Letter Ruling 9850011

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Uniform Issue List Information:

0061.00-00

Gross income v. not gross income

0104.01-00

Compensation for injuries and sickness (Excluded v. not excluded)

Health and accident insurance

0105.00-00

Accident and health plans (Excluded v. not excluded)

0106.00-00

Contribution by employer to accident and health plans (Excluded v. not excluded)

0152.05-00

Dependent defined

Other dependents

0501.09-00

Exception from tax on corporations, certain trusts, etc. (Exempt v. not exempt)

Voluntary employees' beneficiary associations

3102.00-00

Deduction of tax from wages

3401.00-00

Definitions

UIL No. 61.00-00 Gross income v. not gross income; UIL No. 104.01-00 Compensation for injuries and sickness (Excluded v. not excluded), Health and accident insurance; UIL No. 105.00-00 Accident and health plans (Excluded v. not excluded); UIL No. 106.00-00 Contribution by employer to accident and health plans (Excluded v. not excluded); UIL No. 152.05-00 Dependent defined, Other dependents

[Code Secs. 61, 104, 105, 106, 152, 501, 3102 and 3401]

This is in reply to your letter dated May 11, 1998, and subsequent correspondence, submitted on behalf of Fund, concerning the proper federal tax treatment of providing health benefits to same-sex domestic partners of persons qualifying for Fund benefits.

The Fund was established pursuant to a collective bargaining agreement between the Union and the participating employers to provide medical benefits to current and former employees of the participating employers. The Fund has been determined to be exempt from tax under section 501(c)(9) of the Internal Revenue Code.

The Fund pays for benefits under two Union plans, the Family Health Plan and the Individual Health Plan. Participating employers contribute to the Fund in an amount determined under the collective bargaining agreement, generally in an amount equal to a percentage of the compensation paid for work performed. Under the Family Health Plan, the Fund pays or reimburses hospital, major medical, prescription drug, wellness, vision and dental expenses for employees, his or her spouse and dependents. The Individual Health Plan covers the same benefits as the Family Health Plan but only with respect to the employee. Employees who are eligible for coverage under the Individual Health Plan may pay an additional amount to obtain coverage for their spouses and dependents under the Family Health Plan.

The Fund intends to amend the Family Health Plan to allow employees to obtain the same health benefit coverage for the employee’s same-sex domestic partner. To be eligible for coverage by the Fund, the employee and the domestic partner must file a declaration of domestic partnership. The declaration states, in part, that the employee and employee’s domestic partner: (1) have an intimate, committed relationship of mutual caring; (2) have shared the same principal place of residence for at least six months; (3) agree to be responsible for each other’s basic living expenses; (4) are both 18 or older; (5) are the same sex and neither is married; and (6) are not related by blood or certain other relationships.

You have requested rulings on the federal tax consequences of extending coverage under the Family Health Plan to employees’ same-sex domestic partners.

Section 61(a)(1) of the Code and section 1.61-21(a)(3) of the Income Tax Regulations provide that, except as otherwise provided in subtitle A of the Code, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

Section 1.61-21(a)(3) of the regulations provides that a fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for such services.

Section 1.61-21(a)(4) of the regulations provides that, in general, a taxable fringe benefit is included in the income of the person performing the services in connection with which the fringe benefit is furnished. Thus, a fringe benefit may be taxable to a person even though that person did not actually receive the fringe benefit. If a fringe benefit is furnished to someone other than the service provider, such benefit is considered as furnished to the service provider, and use by the other person is considered use by the service provider.

Section 1.61-21(b)(1) of the regulations provides that an employee must include in gross income the fair market value of the fringe benefit. In general, fair market value, under the principles set forth in section 1.61-21(b)(2) of the regulations, is determined on the basis of the amount that an individual would have to pay for the particular fringe benefit in an arm's-length transaction. Where the particular coverage provided to the individual is group medical coverage, the amount includible in the employee's gross income is the fair market value of the group medical coverage.

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).

Section 106 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 of the 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."

Section 105(a) of the Code provides that, except as otherwise provided in section 105, "amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer."

Section 105(b) 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 referred to

in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152 of the Code).

Employer-provided coverage under an accident or health plan for personal injuries or sickness incurred by individuals other than the employee, his or her spouse, or his or her dependents, as defined in section 152 of the Code, is not excludible from the employee's gross income under section 106 of the Code. In addition, reimbursements received by the employee through an employer-provided accident and health plan are not excludible from the employee's gross income under section 105(b) of the Code unless the reimbursements are for medical expenses incurred by the employee, his or her spouse, or his or her dependents, as defined in section 152.

Rev. Rul. 58-66, 1958-1 C.B. 60, provides that the marital status of individuals as determined under state law is recognized in the administration of tax laws. However, Section 3 of the "Defense of Marriage Act", P.L. 104-199 (September 21, 1996), provides that, "In determining the meaning of any Act of Congress, or of any ruling, regulation or interpretation of the various administrative bureaus or agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

Section 152(a)(1) through (8) of the Code provides that the term "dependent" means any individual over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer and who is related to the taxpayer in one of several specified relationships.

Section 152(a)(9) of the Code provides, in pertinent part, that the term "dependent" means an individual over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer and (other than an individual who at any time during the taxable year was the spouse of the taxpayer) who, for the taxable year of the taxpayer has as his or her principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

Section 152(b)(5) of the Code provides that an "individual is not a member of a taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law."

Section 501(c)(9) of the Code provides that the organizations exempt from income tax under section 501(a) of the Code include a voluntary employees' beneficiary association providing for the payment of life, sick, accident or other benefits to the members of such association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 3402 of the Code provides that, except as otherwise provided, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary of the Treasury.

Section 3401(a) of the Code provides that, with certain enumerated exceptions, the term "wages" as used in section 3402 means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

Sections 3101(a) and 3111 of the Code (Federal Insurance Contributions Act (FICA)) provide for a tax on employees and employers which is a percentage of wages received or paid with respect to employment.

Section 3121(a) of the Code provides, with certain exceptions, that for FICA purposes, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

Section 3301 of the Code (Federal Unemployment Tax Act (FUTA)) imposes on every employer an excise tax equal to a percentage of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

Based on the information submitted, representations made, and the authorities cited above, we conclude as follows:

(1) An employee's same-sex domestic partner does not qualify as the "spouse" of the employee for purposes of the Code.

(2) An employee's domestic partner who is not related to the employee in one of the relationships specified in section 152(a)(1) through (8) of the Code, may qualify as a dependent of the employee if the following requirements of sections 152(a)(9) and 152(b)(5) are met: (a) the domestic partner receives more than half of his or her support for the calendar year from the employee; (b) the domestic partner has the home of the employee as his or her principal abode and is a member of the employee's household; and (c) the relationship between the employee and the domestic partner does not violate local law.

(3) Coverage of nondependent domestic partners under the Family Health Plan will not otherwise affect the excludibility, under section 106 of the Code, of amounts contributed by the Fund for employees, their spouses and dependents (as defined in section 152 of the Code).

(4) Coverage of nondependent domestic partners under the Family Health Plan will not otherwise affect the excludibility, under section 105(b) of the Code, of amounts paid by the Fund, directly or indirectly, to reimburse employees for expenses incurred by the

employees for medical care of the employees, their spouses and dependents (as defined in section 152 of the Code).

(5) The Fund requested a ruling on the employee's right to deduct, under section 213 of the Code, amounts paid by the employee to the Fund for coverage of the employee and his or her spouse and dependents (as defined in section 152 of the Code). Because this ruling affects only the tax liability of the employee and not the Fund, we are unable to issue the requested ruling. Section 5.11 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 21.

(6) Coverage of nondependent domestic partners under the Family Health Plan will not affect the exemption of the Fund from income tax as an organization described in section 501(c)(9) of the Code, so long as the benefits paid with respect to nondependent domestic partners do not exceed three percent of the total benefits paid by the Fund.

(7) If a domestic partner covered under the Family Health Plan does not qualify as a spouse or dependent, the excess of the fair market value of the group medical coverage provided by the Fund to the domestic partner, over the amount paid by the employee for such coverage, is includible in the gross income of the employee under section 61 of the Code.

(8) Pursuant to the provisions of section 104(a)(3) of the Code, neither the employee nor the employee's domestic partner will include any amount received as payment or reimbursement under the Family Health Plan to the extent that the coverage provided to the domestic partner was paid for by employee contributions.

(9) The amount includible in the gross income of the employee by reason of the coverage of the domestic partner constitutes "wages" under section 3401(a) of the Code and is subject to income tax withholding under section 3402 of the Code. Such amounts also constitute "wages" within the meaning of section 3121(a) of the Code and section 3306(b) of the Code for FICA and FUTA purposes.

(10) The Fund is required to withhold the amount required to be withheld under section 3402 of the Code and the amount of FICA and FUTA taxes imposed by sections 3111 and 3301 of the Code.

Except as stated above, no opinion is expressed concerning the federal tax consequences to the Fund under any section of the Internal Revenue Code. This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours, Harry Beker Chief, Branch 6, Office of the Associate Chief Counsel (Employee Benefits and Exempt Funds).