

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

December 19, 2008

Legend

Taxpayer =

Association =

Agreement =

Dear :

This is in reply to the letter from your authorized representative dated February 15, 2008, and subsequent correspondence, requesting a ruling on behalf of Taxpayer.

According to the information provided, Taxpayer currently provides retiree health insurance benefits to certain employees represented by Association. Taxpayer has entered into Agreement with Association that certain employees of Taxpayer will have a one-time irrevocable election to waive retirement health insurance in exchange for a higher rate of pay. According to Agreement, to exercise the one-time election, a current employee must sign an irrevocable waiver of the retirement health insurance benefit by a fixed date in order to elect the increased pay rate. Future eligible employees must execute the one-time irrevocable waiver within 15 days of their first contracted day of

work as an employee of Taxpayer to elect the increased pay rate. Employees who do not exercise the one-time irrevocable election to waive the right to the retirement health insurance benefits by the fixed date or within 15 days of their first contracted day of work will not be allowed to waive the retirement health insurance benefit at any later date.

Taxpayer represents that the increase in an employee's rate of pay resulting from the irrevocable waiver of retirement health insurance will apply only on a prospective basis. Employees who irrevocably elect to forgo future health benefits will not receive additional salary or taxable compensation for payroll periods for which the employee has already been paid.

Section 451(a) of the Internal Revenue Code states that the amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

Section 1.451-2(a) of the Income Tax Regulations provides that income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Based on the representations made and authorities cited above, we conclude that an employee will not be in constructive receipt of income due solely to the availability of the one-time irrevocable election to waive retiree health benefits in return for an increase in the rate of pay for future services provided to Taxpayer.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or statute other than those specifically stated above.

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 representative.

Sincerely,

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