



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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The Honorable Paul D. Tonko  
U.S. House of Representatives  
Washington, DC 20515

Attention:

Dear Representative Tonko:

I am responding to your inquiry dated January 28, 2016, on behalf of your constituent, . She wrote that she has health insurance through her employer that includes coverage for her domestic partner and her two children. Her employer told her that only a portion of the health insurance coverage will be excluded from her income tax, which she refers to as "pre-tax." It appears that the employer is now including the value of health insurance coverage for your constituent's two children and domestic partner in her gross income, which she refers to as "post-tax," and she asks about a change in the law. She does not state the ages of her children.

I am not aware of any recent changes to those rules. Generally, the applicable rules under section 106 of the Internal Revenue Code exclude health coverage that an employer provides from an employee's gross income if the coverage is for the employee, the employee's spouse, the employee's dependents, and any child of the employee who as of the end of the taxable year has not reached age 27. Accordingly, an employer can exclude health coverage for an employee's child from the employee's income in a taxable year if the child has not reached age 27 as of the end of the taxable year.

For purposes of the section 106 exclusion, a domestic partner is not a spouse. However, an employer can exclude health coverage for an employee's domestic

partner could be from an employee's income if the domestic partner qualifies as a dependent of the employee. Generally, to qualify as a dependent for this purpose, an individual must meet the following four conditions:

- He or she is not a qualifying child of any taxpayer.
- He or she is a citizen, national, or legal resident of the United States or a resident of a contiguous country.
- He or she is a member of the employee's household for the full tax year.
- He or she receives more than half of his or her support from the employee.

These are long-standing rules and are not related to any recent change in federal law or IRS position.

I hope this information is helpful. If you need additional information, please contact  
or me at .

Sincerely,

Janet A. Laufer  
Senior Technician Reviewer,  
Health and Welfare Branch,  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)