

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:4
PLR-108585-05
Date:
September 09, 2005

LEGEND:

Court =
Broker =
Reinsurance =

Pension Consultant =
date 1 =
date 2 =
date 3 =
date 4 =
date 5 =
date 6 =
date 7 =
a =
b =
c =
d =
e =

Dear _____ :

This is in reply to a request for a ruling that you will be allowed to deduct under § 62(a)(19)[20] of the Internal Revenue Code attorney fees and court costs that will be paid to your attorney for services he rendered to you to obtain pension benefits.

The information submitted indicates that you were employed by Broker and, thereafter, by Reinsurance until you retired on date 1. While you were employed by Reinsurance, Pension Consultant recommended changes to Reinsurance's retirement plan. Because

of these recommended changes, the benefits at normal retirement age for all employees were increased, except for your benefits and those similarly situated. Although Reinsurance adopted the recommended changes to the pension plan, it also adopted a resolution to the effect that your pension benefits would not be adversely affected by the changes to the plan. Pension Consultant, however, incorrectly calculated your pension benefits.

On date 2, you entered into an Agreement with Reinsurance terminating your employment. On date 3 you received a lump-sum payout of \$a of retirement benefits.

After you retired, you inquired whether you were due any further payments based on the changes to Reinsurance's pension plan that Pension Consultant had recommended. Pension Consultant informed Reinsurance that it had erroneously calculated your benefits by failing to credit you with your prior years of service with Broker. Reinsurance, however, advised you that your final pension benefits were "calculated appropriately." You therefore sought legal counsel and entered into a retainer agreement with an attorney.

On date 4, your attorney filed a complaint against Reinsurance in the Court and on date 5 filed an amended class action complaint. The action was brought under § 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(3). This provision provides that a participant or beneficiary may bring a civil action to obtain appropriate equitable relief to enforce certain provisions of title 29 or the terms of a plan.

On date 6, the Court decided cross motions for summary judgment adversely to both parties. As a result of that decision, you propose to enter into a settlement agreement with the Reinsurance (and its pension plan administrator). Under the proposed settlement, Reinsurance would pay you directly \$b and would pay your attorney directly \$c for services rendered to you.¹ On date 7, the Court, at the request of the parties, ordered that the lawsuit be dismissed without prejudice pending the issuance of this letter ruling.

You must include the entire amount of the award of \$e in your gross income under § 61, without reduction for the amounts that will be paid to your attorney.²

Section 62(a)(19)[20], as enacted by the American Jobs Creation Act of 2004, P. L. 108-357, 118 Stat. 1546, provides that adjusted gross income means, in the case of an individual, gross income minus any deduction allowable under Chapter 1 for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in § 62(e)). Section 62(a)(19)[20] does not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement

¹ The amount of \$d would be paid to an actuary retained in connection with the lawsuit.

² You withdrew your request for a ruling that the attorney fees are not included in your gross income.

(whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

Section 62(e)(18)(ii) defines the term “unlawful discrimination” to mean an act that is unlawful under any provision of federal, state, or local law, or common law claims permitted under federal, state, or local law, regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

The \$e that will be awarded to you under the proposed settlement agreement resolves a claim for pension benefits that you asserted against your employer under federal law. Thus, the \$e award resolves a claim of unlawful discrimination under § 62(e). In addition, the amount of the award that will be paid to your attorney as attorney fees for the taxable year is less than the amount that you will be required to include in gross income for the taxable year on account of the settlement of your unlawful discrimination claim.

Accordingly, we conclude, based strictly on the information submitted and representations made, that the portion of your \$e award paid as attorney fees and court costs to your attorney as the result of the settlement of your lawsuit with Reinsurance is deductible from your gross income under § 62(a)(19)[20].

CAVEATS:

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any item discussed or referenced in this letter.

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

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not been adopted. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations to the extent that the regulations are inconsistent with any conclusions in this ruling. See section 11.04 of Rev. Proc. 2005-1, 2005-1 I.R.B. 1, 47. If, however, the criteria in section 11.06 of Rev. Proc. 2005-1 are met, a ruling generally will not be revoked or modified retroactively.

A copy of this letter must be attached to any income tax return to which it is relevant. We enclose a copy of the letter for this purpose. Also enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

In addition, in accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Michael J. Montemurro
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosures (2)

cc: