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LEGEND

City =

State =

Plan A =

Plan B =

Dear :

City is a body corporate and politic organized under laws of State. City has adopted Plan A and Plan B (the Plans) for payment of post employment health and medical expenses. The post employment health and medical benefits provided are reimbursement of medical care expenses and reimbursement of health insurance premiums. Plans provide that both City and eligible employees contribute to fund post employment health and medical benefits. Employee contributions consist of mandatory contributions by each participant of salary and mandatory contributions of accumulated unused sick leave, vacation and severance upon separation from employment. Individual participants cannot elect to contribute additional amounts to either plan. Similarly, Plan participants cannot elect to receive non-Plan benefits in lieu of either Plan contributions or Plan benefits. Mandatory employee contributions are made as a condition of employment with City.

Section 61(a)(1) of the Internal Revenue Code (the Code) and § 1.61-21(a)(3) of the Income Tax Regulations provide that, except as otherwise provided in Subtitle A of the Code, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

However, section 106(a) of the Code provides that gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1(a) of the regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in § 152. The employer may contribute to an accident or health plan either by paying the premium (or a portion of the premium) on a policy of accident or health insurance covering one or more of his employees, or by contributing to a separate trust or fund (including a fund referred to in § 105(e)) which provides accident and health benefits directly or through insurance to one or more of his employees. However, if the insurance policy, trust or fund provides other benefits in addition to accident or health, § 106 applies only to the portion of the contributions allocable to accident or health benefits.

Coverage provided under an accident and health plan to former employees and their spouses and dependents is excludable from gross income under § 106. See Rev. Rul. 62-199, 1962-2 C.B. 32; Rev. Rul. 82-196, 1982-2 C.B. 53.

Section 105(a) provides that, except as otherwise provided in § 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer.

Section 105(b) provides that except in the case of amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred for medical care (as defined in § 213(d)).

Section 3101 imposes taxes under the Federal Insurance Contributions Act (FICA) on an employee's wages. Section 3306 imposes taxes under the Federal Unemployment Tax Act (FUTA). Sections 3121(a) and 3306(b) provide that, with certain exceptions, for FICA and FUTA tax 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. However, §§ 3121(a)(2) and 3306(b)(2) provide that the term "wages" does not include any payment (including any amount paid by an employer for insurance) made to or on behalf of an employee or any of his dependents, for medical or hospitalization expenses.

Based on the information submitted and representations made, we conclude as follows:

(1) Contributions paid to Plans and payments made from Plans which are used exclusively to pay for the health and medical benefits of Plan participants, their spouses and dependents are excludable from the gross income of Plan participants under §§ 106 and 105(b) of the Code.

(2) Contributions to and payments for health and medical benefits are not subject to FICA or FUTA taxes under §§ 3121(a) and 3306(b).

No opinion is expressed concerning the Federal tax consequences of Plans under any other provision of the Code other than those specifically stated herein. In particular, § 3.01(10) of Rev. Proc. 2009-1, 2009-1 I.R.B. 107, provides that the Service will not issue a ruling concerning whether a self-insured medical reimbursement plan satisfies the requirements of §105(h) for a plan year. Accordingly, no opinion is expressed concerning whether Plans satisfy the nondiscrimination requirements of §105(h) of the Code and §1.105-11 of the regulations.

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.

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

Sincerely

Harry Beker
Chief, Health and Welfare Branch
Office of Division Counsel/Associate
Chief Counsel (Tax Exempt & Government Entities)