



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

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OFFICE OF
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The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

Attention: Brian Hughes

Dear Senator Feinstein:

I am responding to your inquiry about the federal tax consequences of a plan under which coworkers may donate leave to the family of a law enforcement officer killed in the line of duty. I hope that the following general information is helpful.

A basic principle of tax law is that a taxpayer's assignment to another person of his or her right to receive compensation for personal services does not relieve the taxpayer of the tax liability on the assigned income. See *Lucas v. Earl*, 281 U.S. 111 (1930), and *Helvering v. Eubank*, 311 U.S. 122 (1940), 1940-2 C.B. 206. There are two situations, however, in which this doctrine does not apply.

The first situation, which is described in Rev. Rul. 90-29, 1990-1 C.B. 11, involves a leave-sharing plan established by an employer. Under the plan, employees who suffer medical emergencies may qualify to receive leave surrendered to the employer by other employees or leave deposited in an employer-sponsored leave bank. The ruling holds that an employee who surrenders leave to the employer or deposits it in the leave bank does not realize any income and incurs no deductible expense or loss, either upon the surrender or deposit of the leave or its use by the recipient. The ruling also concludes that the leave recipient must include the leave received in gross income as compensation.

The second situation involves leave-based donation programs to aid the victims of Hurricane Katrina. Notice 2005-68, 2005-40 I.R.B. 622, provides that the IRS will not assert that cash payments an employer makes to section 170(c) organizations (such as charities) in exchange for vacation, sick, or personal leave that its employees elect to forgo constitute gross income or wages of the employees if the payments are: (1) made to the section 170(c) organizations for the relief of victims of Hurricane Katrina; and (2) paid to the section 170(c) organizations before January 1, 2007.

The plan you described does not fall within the two situations described above. However, if the entity sponsoring the plan wants a definitive ruling on this issue, it may submit a request for a private letter ruling in accordance with the procedures described in Rev. Proc. 2005-1, 2005-1 I.R.B. 1.

If you have any additional questions, please call me at _____ or

at _____.

Sincerely,

Robert M. Brown
Associate Chief Counsel
(Income Tax and Accounting)