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From:

Sent: Friday, May 31, 2024 2:50:36 PM

To:

Cc:

Bcc:

Subject: POSTU-105583-24

██████:

We received your request for assistance on determining whether the definition of remuneration under §4960 includes an employee's elective deferral amounts to purchase a §403(b) annuity and an employee's salary reduction amounts under a §125 cafeteria plan to purchase qualified health insurance benefits and other health benefits that are excluded from gross income.

Section 4960(a)(1) imposes an excise tax on remuneration in excess of \$1 million paid by an applicable tax-exempt organization to any covered employee. Section 4960(c)(3) generally defines remuneration as wages under §3401(a). Section 3401(a) provides that "wages" for Federal income tax withholding purposes means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specific exceptions. Section 3402(a) generally requires every employer making a payment of wages to deduct and withhold upon these wages a tax determined in accordance with prescribed tables or computational procedures.

Contributions to a §403(b) annuity and salary reduction payments to a §125 cafeteria plan that pays for qualified employer-provided health insurance are not explicitly excluded from §3401(a) wages under any of the exceptions found in §§3401(a)(1)-(23). However, IRS guidance provides that these benefits are excluded from income tax withholding under §3402 to the extent they are excludible from gross income. For example, §403(b) contributions are excluded from an employee's gross income and thus not subject to income tax withholding to the extent annuity premiums and vested annual additions do not exceed the limits under §402(g)(3) and §415, respectively. See, Rev. Ruls. 65-209 and 70-453. Amounts in excess of those limits would be includible in an employee's gross income and subject to income tax withholding. Likewise, cafeteria plan salary reductions to pay for health insurance premiums under §125 are excluded from income tax withholding to the extent they are excluded from gross income under §§105(b) or 106(a). Rev. Rul. 2002-3.

For the benefits at issue in this case, the exclusion from income tax withholding under §§3401 and 3402 that is provided in IRS guidance should be treated as extending to the §4960(c)(3) definition of remuneration. Accordingly, for purposes of calculating the §4960 excise tax, §4960 remuneration should not be treated as including elective deferral payments to purchase a §403(b) annuity or salary reduction amounts under a §125 cafeteria plan to purchase qualified health insurance benefits and other health benefits to the extent each of these benefits are excluded from gross income and wages subject to income tax withholding.

Please reach out to us if you have any additional questions.

Sincerely,

A large black rectangular redaction box covering the signature area.