Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Nos.: 117.06-00
117.06-05
410.02-01

Number: **199940025**
Release Date: 10/8/1999

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:IT&A:Br.6-PLR-117992-98
Date:
July 12, 1999

Attn:

Legend:

Taxpayer =

Plan =

Dear

This letter is in response to your request for a ruling under section 117(d) of the Internal Revenue Code of 1986 (Code) respecting the continuing excludability from gross income of certain benefits provided by the taxpayer under a tuition reduction plan, the Plan. The National Office (CP:E:EP:R:7) previously issued a letter ruling to the taxpayer respecting the Plan on June 14, 1994 (IR LTR 9436050). The present request concerns recent amendments to the Plan.

The prior ruling addressed four levels of benefits under the Plan separately as Benefit One, Benefit Two, Benefit Three, and Benefit Four. We concluded that Benefit One and Benefit Two were both within the safe harbor of section 1.410(b)-4 of the Income Tax Regulations and that the qualified tuition reductions provided to employees in accordance with these two benefits were not discriminatory in favor of highly compensated employees within the meaning of section 117(d)(3) of the Code. We analyzed Benefit Three based on the factors set forth in section 1.410(b)-4(c)(3) of the regulations and concluded that Benefit Three met the facts and circumstances test in the regulations and satisfied the requirements of section 117(d)(3).

With respect to Benefit Four, we stated in the prior ruling that if only the

standards set forth in section 410 of the Code and section 1.410(b)-4 of the regulations were applicable, we would have concluded that Benefit Four was discriminatory. However, although section 117(d)(3) prohibits discrimination in favor of highly compensated employees described in section 414(q), there is no specific language in section 117(d) that mandates that the same coverage tests applicable under section 410 are also applicable under section 117(d). The prior ruling cited a number of factors relevant to our analysis of Benefit Four, including: (1) the fact that Benefit Four covers the identical group of highly compensated employees as Benefit Three, which meets the nondiscrimination tests of section 410; (2) the difference in benefits between Benefit Four and Benefit Three depends on the institution the covered employee's child attends and is not related to the compensation level of the covered employee; and (3) the number of nonhighly compensated employees eligible for benefits under Benefit Four is substantial even though less than the number of highly compensated employees who are eligible. We concluded therefore that Benefit Four did not discriminate in favor of highly compensated employees.

The Plan remains substantially the same in the present case. As amended, the Plan now has three levels of benefits: Benefit A, Benefit B, and Benefit C. Benefit A is essentially a merger of Benefit Two and Benefit Three in the prior ruling, and clearly satisfies the discrimination tests under section 410 and the accompanying regulations. Under Benefit A, the extent of the benefits available has been increased over that provided in Benefit Two of the prior ruling, but this change does not adversely affect the availability of these benefits to the nonhighly compensated employees. Benefit B is basically the same as Benefit One in the prior ruling and also satisfies the discrimination tests.

Benefit C is essentially the same as Benefit Four in the prior ruling, and again, if only the standards set forth in section 410 of the Code and section 1.410-4 of the regulations were applicable to Benefit C, we would conclude that Benefit C is discriminatory. However, as previously discussed, there is no specific language in section 117(d) that mandates the same coverage tests applicable under section 410 of the Code and section 1.410(b)-4 of the regulations. In addition, the same basic factors we cited to support our conclusions in the prior ruling remain applicable to Benefit C in the present case: (1) the same group of highly compensated employees covered by Benefit C is also covered by Benefit A which satisfies the nondiscrimination tests under section 410; (2) the difference in benefits between Benefit C and Benefit A depends on the institution the covered employee's child attends and is not related to the compensation level of the covered employee; and (3) there are a substantial number of nonhighly compensated employees eligible for benefits under Benefit C (approximately 40 percent of the employees who are eligible are nonhighly compensated employees).

Thus, Benefit C does not discriminate in favor of highly compensated employees and satisfies section 117(d)(3) of the Code.

We conclude that the recent amendments to the Plan do not substantially or materially affect the findings and conclusions reached in the prior ruling, and that the analysis upon which the prior ruling was based remains applicable to the revised benefits program. Thus, the Plan continues to satisfy the requirements of sections 117(d)(3) and 414(q) of the Code regarding discrimination in favor of highly compensated employees. Accordingly, for purposes of section 117(d) of the Code, gross income does not include any qualified tuition reduction benefit provided by the Plan to employees of the taxpayer.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer, accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item not specifically 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.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling may be issued in the future. Therefore, this ruling will be modified or revoked by the adoption of temporary or final regulations, to the extent the regulations are inconsistent with any conclusion in the letter ruling. *See* section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 3, 44. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

Because it could help resolve future federal tax issues, a copy of this letter should be maintained with the taxpayer's permanent records.

A copy of this letter is being sent to the taxpayer's district director. In accordance with the Power of Attorney on file with this office, a copy of this letter ruling is also being sent to the taxpayer's authorized representative(s).

Sincerely yours,

Assistant Chief Counsel
(Income Tax & Accounting)

/s/ William A. Jackson
By_____
William A. Jackson
Chief, Branch 6

Enclosures:
Copy of this letter
Copy for § 6110 purposes