

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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June 05, 2008

Legend

Taxpayer =

Trust =

Union =

State =

Dear :

This is in response to your letter dated January 4, 2008, in which you requested a ruling on behalf of Taxpayer.

Union is a labor organization in State that includes several bargaining units. Union's bargaining units negotiate benefits on behalf of their members. Union established Trust as a means of funding retiree health benefits for its members (the Program). Trust is designed to allow members to pre-fund retiree health coverage while they are employed, by mandatory contributions made through salary reduction.

Trust will provide health benefits to retired employees, their spouses, dependents (as defined in section 152 of the Internal Revenue Code (the Code)), and nondependent domestic partners. To the extent coverage is provided to nondependent domestic

partners, the value of coverage for the domestic partner will be currently included in an employee's gross income.

Trust is governed by a Board of Trustees comprised of Employer Trustees and Union Trustees. The Employer Trustees and Union Trustees each have equal voting power.

Each of Union's bargaining units negotiates the terms of participation in a collective bargaining agreement (CBA). The Program is a part of the CBA. Each CBA is subject to a vote by the members of the respective bargaining units. A majority vote is required for approval. Once approved, all bargaining unit members are subject to the terms of the CBA. No employee may elect whether to participate, or choose the contribution amount to the Program. It is represented that there is no individual employee election with respect to any part of the Program.

Each CBA also includes a provision regarding whether accrued sick and vacation leave will be contributed pursuant to a non-elective requirement upon retirement. This provision also requires a majority vote for approval. Once approved, all bargaining unit members are subject to the mandatory provision.

If the bargaining unit votes to participate in the Program, then mandatory contributions are negotiated into the CBA for the entire bargaining unit. Mandatory salary reduction contributions are automatically deducted from an employee's wages and placed in an Employee Account in Trust. There are no elective employee contributions to Trust. Employees can only receive funds from the account after retirement, and only for health insurance premiums or the reimbursement of medical expenses. Contributions cannot be rebated or refunded to employees.

Section 61(a)(1) 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 otherwise) 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 (including a fund referred to in section 105(e)) which provides accident and health benefits directly or through insurance to one or more of his employees.

Coverage provided under an accident and health plan to former employees and their spouses and dependents is excludable from gross income under section 106. See Rev. Rul. 62-199, 1962-2 C.B. 32; Rev. Rul. 82-196, 1982-2 C.B. 53.

Based on the information submitted and representations made, we conclude as follows:

Mandatory salary reduction contributions made to Trust that are used exclusively to pay for accident or health coverage for employees, their spouses and dependents (as defined in section 152 of the Code), are excludable from gross income under section 106 of the Code.

No opinion is expressed concerning the Federal tax consequences under any other provision of the Code other than as stated herein. Specifically, section 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) for a plan year. Accordingly, no opinion is expressed concerning whether the Program satisfies the nondiscrimination requirements of section 105(h) of the Code and section 1.105-11 of the regulations.

No opinion is expressed concerning the Federal tax status of Trust or the Federal tax treatment of Trust's income under any provision of the Code.

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.

Sincerely,

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

cc: