

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
August 08, 2008

Legend

Taxpayer =

Union =

State =

Dear :

This is in response to your letter dated March 17, 2008, in which you requested rulings on behalf of Taxpayer.

Union is a labor organization in State that includes multiple bargaining units. Union's bargaining units negotiate benefits on behalf of their members. Taxpayer is an employee welfare trust. The purpose of the Trust is to hold contributions from bargaining units represented by locals for the purpose of funding retiree health benefit payments. Member locals of the Union may join pursuant to collective bargaining agreements with their participating employers

Trust is a funding vehicle for employees to pre-fund retiree health coverage (the Plan) during the time they are employed. The Trust will provide reimbursement payments to

eligible employees toward the cost of post-retirement medical expenses or health insurance premiums.

Trust will provide benefits to retired employees, their spouses, dependents (as defined in section 152 of the Internal Revenue Code (the Code), and nondependent domestic partners. The Trust will advise participating employers that the value of coverage under the Plan for domestic partners will be included in gross income as benefits are earned and not when received. The value of such coverage will be included in a participant's gross income for a taxable year only if he or she is expected to have a domestic partner upon attaining eligibility for benefits under the Plan. Such participants will be identified by the Taxpayer and the amounts to be included in the employee's gross income will be determined under an actuarial calculation that takes into account reasonable actuarial assumptions.

The Plan is a part of the bargaining agreement. All bargaining unit members are subject to the terms of the bargaining agreement. No employee may elect whether to participate, or choose the contribution amount to the Plan. It is represented that there is no individual employee election with respect to any part of the Plan.

Bargaining agreements may include a provision regarding whether accrued sick and vacation leave will be contributed pursuant to a non-elective requirement upon retirement. If the bargaining agreement contains such a provision, all bargaining unit members are subject to the mandatory provision.

If the bargaining unit votes to participate in the Plan, then mandatory salary reduction contributions are automatically deducted from an employee's wages and placed in an employee account in Trust. The employer may also make additional contributions to Trust. There are no elective employee contributions to Trust. Employees can only receive funds from the account after retirement, and only for health insurance premiums or the reimbursement of medical expenses. Contributions cannot be rebated or refunded to employees.

Section 61(a)(1) of the Code provides that, except as otherwise provided, gross income includes all income from whatever source derived, including compensation for services.

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(a) of the Income Tax Regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152. The employer may contribute to an accident or health plan either 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, or by contributing to a separate trust or fund (including a fund referred to in section 105(e)) which provides accident and health benefits directly or through insurance to one or more of his employees.

Coverage provided under an accident and health plan to former employees and their spouses and dependents is excludable from gross income under section 106. See Rev. Rul. 62-199, 1962-2 C.B. 32; Rev. Rul. 82-196, 1982-2 C.B. 53.

Section 104(a)(3) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, 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 included in the gross income of the employee, or (B) are paid by the employer.

Based on the information submitted and representations made, we conclude as follows.

Mandatory salary reduction contributions made to Trust that are used exclusively to pay for accident or health coverage for employees, their spouses and dependents (as defined in section 152 of the Code), are excludable from gross income under section 106 of the Code.

With respect to domestic partners who do not qualify as section 152 dependents, neither the retired employee nor the domestic partners will include in gross income any amount received for personal injuries or sickness under section 104(a)(3) but only to the extent the coverage was paid for with after-tax employee contributions.

No opinion is expressed concerning the Federal tax status of Trust or the Federal tax treatment of Trust's income under any other provision of the Code. In addition, section 3.01(9) of Rev. Proc. 2007-3, 2007-1 I.R.B. 108, provides that the Service will not issue a ruling concerning whether a self-insured medical reimbursement plan satisfies the requirements of section 105(h) for a plan year. Accordingly, no opinion is expressed concerning whether the Plan satisfies the nondiscrimination requirements of section 105(h) of the Code and section 1.105-11 of the regulations.

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

Sincerely,

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