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Department of the Treasury
Washington, DC 20224

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Refer Reply To:
CC:TEGE:EB:HW – PLR-118548-03
Date:
06/13/2003

LEGEND

Taxpayers =

Dear :

This is in response to your letter dated December 31, 2002, concerning the federal income tax and employment tax treatment of medical and dental benefits provided by Taxpayers to the domestic partners of employees.

Taxpayers provide medical and dental benefit coverage for its employees and their eligible dependents under a welfare benefit plan. The plan provides that an eligible dependent includes employee's same-gender domestic partner.

Under Taxpayers' welfare benefit plan, Taxpayers and employees share the cost of the medical and dental coverage for employees, spouses and dependents (other than domestic partners). With respect to domestic partners who do not qualify as dependents under section 152 of the Internal Revenue Code, Taxpayers compute the taxable portion of the benefits provided to a domestic partner and include that in the employee's gross income.

Prior to a domestic partner's enrollment in the medical or dental coverage, the employee and domestic partner must complete and have notarized a Domestic Partner Affidavit to certify the authenticity of the domestic partner relationship. Taxpayers

require an annual recertification to confirm the status of the domestic partner relationship.

Taxpayers also require that the employee and domestic partner certify that the domestic partner qualifies as a dependent if the requirements of section 152 are met. If the domestic partner qualifies as a dependent, Taxpayers will not include the value of the domestic partner medical and dental coverage paid by Taxpayers in the employees' gross income.

Section 61(a)(1) 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. In the case of group medical coverage, the amount includible in the individual's gross income is the fair market value of the group medical coverage.

Section 106 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(e) provides that amounts received under an accident or health plan for employees will be treated as amounts received through accident or health insurance for

purposes of sections 104 and 105.

Section 104(a)(3) 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 105(a) 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) 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, is not excludable from the employee's gross income under section 106. In addition, reimbursements received by the employee through an employer-provided accident and health plan are not excludable from the employee's gross income under section 105(b) 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. However, reimbursements that are not excludable under section 105(b) may be excludable under section 104(a)(3) if they are attributable to employer contributions that were included in the employee's income.

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 defines the term "dependent" for purposes of subtitle A of the Code. Sections 152(a)(1) through (8) define dependent in terms of support and relationship. Those sections define a dependent as an individual who: (1) receives more than half of his or her support from the taxpayer, and (2) is related to the taxpayer as defined in sections 152(a)(1) through (8).

Section 152(a)(9) contains an alternative definition of dependent. That section defines dependent as an individual who: (1) receives more than half of his or her support from the taxpayer for the year, and (2) who has the home of the taxpayer as his or her principal abode and is a member of the taxpayer's household during the entire taxable year of the taxpayer. Section 152(b)(5) imposes an additional requirement. It provides that an individual is not considered a member of the taxpayer's household if the relationship between the individual and the taxpayer is in violation of local law.

Section 3402 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) 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 or her employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

Rev. Rul. 56-632, 1956-2 C.B. 101, holds that benefits excluded under Code section 106 are not subject to income tax withholding. However, health benefits that are included in income are wages for withholding purposes.

Sections 3101 and 3111 (Federal Insurance Contributions Act (FICA)) provide for a tax on employees and employers, which is a percentage of wages (as defined in section 3121(a)) paid with respect to employment. Section 3301 (Federal Unemployment Tax Act (FUTA)) imposes on every employer a tax equal to a percentage of wages (as defined in section 3306(b)) paid by the employer during the calendar year with respect to employment.

Sections 3121(a) and 3306(b) of the Code provide, with certain exceptions, that for FICA and FUTA purposes respectively, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. Under sections 3121(a)(2) and 3306(b)(2), wages for FICA and FUTA purposes does not include amounts paid to or on behalf of an employee or his dependents under a plan covering a class or classes of employees and their dependents on account of medical or hospitalization expenses. Health benefits

provided to persons other than the employee or his dependents are not excluded from FICA or FUTA wages under these provisions.

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

1. An employee's same-gender 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), may qualify as a dependent of the employee if all of the requirements of sections 152(a)(9) and 152(b)(5) are met.

3. Because the domestic partner certification (and annual recertification) contains representations that the support and relationship tests of section 152(a)(9) are met and that the relationship between the employee and domestic partner does not violate local law, Taxpayers may rely upon the domestic partner certification to establish that the domestic partner is a dependent of the employee for the purposes of determining whether the domestic partner medical and dental coverage is subject to Federal income and employment taxes.

4. Medical and dental coverage and reimbursements that are provided to a domestic partner who qualifies as a section 152 dependent of the employee is excludable from the employee's gross income under section 106 and section 105 and are not included in wages for employment tax purposes.

5. The excess of the fair market value of the medical and dental coverage provided by Taxpayers to a domestic partner who does not qualify as a section 152 dependent of the employee, over the amount paid by the employee for such coverage, is includable in the employee's gross income and is subject to income tax withholding and employment taxes.

6. With respect to a domestic partner who does not qualify as a section 152 dependent, neither the employee nor the domestic partner will include in income any amount received as payment or reimbursement under section 104(a)(3) to the extent the coverage was paid for with after-tax employee contributions.

7. The medical and dental coverage provided to domestic partners will not otherwise adversely affect the exclusion from gross income under section 106 of amounts contributed by the Taxpayers for medical and dental coverage for employees, their spouses, and dependents.

Except as specifically ruled on above, no opinion is expressed or implied as to the federal tax consequences of the transaction described under any other provision of the Code.

This ruling is directed only to the Taxpayers 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
Office of Division Counsel/Associate Chief Counsel
(Tax Exempt / Government Entities)

Enclosures:

Copy of Letter
Copy for section 6110 purposes