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

OFFICE OF
CHIEF COUNSEL

August 5, 2005

UIL: 132.08-05

Attention:

Dear :

This letter is in response to your inquiry dated on behalf of your constituent, . requested information on the current tax treatment of on-premises athletic facilities provided by an employer to his employees under section 132 of the Internal Revenue Code (the Code). said that providing special tax treatment for athletic facilities that are on an employer's premises creates an inequity because the same tax treatment is not available for independently operated athletic facilities

The law provides for an exclusion from gross income of the value of certain fringe benefits, and in particular the value of any on-premises athletic facility provided by an employer to its employees. [Code section 132(j)(4)(A)].

The term athletic facility means any gym or other athletic facility, such as a pool, tennis court, or golf course. An employee can exclude the value of an athletic facility from his or her gross income if three criteria are satisfied:

- The facility must be located on the premises owned or leased by the employer. It does not have to be on the employer's business premises. If the employer leases the facility, the exclusion is available even if the employer is not a named lessee on the lease so long as the employer pays a reasonable rent.
- The employer must operate the facility either through its own employees or by contract with another to operate the facility.
- Substantially all use of the facility during the calendar year must be by employees, their spouses, and dependent children.

The exclusion does not apply to an athletic facility for residential use. For example, a resort with accompanying athletic facilities such as tennis courts, pool, and gym would not qualify for this exclusion.

If it is reasonable to believe that the employee will be able to exclude the benefit from gross income under Code section 132 at the time a fringe benefit is provided, the benefit is also excluded from "wages" for purposes of Federal Insurance Contributions

Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes, and for purposes of federal income tax withholding.

When the Congress enacted the exclusion for employer-provided athletic facilities as part of the Deficit Reduction Act of 1984, [P.L. 98-369], the legislative history specifically noted that the exclusion "does not apply to the providing of memberships in a country club or similar facility unless the facility itself is owned and operated by the employer and satisfies the employee-use and other requirements for the exclusion. Thus, where no exclusion is available under this provision, the fair market value of such country club membership is includible in the income of the employee who is provided with the membership…." H.R. Rep. No. 98-432, Part II, at 1605 (1984).

Any change to these rules would require Congressional legislation.

I hope this information is helpful. If you have any questions or wish to discuss this matter further, please contact me or of my staff at .

Sincerely,

Lynne Camillo
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/Government Entities)
Tax Exempt & Government Entities