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Department of the Treasury

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Union =

This is in reply to your ruling request dated November 26, 2002. Based on the information submitted, we understand the relevant facts to be as follows.

The union is an unincorporated association that serves as the certified representative for employees of a certain occupation with respect to a number of employers in a certain industry. The union structure includes locals for each employer with which the union has a collective bargaining agreement. Many of the employees are covered by accident or health plans maintained by their employers pursuant to the terms of the collective bargaining agreement.

The industry has experienced financial difficulties. Many union employees have been furloughed. The union local at each employer voted to approve a special assessment on each employee's wages. The special assessment is used to pay for the cost of health care coverage premiums for furloughed employees. The details differ in the resolutions from local to local, but in each case payments from the special assessment are made to the employer for the health coverage of furloughed employees or are made directly to the furloughed employee for amounts the furloughed employee has paid to the employer for health care coverage. The assessments are collected by the union, are placed in a segregated fund, and are used solely for the funding of health care coverage for furloughed employees. The union wishes to know the tax consequences to its members for the special assessments and for the purchase of health insurance with the proceeds.

Section 61(a) of the Internal Revenue Code provides that the term "gross income" means all income from whatever source derived, unless excluded by law.

Section 104(a)(3) and §1.104-1(d) of the Income Tax Regulations provide that gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer). Similar treatment is also accorded to amounts received under accident or health plans.

Section 1.105-5(a) of the regulations provides that, for purposes of section 104 and 105, amounts received through an accident or health plan for employees are treated as amounts received through accident or health insurance. Under §1.104-1(d) of the regulations, section 104(a)(3) also applies to amounts received by an employee for personal injuries or sickness from a fund which is maintained exclusively by employee contributions.

Rev. Rul. 73-347, 1973-2 C.B. 25, concerns the tax consequences of an arrangement under which a union member receives payments for a period of time when absent from work because of sickness. Under the facts of the ruling, the union member belongs to a union local whose members are employed on a piecework basis by an employer who does not have a sick pay plan for employees. The union member was absent from work for an extended period of time because of sickness. During the absence, the union member received benefit payments pursuant to the rules of the union local. Under the rules, a member who was absent from work on a particular day because of sickness received a specified percentage of the wages earned on that day by the group of employees with whom the member worked. The amount of the payment was determined from the daily earnings of the group and the source of the payments was the earnings from the members actually working on a given day. The ruling considers whether the benefit payments are amounts received under an employee accident or health plan subject to section 104(a)(3) of the Code.

Rev. Rul. 73-347 states that under the plan described, it is as though the contributing members received compensation for their services and paid the compensation into a fund maintained by the group for the payment of accident and health benefits. Accordingly, the ruling concludes that the amounts received by the union member for a period of absence from work due to sickness under the circumstances described are excludable from gross income under section 104(a)(3). The contributing union members, however, must include all their wages in gross income, including amounts deducted from their wages and paid to the absent union member.

Under the reasoning of Rev. Rul. 73-347, the special assessments made by the Union are used for the payment of health plan coverage in the event of employees being furloughed. Because the special assessments are used solely to pay for health care coverage of furloughed members, the fund constitutes an employee accident or health plan. Therefore, amounts paid from the segregated fund for health care coverage of furloughed employees are excludable from the gross income of furloughed employees under section 104(a)(3). However, each contributing

union member must include in gross income the amount by which the union member's pay is reduced on account of the special assessment.

Accordingly, based on the information presented, we rule as follows:

1. Any amount paid from the segregated fund for the health insurance coverage of a furloughed employee is excludable from the gross income of the furloughed employee under section 104(a)(3).

2. Any amount deducted from a contributing member's pay on account of the special assessment must be included in the contributing member's gross income.

Except as specifically ruled, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Sincerely,

Harry Beker
Chief, Health and Welfare Branch
Division Counsel/ Associate Chief Counsel
(Tax Exempt and Government Entities)