976) (holding that plaintiffs do not have standings to sue the IRS for amending its revenue rulings on the general requirements for a hospital to qualify as a charitable corporation).

186. *See, e.g.*, ARIZ. REV. STAT. ANN. § 43-105(A) (2023); IND. CODE § 6-3-1-11 (2023); KAN. STAT. ANN. § 79-32,109(a)(1) (2023).

187. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992) (holding that the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court); *cf.* IND. CODE § 6-3-1-3.5(a)(30) (2023) (defining the "adjusted gross income" for Indiana's personal income tax purposes to specifically include any student loan cancellation amount excluded from the federal income tax under the temporary rules of I.R.C. § 108(f)(5)).

188. *See supra* note 169 and accompanying text.

189. *See infra* notes 200–207 and accompanying text.

190. *See* David Elkins, *Horizontal Equity as a Principle of Tax Theory*, 24 YALE L. & POL. REV. 43, 43 (2006) ("The principle of horizontal equity demands that similarly situated individuals face similar tax burdens. It is universally accepted as one of the more significant criteria of a 'good tax.'"); *see also* Henry Ordower, *Capital, an Elusive Tax Object and Impediment to Sustainable Taxation*, 23 FLA. TAX REV. 625, 627 (2020)

> Sustainable taxation requires stability and predictability. Sustainable taxation is a tax or taxes that collect sufficient revenue to support the governmental goods and services a society needs and wants. The taxes must provide for: 1) even-handedness—something akin to horizontal equity; 2) distributional fairness—a concept emerging from notions of vertical equity; 3) transparency in application so that the populace

the IRC could cause significant troubles for taxpayers and the IRS itself.[191] The IRS is not positioned to handle taxpayer confusion or filing errors.[192] The IRS has struggled to timely process income tax returns in recent years due to lack of funding and the impacts of the COVID-19 pandemic.[193] The significant backlog prompted congressional intervention through which Congress provided nearly $80 billion in additional funding for the IRS.[194] It is in the IRS's interest to proactively mitigate any possible ambiguity in the tax code and avoid foreseeable issues in the collection of taxes.[195]

Ambiguity in the administration of the tax code could disadvantage taxpayers who do not have the economic means to hire tax advisors.[196] Taxpayers are allowed to rely on and "apply[] the principles of a published Revenue Ruling to the facts of their particular cases."[197] Absent clear guidance from the IRS, taxpayers who have access to tax professionals will presumably take advantage of the general welfare exclusion for the lowest tax bill possible after the debt relief. Others would have no choice but to face the ambiguity and its burden.

Suppose a taxpayer relies on the general welfare exclusion and excludes the canceled student loan debts from gross income calculation; if the IRS later determines that the general welfare exclusion does not apply to student

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understands and accepts the tax and the need for it; and 4) collection mechanisms that do not favor some societal groups, especially those with resources to secure creative tax advisors, over others who lack the resources.

Ordower, 23 FLA. TAX REV. at 627.

191. *See* Sarah B. Lawsky, *Formalizing the Code*, 70 TAX L. REV. 377, 381 nn.23–24 and accompanying text (2017).

192. *See* Tara Siegel Bernard, *After A "Horrendous" 2021, The I.R.S. Will Start the Tax Season with A Major Backlog*, N.Y. TIMES (Jan. 12, 2022), https://www.nytimes.com/2022/01/12/business/irs-backlog-tax-returns-2021.html.

193. *See id.*

194. Inflation Reduction Act of 2022, Pub. L. No. 117-169, § 10301, 136 Stat. 1831. *But see* Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 251, 137 Stat. 30–31 (rescinding $1,389,525,000 of unobligated balances from the total amount allocated to the IRS in the Inflation Reduction Act of 2022); Press Briefing, White House, Background Press Call on the Bipartisan Budget Agreement (May 28, 2023), https://www.whitehouse.gov/briefing-room/press-briefings/2023/05/28/background-press-call-on-the-bipartisan-budget-agreement/ (indicating that an additional $20 billion will be reduced from the IRS's budget during the annual appropriations for future year); BRENDAN MCDERMOTT, CONG. RSCH. SERV., IN12172, CHANGES TO IRS FUNDING IN THE DEBT LIMIT DEAL 1–2 (2023).

195. *See* Kyle D. Lougue, *Tax Law Uncertainty and the Role of Tax Insurance*, 25 VA. TAX REV. 339, 349 (2005) (noting ambiguity both increases the burden of taxpayer compliance and incentivizes "free riding," ultimately increasing IRS burden in enforcing compliance).

196. Brunson & Johnson, *supra* note 39, at 1455.

197. Treas. Reg. § 601.601(d)(2)(v)(e) (as amended in 1987).

loan debt relief and seeks to collect the deficient tax, the taxpayer could challenge the IRS's determination on the relieved debt.[198] In that scenario, the taxpayer may cite to the general welfare exclusion as a defense, and the reviewing court will likely afford the general welfare exclusion some level of judicial deference to the extent of its power to persuade.[199] Nevertheless, the IRS can avoid this type of litigation by issuing clear guidance after the expiration of the temporary exemption in the IRC.

C. Student Loan Debt Relief Plans Based on Individuals' Needs Likely Satisfy the General Welfare Exclusion Criteria

The Biden Administration's original debt relief plan meets all three criteria for the application of the general welfare exclusion.[200] First, the plan is a government-funded program for the promotion of general welfare.[201] It waives qualified individuals' repayment obligation for the educational loans serviced by the federal government.[202] The IRS previously treated the governmental waiver of a repayment obligation as a form of general welfare payment on at least one occasion.[203] When excluding the administratively waived repayment obligation, the IRS reasoned that the showing of an economic hardship satisfied the need-based requirement, and the nature of the relief made was for the promotion of the general welfare.[204] As such, governmental relief of one's repayment obligation can be viewed as a payment made by the government.[205]

Second, the debt relief plans, as well as the underlying student loan

198. For example, a taxpayer can challenge the IRS's determination of tax deficiency before the Tax Court. *See* I.R.C. § 6213(a).

199. *See, e.g.*, Eaton Corp. v. Comm'r, 152 T.C. 43, 53 n.6 (2019) (citing Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (holding that Tax Court is not bound by revenue rulings, and the weight it affords them depends upon their persuasiveness and the consistency of the Commissioner's position over time) ; PSB Holdings, Inc. v. Comm'r, 129 T.C. 131, 142 (2007); *see also supra* Section I.C; *cf.* Syzygy Ins. Co. v. Comm'r, 117 T.C.M. (CCH) 1165 (2019) ("The Commissioner is required to follow his revenue rulings, and we have treated revenue rulings as concessions by the Commissioner where those rulings are relevant to the disposition of a case." (citing Rauenhorst v. Comm'r, 119 T.C. 157, 171–72 (2002))).

200. *See supra* notes 44–47 and accompanying text.

201. *See supra* note 45 and accompanying text.

202. *See supra* note 149 and accompanying text.

203. *See supra* note 51 and accompanying text.

204. Rev. Rul. 78-170, 1978-1 C.B. 24. In the year prior, the IRS excluded the actual payment made to eligible dependents as a payment "received under a statute in the nature of a workmen's compensation act and as such is excludable from gross income under section 104(a) of the Internal Revenue Code of 1954." Rev. Rul. 77-235, 1977-2 C.B. 45.

205. *See supra* note 51 and accompanying text.

programs, promote general welfare.[206] Congress designed the underlying student loan programs "for the promotion of general welfare."[207] In Title IV of the Higher Education Act of 1965,[208] Congress explicitly declared that the purpose of these assistance programs is "to assist in making available the benefits of postsecondary education to eligible students."[209] The loans are only to be used following a set of laws and regulations and exclusively for educational purposes.[210] While the student loan programs can help current students in accessing higher educations, a debt relief for graduated individuals raises the question of whether it would serve the same purpose as providing the loan.

Nevertheless, the debt relief could still rescue borrowers from falling into a worse financial position as a result of the COVID-19 pandemic.[211] The original relief plan under the HEROES Act aims to protect borrowers from being placed in a worse financial position in relation to their student loans due to the COVID-19 national emergency.[212] Even though the Court invalidated the plan for lack of statutory authority, the opinion made clear that it was not an adjudication on whether relief is needed to ease the pain of mounting student loan debts.[213] A paper by the Federal Reserve Bank of New York predicts that student loan delinquency and default will surpass pre-pandemic levels if student loan repayments resume without debt relief.[214] The Biden Administration's original debt relief plan would have most benefited younger

206. *See* 20 U.S.C. § 1070(a) ("It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students . . . in institutions of higher education . . . ."); § 1098bb(a)(2)(A) (protecting loan borrowers from being placed in a worse position financially).

207. *See supra* note 45 and accompanying text.

208. 20 U.S.C. §§ 1070–1099d.

209. § 1070(a); *see also* § 1071 (stating purposes for the Federal Family Education Loan Program).

210. *See, e.g.*, § 1091 (setting limitations which students must comply to participate in student assistance programs).

211. *See supra* note 149 and accompany text; § 1098bb(a)(2).

212. § 1098bb(a)(2).

213. *See* Biden v. Nebraska, No. 22-506, slip op. at 19 (U.S. June 30, 2023) ("The question here is not whether something should be done; it is who has the authority to do it.").

214. JACOB GOSS, DANIEL MANGRUM & JOELLE SCALLY, FED. RSRV. BANK OF N.Y., ASSESSING THE RELATIVE PROGRESSIVITY OF THE BIDEN ADMINISTRATION'S FEDERAL STUDENT LOAN FORGIVENESS PROPOSAL 2 (rev. ed. 2023) ("[S]tudent loan borrowers with paused payments already have credit card and auto delinquency rates higher than before than pandemic. These missed credit card and auto payments are occurring despite borrowers not having to make payments on their student loans. We expect these patterns to worsen once borrowers add student loan payments to their existing monthly debt obligations.").

borrowers—especially Black and Hispanic borrowers—who live in lower- and middle-income neighborhoods and have lower credit scores.[215]

Eligibility based on an individual's or family's financial status satisfy the need-based requirement for general welfare exclusion.[216] A categorical determination of eligibility—for example, the income-based eligibility in the original plan—does not necessarily violate the general welfare exclusion criteria.[217] The Secretary of Education has already concluded that the COVID-19 pandemic has disproportionally harmed many lower-income borrowers.[218] Accordingly, the current debt relief is available only to borrowers with an AGI less than the said thresholds.[219] The Secretary of Education further determined that Pell Grant recipients could face "substantially greater risk" as they tend to have fewer resources.[220] The additional $10,000 relief available to Pell Grant recipients furthers the argument that the relief plan is based on individual's needs.[221] The Court's recent decision on the Secretary of Education's authority under the HEROES Act does not alter the need for debt relief or the need-based nature of an income-based debt relief plan.[222]

Third, the current debt relief plan has no service requirement, and thus is not a form of compensation.[223] Accordingly, a government-provided student loan debt relief plan that is designed to mitigate the disproportional economic impacts of the COVID-19 pandemic on lower-income borrowers with no service requirement will likely satisfy the three criteria for the general welfare exclusion.

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215. *Id.* at 1.

216. *See supra* notes 62–64 and accompanying text.

217. *See, e.g.*, Rev. Rul. 74-205, 1974-1 C.B. 21; I.R.S. Notice 99-3, 1999-1 C.B. 271, 271–72.

218. Brief for Petitioners at 8, Biden v. Nebraska, No. 22-506 (U.S. Jan. 4, 2023).

219. *See supra* Table 1.

220. Brief for Petitioners at 8, Biden v. Nebraska, No. 22-506 (U.S. Jan. 4, 2023).

221. The Biden Administration justifies the additional relief on the basis that "[n]early every Pell Grant recipient came from a family that made less than $60,000 a year, and Pell Grant recipients typically experience more challenges repaying their debt than other borrowers." *2022 Student Loan Relief Press Release*, *supra* note 2.

222. *See* Biden v. Nebraska, No. 22-506, slip op. at 19 (U.S. June 30, 2023).

223. The general welfare exclusion does not apply to compensatory payments. *See* Rev. Rul. 74-413, 1974-2 C.B. 333–34; *see also* Wood & Morris, *supra* note 47, at 204.

CONCLUSION

The federal government's attempt to resolve the mounting student loan debt crisis could unintentionally expose many borrowers to tax bombs.[224] The short-term solution provided in the American Rescue Plan Act of 2021 only protects student borrowers from tax bombs before 2026.[225] Meanwhile, the general welfare exclusion is a promising solution to mitigate the tax implication from a wide-scale student loan debt relief plan.[226] The Biden Administration's original student loan debt relief plan almost certainly satisfies all three requirements for the general welfare exclusion.[227] Even more broadly speaking, any government cancellation of student loan debt based on individual borrowers needs and without any service requirements should also qualify for the general welfare exclusion using the same analysis.[228] Because the Treasury Regulation explicitly permits taxpayers to rely on principles published in revenue rulings,[229] individual taxpayers are well within their rights to make legitimate legal arguments to not pay income tax for such a debt relief.[230] Nevertheless, the IRS has the authority to decide whether the general welfare exclusion applies to student loan cancellations, and by extension, whether to collect income tax on the canceled student debt.[231] A clear declaration by the IRS could promote the administrability of the federal income tax and avoid potential taxpayer disparities.[232] The IRS should issue a revenue ruling to formally extend the general welfare exclusion to include government-provided student loan debt relief.

224. *See supra* note 13 and accompanying text.
225. *See supra* note 26 and accompanying text.
226. *See supra* Part III.
227. *See supra* Section III.C.
228. *See id.*
229. *See* 26 C.F.R. § 601.601(d)(2)(v)(e) (amended 1987).
230. *See supra* Section III.B.
231. *See supra* Section III.A.
232. *See supra* note 188 and accompanying text.