



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

February 4, 2003

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GENIN-168885-02  
CC:TEGE:EOEG:ET2



Dear [REDACTED]:

I apologize for the delay in responding to your inquiry to our office dated April 18, 2002, concerning questions relating to leave donation programs under Rev. Rul. 90-29, 1990-1 C.B. 11, and Notice 2001-69, 2001-2 C.B. 491.

Unfortunately, we are not able to provide a formal opinion on these issues due to the fact that your submission does not comport with the requirements for requesting a private letter ruling. Revenue Procedure 2003-1, 2003-1 I.R.B. 1, sets forth procedures for requesting letter rulings. If you wish to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2003-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided to us and set forth below general information, which we hope is helpful to you.

Notice 2001-69, 2001-2 C.B. 491, which provided interim guidance on the tax treatment of employers' payments to charitable organizations under leave-based donation programs, is no longer in effect. It has been modified and superseded by Notice 2003-1, 2003-2

I.R.B. 1, which provides that Notice 2001-69 will not be extended to payments made after December 31, 2002.

In addition, Rev. Rul. 90-29, 1990-1 C.B. 11, is the only published guidance specifically involving amounts paid by an employer pursuant to an employer established leave-sharing plan. The ruling addresses a situation in which employees who suffer "medical emergencies" may qualify as recipients of leave surrendered to the employer in an employer-sponsored leave bank. The plan defines a "medical emergency" as a medical condition of the employee or family member that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will exhaust all available leave under the plan apart from the leave-sharing plan.

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Under the heading ISSUE TWO of your letter, you ask about the proper tax treatment of employee donated leave credits established in three situations. Your first situation involves programs permitting employees to donate leave credits (other than sick leave credits) to family members who are employees so that the employee who receives the leave may (i) care for a family member (including a newborn child) who is a member of the leave recipient-employee's household, (ii) recover from a serious health condition, and (iii) adopt a child. First, we note that Rev. Rul. 90-29 refers to donations of leave, not to donations of sick leave. In addition, some of the circumstances described in situation 1 of Issue Two could qualify as "medical emergencies" under Rev. Rul. 90-29.

The IRS has not issued published guidance addressing the questions you raised in Situation 1 that are not medical emergencies, or in your Situations 2 and 3. Therefore, in the context of a request for general information, we cannot address whether the programs described in those situations would qualify for the tax treatment in Rev. Rul. 90-29.

I've enclosed a copy of the letter you forwarded to our office. If we can be of further assistance, please contact [REDACTED] at [REDACTED]  
[REDACTED]

Sincerely,

LYNNE CAMILLO  
Chief, Employment Tax Branch 2  
Division Counsel/Associate Chief  
Counsel  
(Tax Exempt and Government  
Entities)

Enclosure