

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EB:HW PLR-108121-03

Date:

06/17/2003

### Legend

Taxpayer =

Plan =

Dear :

This responds to your ruling request, dated December 20, 2002, that payments to participating employees under the Plan are excludable from their income.

The Taxpayer, a law firm, proposes to establish the Plan to provide financial support to its non-lawyer employees to help them with the cost of attending law school.

The Plan provides that a non-lawyer employee may borrow an amount to cover law school expenses (or self-finance the law school expenses). Under the Plan, the non-lawyer employee will exclude all or a portion of their debt forgiveness from income. The employee will receive additional salary in the amount of interest and principal due on the loan each year from the Taxpayer. However, rather than including the entire amount of additional salary in income, only the amount of additional salary in excess of \$5,250 would be included in income. The exclusion of \$5,250 from income would continue until the end of the debt forgiveness.

The Plan is designed so that only expenses attributable to law school tuition are reimbursable by the Taxpayer and excluded from gross income. In addition, the Plan is designed to provide assistance to non-lawyer employees at the time the employees incur the costs of their law school education.

The Plan will be available to all non-lawyer employees, will be evidenced by a written

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document, will not offer any benefits other than educational assistance and all eligible employees will be given notice of the availability and the terms of the Plan. The Plan will not discriminate in favor of highly compensated employees, either in eligibility or in delivery of benefits. Benefits under the Plan will be paid out of Taxpayer's general assets when the benefits are due.

The Plan states that not more than 5 percent of the benefits paid or incurred each year under the Plan for educational courses shall be attributable to principal (5 percent) shareholders or owners of the Taxpayer in accordance with section 127(b) of the Code.

Based on the foregoing, you request a ruling that the Plan qualifies under section 127 of the Internal Revenue Code and that benefits provided to the non-lawyer employees under the Plan are excludable from the gross income of participating employees up to the applicable statutory limit.

Section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in section 127(b).

Section 127(b)(1) requires a separate written plan of the employer for the exclusive benefit of the employees to provide such employees with educational assistance.

Section 127(b)(2) and section 1.127-2(e) of the Income Tax Regulations provide that the program shall benefit employees who qualify under a classification set up by the Secretary not to be discriminatory in favor of employees who are officers, owners, or highly compensated, or their spouses and dependents who are themselves employees. However, a program shall not be considered discriminatory because members of the prohibited group in fact utilize the program to a greater degree than eligible employees who are not within the prohibitive group; or, because with respect to a course of study for which benefits are otherwise available, successful completion of the course, attaining a particular course grade, or satisfying a reasonable condition subsequent (such as remaining employed for one year after completing the course) are required or considered in determining the availability of benefits.

Section 127(b)(3) provides that not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

Section 127(b)(4) provides that a program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income.

Section 127(b)(5) states that a program referred to in section 127(b)(1) is not required

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to be funded.

Section 127(b)(6) requires that reasonable notification of the availability and terms of the program must be provided to eligible employees.

Based on the information submitted, representations made and authorities cited, we conclude that the Plan qualifies as an educational assistance program as described in section 127 of the Code. Payments made under the Plan up to a maximum amount of \$5,250 during a calendar year are excludable from the gross income of participating employees under section 127(a) of the Code, as employer-provided educational assistance.

Except as expressly provided herein, no opinion is expressed or implied with respect to the application of any other provision of the Code or regulations to the benefits described.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

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Harry Beker  
Chief, Health & Welfare Branch  
Office of Division Counsel /  
Associate Chief Counsel  
(Tax Exempt & Government Entities)

Enclosure:

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cc: