

Internal Revenue Service

Department of the Treasury

Number: **200229017**
Release Date: 7/19/2002
Index Number: 3121.16-01

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:ET2 PLR-155405-01

Date:

April 12, 2002

In Re:

Key:

Plan =

Employer =

Union =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Dear

This is in reply to your request for a letter ruling directed to the Employee Plans Division of the Internal Revenue Service on behalf of the Plan. Your letter presented two specific ruling requests. The Employee Plans division has advised us that ruling request 2 has been withdrawn. They asked that we respond to ruling request 1, concerning whether supplemental contributions to the Plan made by the Employer pursuant to a collective bargaining agreement are "wages" for purposes of the Federal

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Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA).

FACTS

The Plan, a collectively bargained money purchase plan, was established on Date 1. The Plan requires individual employers to make cents per hour contributions to Regular Subaccounts on behalf of employee participants. The Plan was restated on Date 2 with an amendment providing for variable subaccounts. The amendment provides that, in addition to the employer contribution to the regular subaccount, an employee may elect to have the employer make a contribution to the variable subaccount. The amount of contributions to the Plan is established by a Year 1 - Year 2 collective bargaining agreement between the Employer and the Union. The Date 4 memorandum of understanding (MOU) to the collective bargaining agreement called for supplemental contributions to the variable subaccounts made by the Employer on behalf of eligible employees starting on Date 4.

The Plan received its most recent favorable determination letter under section 401(a) of the Internal Revenue code (the "Code") on Date 3. The Date 3 Letter was based on the Plan as restated to include variable subaccounts.

The amount of supplemental contributions¹ is established by the classifications and pay rates listed in the MOU. The supplemental contributions do not exceed \$2.00 per hour. The supplemental contributions were described as employer contributions when the Plan was submitted for a favorable determination letter and approved. All supplemental contributions are vested contributions.

LAW

Sections 3101(a) and 3111 of the Code, impose a FICA tax on employees and employers, respectively, which is a percentage of wages received or paid with respect to employment.

Section 3121(a) of the Code provides, with certain exceptions, that for FICA purposes, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash.

Section 3121(a)(5)(A) of the Code provides that the term "wages" shall not include any payment made to or on behalf of, an employee or his beneficiary from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee or the trust as

¹The supplemental contributions at issue described in the MOU to the collective bargaining agreement refer to amounts placed in the variable subaccounts described in the Plan.

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remuneration for services rendered and not as a beneficiary of the trust.

Section 3301 of the Code imposes on every employer a FUTA excise tax equal to a percentage of the total wages (as defined in section 3306(b) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

Section 3306(b)(5)(A) of the Code provides that the term "wages" shall not include any payment made to or on behalf of, an employee or his beneficiary from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered and not as a beneficiary of the trust.

Section 1.401(k)-1 provides that a plan, other than a profit-sharing, stock bonus, pre-ERISA money purchase pension or rural cooperative plan, does not satisfy the requirements of section 401(a) if the plan includes a cash or deferred arrangement.

Analysis

The Plan, as restated on Date 2, provides for the supplemental contributions to variable subaccounts to be made by the employer pursuant to the collective bargaining agreement. By issuing a favorable determination letter on the restated Plan, the Internal Revenue Service concluded that the supplemental contributions would not cause the Plan to lose its qualified status under section 401(a) as a money purchase pension plan. In effect, the supplemental contributions have not been found by the Internal Revenue Service to constitute a cash or deferred arrangement which would otherwise cause the Plan to lose its qualified status.

Accordingly, based on the information submitted, we conclude that the supplemental contributions will not be considered wages pursuant to Sections 3121(a)(5)(A) and 3306(b)(5)(A) of the Code and therefore will not be subject to FICA or FUTA taxes.

The above ruling is based on the assumption that the Plan will be qualified under Code section 401(a), and the related trust will be tax-exempt under Code section 501(a) at the time of the employer contributions.

No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and 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 request for rulings, it is subject to verification on examination.

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

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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

cc: