

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B02

PLR-119368-04

Date: September 29, 2005

Legend

Taxpayer =

State A =

Dear :

This letter is in response to a letter dated March 15, 2004, and subsequent discussions with your authorized representative requesting a ruling under the Internal Revenue Code ("Code") regarding employee leave donation programs. In your request, you indicate that if an employee chooses to donate leave under the program as described below, the value of any leave surrendered will be gross income under § 61 of the Code for the employee and treated as wages for purposes of income tax withholding and employment taxes. We agree. Your request, however, concerns the situation where an employee does not choose to donate leave. You requested the following ruling:

Employees who do not participate in the PTO Donation Policy will not have gross income under § 61 merely because they have the ability to participate in it.

The information submitted indicates that Taxpayer is a corporation organized under State A's nonprofit corporation law. Taxpayer is an organization exempt from Federal income tax under § 501(c)(3). Taxpayer is involved in health care, overseeing a variety of hospitals and related health care organizations in a few states.

Taxpayer and its individual hospitals and non-hospital affiliates (related health care organizations) each maintain a vacation or paid time-off program (collectively "PTO

Programs”) for their employees. Under the PTO Programs, employees earn leave that they can use for paid time off such as vacations, sicknesses and personal holidays. Under the PTO Programs, employees earn leave in accordance with a schedule based upon factors such as years of service, position, and full or part time status. The PTO Programs require employees to obtain approval from their employers prior to using their leave (except when advance notice is not possible, as in the case of illness), and they do not permit employees to incur a negative leave balance. Under the PTO Programs when an employee separates from service he or she receives his or her unused leave balance in a single sum cash payment. The PTO Programs provide that amounts paid to an employee for unused leave upon his or her separation from service are wages subject to income tax withholding and employment taxes.

Taxpayer proposes to supplement the PTO Programs by allowing its individual hospitals and non-hospital affiliates to adopt an employee leave donation policy (“PTO Donation Policy”) that permits employees to convert a limited amount of their leave into cash donations to certain organizations described in § 501(c)(3). Under the proposed PTO Donation Policy, employees who wish to participate in the donation arrangement make a written, irrevocable choice to surrender leave to their employers on the express condition that the employers make cash payments to the charitable organizations. The value of leave surrendered under the PTO Donation Policy will be gross income to the employee who surrenders it and will be wages for purposes of income tax withholding and employment taxes. The payment to the charity will equal the value of the leave surrendered, less applicable withholding and employment taxes.

Section 61(a) provides that, except as otherwise provided by the Code, gross income includes all income from whatever source derived, including compensation for services.

Section 1.61-2(c) of the Income Tax Regulations provides that the value of services is not includible in gross income when such services are rendered directly and gratuitously to an organization described in § 170(c). Where, however, pursuant to an agreement or understanding, services are rendered to a person or entity for the benefit of an organization described in § 170(c) and an amount for such services is paid to such organization by the person or entity for whom the services were performed, the amount so paid constitutes income to the person performing the services. *Id.*

Upon irrevocably donating leave under the PTO Donation Policy, the value of the leave donated is includible in the gross income of the donating employee and is subject to income tax withholding and employment taxes. See Rev. Rul. 58-495, 1958-2 C.B. 27 (“amounts earned by employees with respect to services donated for charitable purposes under the fund-raising plan of the instant case are includible in gross income ... and subject to the withholding of income tax ... even though such earnings are paid directly to a tax-exempt charitable organization by the employer.”). See also § 1.61-2(c).

Based on the facts submitted regarding the PTO Donation Policy, and the representations made, we conclude:

Employees who do not participate in the PTO Donation Policy will not have gross income under § 61 merely because they have the ability to participate in it.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Although not part of the ruling request, employees who do participate in the PTO Donation Policy will have gross income under § 61, and are subject to income tax withholding and employment taxes. § 1.61-2(c); Rev. Rul. 58-495.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Clifford M. Harbourt
Senior Technical Reviewer, Branch 2
(Income Tax & Accounting)