

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:TEGE:EB:HW
PLR-T-103519-15

Third Party Communication: None
Date of Communication: Not Applicable

UILC: 419.03-00

date: May 18, 2015

to: Internal Revenue Service
Attn: Lavena B. Williams
Industry Director
Metro Park Office Complex LB&I
111 Wood Avenue, South
Iselin NJ 08830

from: Janet Laufer
Senior Technician Reviewer
Health and Welfare (Employee Benefits)
TEGE Associate Chief Counsel

subject: PLR Request for which we have declined to rule

LEGEND

Parent:



Captive:



This is to let you know that, based on the interest of sound tax administration, we have declined to rule on a requested private letter ruling submitted on behalf of a corporation (Parent) and its wholly owned captive insurance company (Captive). The request states that Captive qualifies as an insurance company for federal income tax purposes. We have concerns about the proposed transactions for the reasons discussed below. In particular, the proposed transactions might not have the tax consequences claimed by Taxpayers.

BACKGROUND





LAW

Under section 404(a)(5), contributions to a nonqualified plan of deferred compensation are deductible in the taxable year in which the amount attributable to the contribution is includible in the income of the participating employee, but only if separate accounts are maintained for each employee. Section 404(b)(2) provides that a plan providing for deferred benefits is treated as a plan deferring the receipt of compensation, but an exception is provided for benefits provided through a welfare benefit fund described in section 419(e).

Sections 419 and 419A provide rules concerning the timing and amount of deductions for an employer's contributions to a welfare benefit fund. In general, amounts are not deducted until the benefit is provided to the employee. Special rules apply for PRMBs. Generally, an employer is allowed to deduct contributions to a reserve for PRMBs that is funded over the working lives of the covered employees and actuarially determined on a

¹ ERISA refers to Title I of the Employee Retirement Income Security Act of 1974, for which interpretive jurisdiction is under the authority of the Secretary of Labor.

level basis (and based on current medical costs). Contributions for benefits provided through a separate welfare benefit fund under a collective bargaining agreement are excepted from many of the deduction limits. However, no amounts are deductible under sections 419 and 419A unless they would otherwise be deductible under the Code, including that the amounts contributed are ordinary and necessary.

A welfare benefit fund is defined in section 419(e)(1) as: (i) a fund, (ii) which is part of a plan of an employer, and (iii) through which the employer provides welfare benefits to employees or their beneficiaries. The definition of "fund" is found in section 419(e)(3), including the treatment of amounts held pursuant to insurance contracts. The determination of whether amounts held pursuant to an insurance contract come within the definition of a fund is very factual.

CONCERNS

[REDACTED]

In addition, assuming the insurance contract arrangements are welfare benefit funds, amounts paid to Captive are subject the overriding rule of section 419(a) that no amounts are deductible under sections 419 and 419A unless they would otherwise be deductible, including that the amounts paid to the fund are ordinary and necessary expenses for the particular benefits provided by the fund. This rule applies to contributions to collectively bargained funds as well as non-collectively bargained funds.

[REDACTED]

Finally, depending on the particular facts, other tax provisions not addressed in the ruling request may be relevant to the tax consequences of the arrangement, including but not limited to section 264(a) (deductions for premiums paid on a life insurance policy, or endowment or annuity contract), section 72(u) (treatment of annuity contract not held by natural persons), the tax benefit rule, section 4976 (involving taxes imposed with respect to a disqualified benefit of a welfare benefit fund), and the definition of an insurance company for federal tax purposes.

If you have questions regarding this matter, please contact Betty Clary or me at (202) 317-5500.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.