

INTERNAL REVENUE SERVICE

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September 29, 1999

Fund =

Union =

Association =

Dear

This is in reply to a letter dated December 21, 1998, and subsequent correspondence from your designated representatives, requesting rulings on behalf of Fund concerning the Federal income and employment tax treatment of contributions to and distributions from the Fund under the "Supplemental Plan".

The Fund is a multi-employer health and welfare benefit trust fund maintained pursuant to collective bargaining agreements between Union and Association. The Fund provides health and other welfare benefits to employees working under the terms of the collective bargaining agreements, their spouses and dependents. A written plan adopted by the Fund's Board of Trustees sets forth the terms and conditions of eligibility for coverage and the specific benefits provided under the plan. The plan is funded principally by contributions made by signatory employers at hourly rates established in the applicable collective bargaining agreements.

Employees (the "Participants") maintain their eligibility by working a threshold number of hours under the terms of the applicable bargaining agreement over a rolling three month period. Retirees and employees who would lose their eligibility as a result of termination of employment or a reduction in hours, and spouses and dependents of deceased employees or retirees, may extend their eligibility by making monthly self-contributions to the Fund.

It is represented that the Fund is a Voluntary Employees' Beneficiary Association described in section 501(c)(9) of the Internal Revenue Code (the "Code").

Pursuant to a collective bargaining agreement, employers have agreed to make a Supplemental Contribution of a specific dollar amount per hour to the Supplemental Plan to be set aside exclusively to provide Supplemental Benefits to the Participants, their spouses and dependents. The Supplemental Plan will provide only for the payment of expenses of medical care (within the meaning of section 213(d) of the Code) not otherwise paid under the plan or by other insurance on behalf of the Participants their spouses and dependents (as defined in section 152 of the Code). The Supplemental Plan will also provide for the payment of self-contributions necessary to continue hospitalization, surgical, major medical, prescription drug, vision, dental, hearing, and disability income coverage under the plan. Upon a Participant's death, the account of the deceased Participant will be available to pay monthly self-contributions required for medical benefits coverage under the plan and to reimburse any other expenses for medical care (within the meaning of section 213(d) of the Code) for the surviving spouse and eligible dependents.

Section 106(a) of the Code provides that, except as otherwise provided, 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 provides that the employer may contribute to an accident or health plan by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees.

The Service has determined that benefits provided under an accident and health plan to a retiree, his or her spouse or his or her dependents, may be excludable from gross income under section 106 of the Code. Rev. Rul. 62-199, 1962-2 CB 38; Rev. Rul. 75-539, 1975-2 CB 45. The Service has also determined that benefits provided under an accident and health plan to a deceased employee's surviving spouse or dependents may be excludable from gross income under section 106 of the Code. Rev. Rul. 82-196, 1982-2 CB 53.

Section 1.105-5(a) of the regulations provides that, in general, an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 105(a) of the Code provides that, generally, amounts received by an employee through employer-provided accident or health insurance for personal injuries or sickness shall be included in gross income. However, section 105(b) of the Code provides an exception to the general rule of inclusion under section 105(a). Section 105(b) provides that except in the case of amounts attributable to deductions allowed under section 213 for any prior taxable year, gross income does not include amounts received by an employee for personal injuries or sickness if such amounts are paid directly or indirectly to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care of the taxpayer, his spouse or dependents.

Section 105(e) of the Code provides that, for purposes of section 105, amounts received under an accident or health plan for employees shall be treated as amounts received through accident or health insurance.

Section 105(h)(1) of the Code provides that unless the plan satisfies the requirements of section 105(h)(2), amounts paid under a self-insured medical expense reimbursement plan to a highly compensated individual will not be excludable from that individual's gross income under section 105(b) of the Code to the extent they constitute excess reimbursements.

Section 3121(a)(2)(B) of the Code excludes from the definition of "wages" for Federal Insurance Contributions Act (FICA) purposes, the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees or their dependents) on account of medical or hospitalization expenses in connection with sickness or accident disability.

Section 3306(b)(2)(B) excludes those same amounts from the definition of "wages" for Federal Unemployment Tax Act (FUTA) purposes.

Pursuant to sections 31.3121(a)(2)-1(c) and 31.3306(b)(2)-1(c), of the Employment Tax Regulations, for purposes of the exclusion from FICA and FUTA wages for accident and health benefits, the "dependents" of an employee include the employee's husband or wife, children, and any other members of the employee's immediate family.

For sick pay payments to employees to come within the exclusion from wages under Sections 3121(a)(2) and 3306(b)(2), the employer must have a definite plan or system applicable to all employees generally, or to a class or classes of employees. See, Rev. Rul. 80-303, 1980-2 C.B. 295.

Accordingly, based on the representations made and authorities cited above, we conclude as follows that as of the effective date of the Supplemental Plan:

- (1) Supplemental Contributions designated for the Supplemental Plan will be excludable from the Participants' gross income under section 106(a) of the Code.
- (2) Provided that the Supplemental Plan does not discriminate in favor of highly compensated employees under section 105(h) of the Code, payments under the Supplemental Plan for medical expenses (as defined in section 213(d) of the Code), of the Participants, the Participants' spouses and dependents, (as defined in section 152 of the Code), will be excludable from the gross income of the Participants, (or the surviving spouses and eligible dependents of the Participants) under section 105(b) of the Code.

- (3) Supplemental Contributions designated for the Supplemental Plan will not be considered "wages" for FICA tax or FUTA tax purposes.

No opinion is expressed or implied concerning the tax consequences of this arrangement under any other provision of the Code or regulations other than those specifically stated above. Specifically, no opinion is expressed or implied concerning whether the plan or Supplemental Plan constitutes a discriminatory self-insured medical expense reimbursement plan within the meaning of section 105(h) of the Code.

These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

Sincerely yours,

Harry Beker
Chief, Branch No.6
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures:

Copy of this letter

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