

Revenue Ruling 61-146

1961-2 CB 25

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SECTION 106.--CONTRIBUTIONS BY EMPLOYER TO ACCIDENT AND
HEALTH PLANS

26 CFR 1.106-1: Contributions by employer to accident and
health plans.

Advice has been requested whether amounts paid by an employer, under the circumstances below, as his share of premiums for hospital and medical insurance for his employees are excludable from the gross income of the employees under section 106 of the Internal Revenue Code of 1954.

In the instant case, the employer pays a share of the premiums for hospital and medical insurance for his employees. For those employees who are covered by a group policy through their employment, the employer pays his share of the premium directly to the insurance company. For those employees who are not covered by the employer's group policy but have other types of hospital and medical insurance for which they pay the premiums directly to the insurers, the employer pays a part of such premiums upon proof that the insurance is in force and is being paid for by the employees.

To facilitate payment of his share of the premiums paid directly by the employees to the insurers, the employer uses the following methods:

- (1) reimburses each employee directly once or twice a year for the employer's share of the insurance premiums upon proof of prior payment of the premiums by the employee;
- (2) issues to each employee a check payable to the particular employee's insurance company, the employee being obligated to turn over the check to the insurance company; or
- (3) issues a check as in method (2) except the check is made payable jointly to the insurance company and the employee.

Section 106 of the Code provides that gross income does not include contributions by the employer to accident or health plans for compensation (through insurance or otherwise) to his employees for personal injuries or sickness.

Section 1.106-1 of the Income Tax Regulations provides that the employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate

trust or fund, which provides accident or health benefits directly or through insurance to one or more of his employees.

In this case it is clear that in method (2) the employer is actually paying accident or health insurance premiums directly to the insurer of the particular employee, utilizing the employee as his agent for the delivery of the checks to the insurer. Method (3) is not substantially different, inasmuch as the employee there is obligated to turn the checks over to the insurer and can in no event divert the payments to other uses. Although method (1) involves direct payment to the employee, in practical effect it does not differ from methods (2) or (3), since proof is required by the employer that hospital and medical insurance is in force for the employee and that premiums for the period involved have been paid by the employee and because the employer's payment is stated to be in reimbursement for the employer's share of the insurance premiums.

Under the circumstances of this case, it is held that the amounts paid by the employer under methods (2) or (3) above constitute payments of premium or portions of premiums on policies of accident or health insurance covering one or more employees within the meaning of section 1.106-1 of the regulations. Similarly, the payments under method (1) constitute employer payments of accident or health insurance premiums for employees if the payments are shown to be in reimbursement of premiums actually paid by the employees to the insurers. Accordingly, amounts paid as above are excludable from the gross income of the employees under section 106 of the Code.

Revenue Ruling 57-33, C.B. 1957-1, 303, holds that certain weekly payments made by employers direct to employees, pursuant to a union contract of employment, for the purpose of purchasing individual hospitalization and surgical insurance coverage, are "wages" for Federal employment tax purposes and are includible in the gross income of the employees.

Under the facts in that case, the employers had no accident or health plan of their own in effect and, with respect to the payments which they made direct to the employees, did not require an accounting either by the employees or the employees' union that the funds were expended in the acquisition of insurance coverage. Revenue Ruling 57-33, accordingly, is distinguishable from the instant case.