

Rev. Rul. 85-121

Section 106. -- Contributions by Employer to Accident and Health Plans

26 CFR 1.106-1: Contributions by employer to accident and health plans.

1985-2 C.B. 57

August 12, 1985

ISSUE

Under the circumstances described below, is a laid-off worker an "employee" during the period of layoff for purposes of an accident or health plan described in sections 105 and 106 of the Internal Revenue Code?

FACTS

Corporation X maintains for its employees an employer-financed accident and health plan that qualifies as an accident or health plan described in sections 105(e) and 106 of the Code. Pursuant to the collective bargaining agreement between X and its employees, the plan also provides identical accident and health coverage for former active employees of X who have been laid off during the term of the agreement and who are available for work.

A, an employee, was laid off by X for a period of time. During the period of layoff X made contributions to its accident and health plan on behalf of A, and A received health benefit payments from the plan.

LAW AND ANALYSIS

Section 106 of the Code provides that gross income of an employee does not include contributions by the employer to an accident or health plan for compensation (through insurance or otherwise) to the employees for personal injuries or sickness.

Section 106 of the Code operates in conjunction with section 105, which provides, with certain exceptions, that amounts an employee receives through accident or health insurance for personal injuries or sickness are includible in gross income to the extent the amounts (1) are attributable to contributions by the employer that were not includible in the gross income of the employee, or (2) are paid by the employer. Withholding is required on payments of amounts includible in gross income under section 105(a) pursuant to section 3401(a) and section 31.3401(a)-1(b)(8) of the Employment Tax Regulations.

Rev. Rul. 82-196, 1982-2 C.B. 53, holds, in part, that employer contributions to an accident or health plan that provides coverage for an employee and the employee's spouse and dependents before and after the employee's retirement and for a deceased employee's surviving spouse and dependents are excludable from the gross income of the employee and the survivors under section 106 of the Code. Rev. Rul. 82-196 also holds that the taxation of health benefits paid to survivors of a deceased employee-participant in such a plan is determined under section 105. The revenue ruling in effect considers an employee-participant in an employer-funded accident or health plan to continue to be an "employee" for purposes of section 105 and 106 even after termination of employment.

As in the case of retired or deceased employees, X's contributions to the accident and health plan on behalf of A were based solely upon the employment relationship. A's treatment under section 105 and 106 should, therefore, be the same as that of the retired or deceased employees in Rev. Rul. 82-196.

HOLDING

During the period of layoff, the laid-off worker is an "employee" for purposes of sections 105 and 106 of the Code.