DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE

MEMORANDUM FOR AREA COUNSEL, CC:TEGE:GLGC

FROM: Acting Branch Chief, CC:TEGE:EOEG:ET2

SUBJECT: Request for Technical Assistance–Tuition Reduction for Graduate Student as a Working Condition Fringe Benefit

This Chief Counsel Advice responds to your memorandum dated June 25, 2001. In accordance with Internal Revenue Code (Code) § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

ISSUE

Whether a tuition reduction provided for graduate education by an educational institution employer (a "university") can be excluded as a working condition fringe benefit under the provisions of Code § 132(a)(3) if the tuition reduction does not qualify for exclusion under Code § 117(d).

CONCLUSIONS

Tuition reduction provided by a university may not be excluded from an employee's gross income as a working condition fringe benefit.

FACTS

The taxpayer in several cases is a university as described in Code § 170(b)(1)(A)(ii). The university provided tuition reduction for undergraduate and graduate level courses. For graduate level courses, the university obtained from employees certain information from employees that it used to determine whether the tuition reduction was excludable as a working condition fringe benefit.

LAW AND ANALYSIS

Code § 61(a) sets forth, except as otherwise provided, that gross income includes compensation for services, including fringe benefits.

The rules for tuition reduction arrangements are generally provided in Code § 117(d). Section 117(d) of the Code allows a taxpayer to exclude from gross income a qualified tuition reduction. A qualified tuition reduction is defined as

- the amount of any reduction in tuition
- provided to an employee of an organization described in Code § 170(b)(1)(A)(ii)
- for education below the graduate level
- at such organization or another organization described in Code § 170(b)(1)(A)(ii)
- for the employee or any person treated as an employee under the provisions of Code § 132(h).

Code § 132(a)(3) allows an employee to exclude working condition fringe benefits from gross income. Code § 132(d) defines working condition fringe benefits as any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under Code § 162 or 167.

Section 132(l) of the Code provides that Code § 132 generally does not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

Code § 132(j)(8) provides that amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under Code § 127 are excluded from gross income under Code § 132 only if such amounts or expenses are working condition fringe benefits.[1]

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[1]Under the Code § 127, an employee can exclude up to $5,250 of educational assistance provided by an employer from a qualified program. Educational assistance for graduate education was not provided under Code § 127 after June 30, 1996, however, for courses beginning after 2001, graduate courses are included as educational assistance under Code § 127. Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16, 115 Stat. 38, § 411.

Treasury Regulation § 1.132-1(f)(1) provides, in part,

> If the tax treatment of a particular fringe benefit is expressly provided for in another section of Chapter 1 of the Internal Revenue Code of 1986, section 132 and the applicable regulations (except for section 132(e) and the regulations thereunder) do not apply to such fringe benefit. For example, because section 129 provides an exclusion from gross income for amounts paid or incurred by an employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance. Similarly, because section 117(d) applies to tuition reductions, the exclusions under section 132 do not apply to free or discounted tuition provided to an employee by an organization operated by the employer, whether the tuition is for study at or below the graduate level. Of course, if the amounts paid by the employer are for education relating to the employee's trade or business of being an employee of the employer so that, if the employee paid for the education, the amount paid could be deducted under section 162, the costs of the education may be eligible for exclusion as a working condition fringe. (emphasis added).

Legislative History to Code § 132(l)

The House Report for the Deficit Reduction Act of 1984 (DEFRA), which enacted Code
§ 132, explains the relationship between Code § 132 and other Code sections.

> A benefit is not excludable under new Code section 132 (except pursuant to the rules for de minimis benefits) if another section of the Internal Revenue Code provides rules for the tax treatment of the general type of benefit. For example, the fair market value of day care services provided to an employee is excludable only pursuant to the provisions of Code section 129. If in a particular situation such services do not qualify for exclusion under section 129 (e.g., because the nondiscrimination requirement of the section are not met), no exclusion is available under the bill (other than the de minimis exclusion).

H.R. Rep. 432, Part II, 98th Cong. 2d Sess. 1608 (1984) (emphasis added).

Legislative History to Code § Section 132(j)(8)

The House Report for the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), which enacted Code § 132(j)(8), describes the relationship between Code §§ 132(d) and 127.

> The provision clarifies that, to the extent employer-provided educational assistance is not excludable under section 127 because it exceeds the maximum dollar limitation or because of the limitation on graduate-level courses, it may be excludable from income as a working condition fringe benefit (132(d)), provided the requirements of that section are otherwise satisfied (e.g., the education is job-related as defined under section 162). Educational assistance may not be excluded under any other provision of section 132.

H.R. Rep. 247, 101st Cong. 1st Sess. 1172 (1989).

Based on treasury regulations and legislative history, authorities indicate that tuition reduction is not excludable as a working condition fringe benefit. Tuition reduction is the type of benefit provided for under Code § 117; thus, Code § 132(l) precludes application of § 132 to exclude tuition reduction amounts from gross income, other than as a de minimis fringe benefit. In addition, the regulations seem to clearly distinguish between tuition reduction under Code § 117 and amounts paid by an employer for an employee's education under Code § 127. Further, the legislative history speaks of "the general type of benefit" that may not be excludable under § 132 if another Code section provides a tax treatment for such benefit. Consequently, tuition reduction for graduate courses is the general type of benefit related to Code § 117 tax treatment and, therefore, is not excludable under Code § 132.

Moreover, Congress considered the relationship between the working condition fringe benefit and educational assistance in enacting OBRA '89, and found it necessary to amend Code § 132 (then Code § 132(h)(9)) to provide that educational assistance that is not excludable under Code § 127 may be excludable under Code § 132. This suggests that Congress believes that educational assistance would not be otherwise excludable because Congress is presumed not to enact statutes that are superfluous. Thus, Congress' failure to include Code § 117 in this amendment provides further support that tuition reductions are not excludable under Code § 132(d).

Dicta in Private Letter Ruling 9040045 have been read as excluding tuition reduction benefits for graduate-level courses as a working condition fringe benefit. However, if read in context of the legislative and regulative analysis, the term "tuition benefits" appears to refer to educational benefit exclusions under § 127.

In this ruling, Treasury Regulations § 1.132-1(f)(1) [cited as § 1.132-5(f)(1)] is cited for NOT applying the § 132 exclusion to free or discounted tuition whether for graduate or undergraduate studies per Code § 117(d) and for applying the working condition fringe benefit exclusion under Code § 132(d) to employer-paid education amounts if such amounts can be deducted under Code § 162. (Code § 127 applies to employer-paid education amounts.) The ruling also refers to the legislative history for Code § 132 in which employer-provided education amounts not excludable under Code § 127 can be excludable under Code § 132(d) as a working condition fringe benefit provided the requirements of § 162 are met. The analogy concludes with the hypothetical application of "graduate tuition benefits" as a working condition fringe benefit provided the requirements of that section are met. Since the § 132 regulations specifically exclude application of such section to Code § 117 tuition reduction benefits, the analogy appears to refer only to Code § 127 benefits.

Further, another possible rationale for treating tuition reduction benefits differently is that there is little incentive to monitor whether graduate-level courses are job related when the courses result in no additional cost to the employer.

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Please call if you have any further questions.

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LYNNE A. CAMILLO
Acting Branch Chief
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