

## Part III — Administrative, Procedural, and Miscellaneous

### Section 106-Contributions by Employers to Accident and Health Plans

Effect of the Working Families Tax Relief Act of 2004 on employer-provided accident or health plans.

Notice 2004-79

#### I. PURPOSE

This notice provides guidance regarding the effect of the Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108-311, 118 Stat. 1166, on the exclusion from the gross income of an employee under § 106 of the Internal Revenue Code (Code) of employer-provided coverage under an accident or health plan.

#### II. BACKGROUND

Section 201 of WFTRA amended the definition of dependent in § 152, effective for taxable years beginning after December 31, 2004. Pursuant to § 152, as amended, an individual must be either a “qualifying child” or a “qualifying relative” to be a dependent. Section 152(c), as amended, provides that an individual must meet relationship, residency, and age requirements to be a qualifying child. In addition, an individual is not a qualifying child if the individual provided over one-half of his or her own support for the calendar year. Section 152(c)(3)(A) provides that an individual meets the age requirement if the individual has not attained age 19 as of the close of the calendar year or if the individual is a student who has not attained age 24 as of the close of the calendar year. Under § 152(c)(3)(B), an individual is treated as meeting the age requirement if the individual is permanently and totally disabled (as defined in § 22(e)(3)) at any time during the calendar year.

Section 152(d)(1), as amended, provides, in general, that a qualifying relative is an individual who bears a relationship to the taxpayer described in §152(d)(2), whose gross income is less than the exemption amount (as defined in §151(d)), who receives over one-half of his or her support from the taxpayer, and who is not a qualifying child of the taxpayer or any other taxpayer.

Section 207 of WFTRA contains several technical and conforming amendments to Code sections that refer to the § 152 definition of dependent, including an amendment to § 105(b). Section 105(b) generally excludes from an employee’s gross income employer-provided medical care reimbursements paid directly or indirectly to the employee for the medical care of the employee and

the employee's spouse and dependents, as defined in § 152. Under the WFTRA amendment to § 105(b), an individual's status as a dependent for purposes of § 105(b) will be determined without regard to new § 152(b)(1) and (b)(2), which contain certain exceptions to the definition of dependent, and without regard to new § 152(d)(1)(B), which contains the gross income limitation for a qualifying relative. It appears that the intent of Congress in making these conforming amendments was to maintain the current law definition of dependent for purposes of employer-provided medical care reimbursements.

Section 106(a) provides that the gross income of an employee does not include employer-provided coverage under an accident or health plan. Thus, premiums and other amounts that an employer pays on behalf of an employee to an accident or health plan are not included in gross income. Treas. Reg. § 1.106-1 provides that the exclusion from gross income extends to contributions which the employer makes to an accident or health plan on behalf of the employee and the employee's spouse or dependents, as defined in § 152. Because the reference to "dependents" under § 106 appears only in the regulations under that section and not in the statute itself, Congress made no conforming amendments to § 106 in WFTRA.

Under current law, the exclusion under § 106(a) for employer-provided coverage under an accident or health plan parallels the exclusion under § 105(b) for employer-provided reimbursements of medical care expenses incurred by the employee and the employee's spouse and dependents, as defined in § 152. However, as a result of the changes made by WFTRA, the definition of dependent in § 105(b) differs from the definition in the regulations under § 106(a). Accordingly, if the regulations under § 106(a) continued to be applied as currently written after the effective date of section 201 of WFTRA, the value of employer-provided coverage for an individual who is not a qualifying child and who does not meet the gross income limitation for a qualifying relative would have to be included in the employee's gross income. Because the intent of Congress was not to change the definition of dependent for purposes of employer-provided health plans, regulations under § 106 should be revised to provide that the same definition of dependent applies to § 106 as applies to amended § 105(b).

### III. APPLICATION

The IRS intends to revise the regulations at 26 C.F.R. 1.106-1 to provide that the term "dependent" for purposes of § 106 shall have the same meaning as in § 105(b). The revised regulations will be effective for taxable years beginning after December 31, 2004.

Taxpayers may rely on this Notice pending the issuance of the revised regulations. Accordingly, an employee may exclude from gross income the value of employer-provided coverage for an individual who meets the definition of a qualifying relative except that the individual's gross income equals or exceeds the exemption amount.

#### DRAFTING INFORMATION

The principal author of this notice is Barbara Pie of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Pie on (202) 622-6080 (not a toll free call).