INTERNAL REVENUE SERVICE

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Plan =

Dear

This is in reply to your letter dated July 8, 1999, and subsequent correspondence, requesting rulings on behalf of the Plan concerning the federal income tax treatment of home health care benefits paid under the Plan.

Plan is a self-funded multiemployer welfare plan that provides to employees life insurance, accidental death and dismemberment, short-term disability income coverage, hospital, surgical, medical, dental and vision benefits. You represent that the Plan is a tax exempt organization under section 501(c)(9) of the Internal Revenue Code (Code).

The trustees recently amended the Plan to include benefits for the medical component of home health care (subject to numerous conditions and limitations) for active employees and their eligible dependents. You request rulings that the home health care benefits provided under the Plan, as amended, are permitted benefits under section 501(c)(9) of the Code and excludable from Plan participants' gross income under section 105(b) of the Code.

On September 8, 1999, a ruling was issued that the home health care benefits provided for in the amendment were permitted benefits under section 501(c)(9). On March 28, 2000, you submitted a Revised Amendment to the Plan concerning home health care services.

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

Section 1.105-5(a) of the Income Tax Regulations provides that an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 106 of the Code provides that gross income of an employee does not include employer-provided coverage under an accident and health plan.

Section 105(e) of the Code provides that amounts received under an accident or health plan for employees shall be treated as amounts received through accident or health insurance.

Section 105(a) of the Code provides that, except as provided in sections 105(b) or (c), gross income includes amounts received by an employee through accident or health insurance for personal injuries or sickness to the extent such amounts are attributable to contributions by the employer which were not includible in the gross income of the employee.

Section 105(b) of the Code provides that gross income does not include amounts paid 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.

Section 105(h) of the Code provides that section 105(b) will not apply to excess reimbursements paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan.

The Revised Amendment to the Plan has two parts. In the first part, the new language includes as home health care coverage only the medical components of home health care benefits, either as part of hospice or as approved in lieu of hospitalization that are provided due to personal injury or sickness. As amended, the first part of the Plan is therefore limited to benefits that qualify as medical care under section 213(d)(1)(A) of the Code. In the second part, the new language meets the requirements of section 7702B(c) of the Code, and the benefits therefore qualify as medical care under section 213(d)(1)(C) of the Code.

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

The Revised Amendment set forth in your March 28, 2000 submission does not effect the September 8, 1999 ruling that the home health care benefits provided under the Plan are permitted benefits under section 501(c)(9) of the Code.

Provided the Plan is not a discriminatory plan under section 105(h), the home health care benefits provided pursuant to the Revised Amendment to the Plan will be excludable from participants' gross income under section 105(b) of the Code.

Except as specifically stated above, no opinion is expressed or implied with respect to the application of any other provision of the Code or regulations to the Plan.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,
Harry Beker, Chief, Branch No.6
Office of the Associate Chief Counsel
(Employee Benefits and Exempt Organizations)

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