

**Internal Revenue Service**  
**memorandum**

FREV -115240-98

Br6:CEWachsstock

date: SEP | 1998

to: Director, Exempt Organizations Division OP:E:EO

Chief, Branch 6 CC:EBEO:6

from: Office of the Associate Chief Counsel  
(Employee Benefits and Exempt Organizations)

---

subject: [REDACTED]

EIN: [REDACTED]

This is in response to your request of July 21, 1998, for technical assistance with respect to the captioned organization's private letter ruling request of April 20, 1998.

According to the information submitted, the organization is a statewide federation of local police officer associations that sponsors an employee benefit trust (the Trust). The Trust is tax exempt under section 501(c)(9) of the Internal Revenue Code as a VEBA.

The organization seeks to implement a collectively bargained "Retiree Premium Reimbursement Plan" (the Plan) to reimburse its members for health coverage premiums after termination of employment, including retirement. The Plan will provide benefits through either the Trust or a new VEBA. The organization's members can only join the plan as a group through the collective bargaining process. There is no individual election into the Plan. Employers will make contributions to the Plan on behalf of all members of the bargaining unit while they are actively employed. There is no individual election on the amount of the contributions. The Plan will be funded by mandatory pre-tax contributions in one of two methods. Under the first method, the employers will contribute to the Plan a percentage of all employees' pay. Under the second method, the employer will contribute to the Plan an amount equal to a certain portion of unused sick leave for all employees. The Plan will maintain a separate account for each employee. An employee may not elect to receive cash in lieu of the contributions to the Plan.

The Plan will pay benefits, consisting of reimbursement of health insurance premiums. When an employee incurs an expense for health insurance premiums, the employee will submit a voucher to the Plan for reimbursement. Proof of expenses shall be at least, but not limited to, canceled checks drawn to the name of the medical insurance provider, receipt for payment from the medical insurance provider, etc., subject to verification by the Plan. The Plan will provide reimbursement of benefits to retirees until the retirees' account balances reach zero. Upon the death of a retiree, the retiree's surviving spouse and other dependents may continue eligibility for the reimbursement benefits.

PMTA: 01536

You have requested that we address the following ruling request: ". . . that benefits from the Plan (through either the current Trust or a new VEBA), i.e. reimbursement for premiums, will be exempt from taxable income."

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 of the Income Tax Regulations states that gross income of an employee does not include contributions which his employer makes to an accident or health plan either by paying the premium (or a portion of the premium) on a policy covering one or more employees or by contributing to a separate trust or fund which provides accident and health benefits directly or through insurance to one or more employees. If such trust provides other benefits in addition to accident and health benefits, section 106 applies only to the portion of the employer's contribution which is allocable to accident or health benefits.

Rev. Rul. 61-146, 1961-2 C.B. 25, considered a situation in which employers paid a share of employees' premiums for hospital and medical insurance. For those employees who were covered by an employer's group policy, the employer paid his share of the premium directly to the insurance company. For those employees not covered by an employer's group policy but had other types of hospital and medical insurance for which the employees paid premiums directly to the insurers, the employer paid a part of the premiums upon proof that the insurance was in force and was being paid by the employees. The employer used one of three methods to pay his share of the premiums. Under one method, the employer reimbursed each employee directly once or twice a year upon proof of prior payments of the premiums by the employee. Under the second method, the employer issued to each employee a check payable to the particular employee's insurance company, the employee being obligated to turn over the check to the insurance company. Finally, the employer issued a check as in the second method except that the check was made payable jointly to the insurance company and the employee. Rev. Rul. 61-146 concluded that the reimbursements constituted employer payments of accident or health insurance premiums for employees and therefore were excludable from the gross income of the employees under section 106 of the Code.

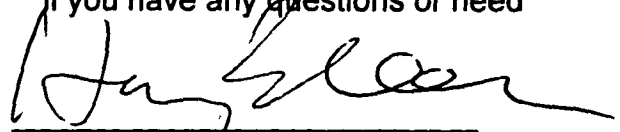
Rev. Rul. 75-539, 1975-2 C.B. 45, concerned two contracts that provided that employees could accumulate up to a maximum of 150 days of sick leave credits. The contracts also stipulated the treatment to be accorded accumulated sick leave for retired employees. In Contract A, an employee received a cash payment for one-half of the employee's accumulated sick leave credits in excess of 50 days or, at the option of the employee, the payment applied to the cost of the employee's continued participation in the employer's hospital, surgical and medical group insurance plan. In Contract B, the employer placed the value of three-fourths of a retiring employee's accumulated sick leave credits in an escrow account to pay the premiums of continued

participation by the retired employee in the employer's hospital, surgical and medical group insurance plan. Under this contract, the retired employee, his spouse or his dependents could not receive any of the escrow amount in cash. The revenue ruling held that the payments made under Contract A were includible in the employee's income. The payments made under Contract B were excludable pursuant to section 106 of the Code.

Based on the information submitted, we conclude that reimbursement of health insurance premiums under the Plan will be excludable from the gross income of members under section 106 of the Code.

Please contact Charles Wachstock at additional assistance.

if you have any questions or need

  
HARRY BEKER