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

CHIEF COUNSEL

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[redacted]

Dear [redacted]:

This general information letter responds to your letter to Mr. Aaron Welch of the Internal Revenue Service's Electronic Tax Administration, which was forwarded to our office for reply. Please note that a general information letter is advisory only and has no binding effect on the IRS. If you need definitive guidance on the law applicable to your particular facts, you may request a private letter ruling in accordance with the procedures in Rev. Proc. 2003-1, 2003-1 I.R.B. 1, or its successor.

In your letter you state that [redacted] is planning to offer on-line tax preparation and electronic filing services to employers who wish to provide these services as a benefit to their employees. [redacted], you would like the Service to address the following questions regarding the federal income tax consequences to the employers who will be participating in the plan and to their employees who will be receiving your services as a benefit.

1. Would the value of the services provided by the employer be excludable from an employee's gross income as a de minimis fringe benefit pursuant to § 132(a)(4) of the Internal Revenue Code?

2. Would the cost of the on-line tax preparation and electronic filing services purchased by employers be deductible as ordinary and necessary business expenses under § 162?

3. What information and documentation would an employer need to provide to substantiate the deduction under § 162?

Section § 61 defines gross income as all income from whatever source derived and provides a list of the type of items normally included in gross income. Among the items included are compensation for services, including fees, commissions, fringe benefits, and similar items. However, § 132(a)(4) provides that gross income does not include any fringe benefit that qualifies as a de minimis fringe. Pursuant to § 132(e)(1), the term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

Section 1.132-6(c) of the Income Tax Regulations provides that a cash equivalent fringe benefit (such as a fringe benefit provided to an employee through the use of a gift certificate or charge or credit card) is generally not excludible under § 132(a) even if the same property or service acquired (if provided in kind) would be excludible as a de minimis fringe benefit. Therefore, vouchers which can be exchanged for property or services with a specific fair market value are not eligible for exclusion as de minimis fringe benefits. Moreover, although employers may offer electronic filing services limited to the electronic transmittal of employee returns as a de minimis fringe benefit, this treatment does not extend to return preparation services with a specific fair market value. Consequently this exclusion also does not extend to vouchers for tax preparation software that has a readily ascertainable value.

As a general rule, § 162 provides that all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business are deductible. Among the items included in business expenses are labor costs such as compensation for services and certain employee benefits. If an employer pays for tax preparation and electronic filing services as a benefit to its employees, the expenditure would be deductible under § 162. However, if an employer includes the value of a noncash fringe benefit in an employee’s gross income, the employer may not deduct this amount as compensation for services but rather may deduct only the costs incurred by the employer in providing the benefit to the employee. Section 1.162-25T(a) of the temporary Income Tax Regulations.

Taxpayers are required to keep permanent books and records which are sufficient to establish the amount of gross income, deductions, credits, or other matters reported in their income tax returns. See § 6001 and § 1.6001-1. While there is no specific list of information or documentation that is necessary to substantiate every type of deduction allowable under the law, it is assumed that taxpayers will normally maintain records that are sufficient to determine the amount and business purpose of expenditures deducted on their income tax returns.

We hope that this information sufficiently answers your questions. If you have further questions, please contact [redacted].

Sincerely yours,

PAUL M. RITENOUR
Chief, Branch 1
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: