

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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CC:TEGE:EB:HW
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Date:
January 29, 2008

Legend:

Taxpayer =

Plan =

Retirement Plan =

Dear

This is in reply to your letter dated October 5, 2007, requesting rulings on behalf of Taxpayer concerning whether certain benefits paid by the Plan to active and former employees are excludable from gross income under sections 106 and 105 of the Internal Revenue Code (the Code).

Plan was established as part of a collective bargaining agreement and is a self-funded multiemployer welfare plan that provides benefits to eligible active and former employees who are determined to have as defined in the Plan. Taxpayer is trustee of the trust that administers the Plan. The trust is a tax exempt organization under section 501(c)(9) of the Code. The trust receives employer contributions sufficient to pay estimated Plan benefits and expenses.

Plan provides coverage to active and former eligible employees. An employee is eligible if: (1) the individual is vested under the Retirement Plan due to credited service; or (2) the individual has received total and permanent disability benefits. All employees who satisfy the Plan's eligibility requirements and are determined by the Taxpayer to have , as defined in the Plan, receive the same benefits under the Plan. Benefits do not vary based upon age, years of service or compensation.

Plan reimburses or pays for certain expenses as follows: (1) the costs of substantiated institutional custodial care, institutional charges, home custodial care provided by an unrelated third party, physician services, durable medical equipment, and prescription medication, up to 1/12 of the maximum benefit payable for any month in which the eligible employee was admitted as an in-patient to an institution; and (2) the costs of substantiated home custodial care provided by an unrelated third party, physician services, durable medical equipment, and prescription medication, up to 1/12 of the maximum benefit payable for any month in which the eligible employee was not admitted as an in-patient to an institution.

The benefits are payable for the duration of the eligible employee's _____ and cease if the eligible employee is determined by the Taxpayer to no longer have _____.

Section 61(a) of the Code provides that, except as otherwise provided, gross income includes all income from whatever source derived, including compensation for services.

Section 106(a) of the Code provides that gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1(a) of the Income Tax Regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or other wise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152. 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.

Section 105(a) provides that amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent that such amounts (1) are attributable to contributions by the employer that are not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) provides that except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc. expenses) for any prior taxable year, gross income does not include amounts referred to in section 105(a) if such amounts are paid directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in section 213(d)) for the taxpayer, or the taxpayer's spouse and dependents (as defined in section 152).

Rev. Rul. 62-199, 1962-2 C.B. 32, states that the exclusion under section 106 is applicable to amounts paid for the benefit of retired employees as well as current employees.

Section 213(a) of the Code generally provides that expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152) are deductible to the extent such expenses exceed 7.5 percent of adjusted gross income. Section 213(d)(1)(A) of the Code defines the term “medical care” to include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. “Medical care” also includes amounts paid for qualified long-term care services (as defined in section 7702B(c)), or for any qualified long-term care insurance contract (as defined in section 7702B(b)). See sections 213(d)(1)(C) and (D). However, nothing in sections 213(d)(1)(C) and (D) indicate that “qualified long-term care services” as defined in section 7702B(c) have to be provided pursuant to a “qualified long-term care insurance contract” as defined in section 7702B(b) in order to be treated as “medical care” for purposes of section 213.

Based on the representations made and authorities cited above, we conclude that contributions paid to the Plan and payments made from Plan which are used to pay for benefits that qualify as medical care under section 213(d) of the Code are excludable from the gross income of eligible active and former employees under sections 106 and 105(b) of the Code.

No opinion is expressed concerning the Federal tax consequences of the Plan under any other provision of the Code other than those specifically stated herein. In particular, § 3.01(10) of Rev. Proc. 2008-3, 2008-1 I.R.B. 110 provides that the Service will not issue a ruling concerning whether a self-insured medical reimbursement plan satisfies the requirements of section 105(h) of the Code for a plan year. Accordingly, no opinion is expressed concerning whether Plan satisfies the nondiscrimination requirements of section 105(h) of the Code and section 1.105-11 of the regulations.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Harry Beker, Chief
Health & Welfare Branch
Office of Associate Chief Counsel/Division
Counsel (Tax Exempt & Government Entities)

cc: