Internal Revenue Service

Number: **201350032**
Release Date: 12/13/2013

Index Numbers: 61.53-00, 79.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EB:HW
PLR-152054-12

Date:
September 09, 2013

LEGEND:

Taxpayer =

Association =

Location M =

$x =

$y =

$z =

Dear :

This is in response to a request submitted on behalf of the Taxpayer by its authorized representatives. The Taxpayer is asking for rulings regarding the federal income tax consequences of offering to Taxpayer's employees and retirees, through the Association, group term life insurance coverage on the lives of the employees and retirees, as well as on the lives of the spouses and dependents of the employees and retirees.

The Taxpayer provides its employees and retirees basic group term life insurance on the life of the employee or retiree. The basic coverage is provided at no cost to the employees and retirees. For most of the employees, this coverage is the greater of $x

or one times the employee's basic annual earnings with basic annual earning rounded to the next higher $y. For employees at the Taxpayer's operations at Location M, the basic group coverage is the greater of $x or two times the employee's basic annual earnings with basic annual earning rounded to the next higher $y. The Taxpayer also provides each employee, upon retirement, no-cost life insurance coverage of $z.

In addition to the basic insurance, the Taxpayer's employees can purchase supplemental group-term life insurance on the life of the employee and, with the exception of employees in Location M, group term life insurance on the lives of an employee's spouse and dependents. All of the supplemental insurance is purchased by the employees on an after-tax basis from an insurance company pursuant to contracts negotiated by the Association.

The Association, open to all of the Taxpayer's regular employees, provides group term life insurance benefits and other benefit programs to its members. A letter from the IRS is being obtained, determining that the Association is a voluntary employees' beneficiary association qualified under section 501(c)(9) of the Internal Revenue Code (the Code).

Members of the Association generally can elect to purchase one, two, three, four, or five times the amount of basic Taxpayer-provided life insurance coverage on the life of the employee. The cost of the insurance for these members is a fixed amount per $1,000 of coverage, which is higher for smokers than for non-smokers.

Members of the Association in Location M can purchase life insurance coverage on the life of the employee based on 100% or 200% of the employees' basic annual earnings. The cost of the insurance for members in Location M is a fixed amount per $1,000 of coverage, but is a different amount than the cost charged to members in other locations.

Retirees generally can elect to purchase an amount not exceeding the active insurance on the life of the employee (i.e., basic plus supplemental life insurance) in effect at the time of retirement, with a minimum election of $y. Depending on a retiree's age, adjustments are made in the coverage that can be elected by the retiree. The rates charged per $1,000 for retirees are age-weighted.

Members of the Association can also elect to purchase various optional amounts of life insurance on the lives of an employee's spouse and children. The Association charges flat rates for this insurance, depending on the option selected.

The Association members pay for the life insurance purchased from the Association through payroll deduction from their salaries. To maintain the desired independence from the Taxpayer, the Taxpayer's involvement with the Association's life insurance programs is limited to providing administrative services as an independent contractor. The Association has agreed to this arrangement since it is more economical and

efficient for the operation of its life insurance programs to have the Taxpayer perform such services.

In addition to collecting the employees' payments of insurance premiums through payroll deductions and remitting them to the Association, the Association arranges for the Taxpayer to add sections in its employee benefit handbooks describing the Association's insurance programs; enroll employees in the Association's insurance programs and maintain the enrollment records; employ and pay the fees of accountants to monitor premium collections and the distribution of insurance proceeds and to audit financial statements for these insurance programs. The Association reimburses the Taxpayer for all identifiable costs of performing these administrative services.

The Association has entered into two life insurance policies – a U.S. policy and a Location M policy. Within the U.S. policy there are four types of coverage, which are Active Supplemental Life, Retiree Supplemental Life, Accidental Death & Dismemberment, and Dependent Life. Within the Location M policy there are different types of coverage for the Active Supplemental Life Insurance, which is provided through two different plans.

The Association each year works with the insurance carrier to calculate actuarially the expected benefit payouts (based on historic mortality and standard mortality tables), and to establish premiums to be charged to Association members which are computed separately for each of the types of coverage listed above. For each type of coverage the total member premiums, plus any interest income, are calculated to be equal to (or slightly more than) the expected actuarially computed benefit payouts, plus any administrative expenses. In the event that the actuarial projections are ever inaccurately low, the insurance carrier would pay the promised life insurance benefits.

The Association's supplemental life insurance and spousal/dependent life insurance are purchased from the same insurance carrier as the one the Taxpayer uses to provide the basic life insurance. However, the Taxpayer is not a party to the life insurance contracts providing coverage to the Association members. Further, the Association's policies are financially self-supporting and the premiums charged under those policies are not subsidized by the premiums charged under the Taxpayer's basic employee life insurance policy. In addition, the Taxpayer does not arrange for, contribute to, or guarantee the performance of the Association's insurance programs in any way. Only the Association (not the Taxpayer) has authority to make final decisions with respect to selection of insurance carriers and establishment of insurance prices.

The Taxpayer represents that the premiums charged to the Taxpayer for the basic coverage are developed independently from any amounts charged with respect to the life insurance programs offered through the Association. The Association performs separate actuarial computations in developing and establishing the total annual amount of the member contributions (both for smoker and nonsmoker coverage and coverage for

employees in Location M), so as to ensure that the total member contributions under each of the three policy types (smoker, non-smoker, and employees in Location M) equal or exceed the total life insurance benefits payouts under the corresponding policy type for each policy year (or series of years). There are no subsidies or credits being exchanged between or among the three policy types (or between any of these policy types and any of the Taxpayer's policies), and no policy dividends paid with respect to any one policy type (including each of the Association's Policy Types as well as the Taxpayer's insurance policies) are allocated to another policy type. For example, the experience rating for each group term life insurance plan is separately developed based on historic mortality, interest income, administrative expenses and similar factors; reserves are not shifted between policies; no premium loading expenses allocable to one plan are included in the premiums of the other plan; and the dividend and rate credits attributable to each of the plans are determined separately from each other, based on independent retrospective adjustments

The taxation of employer-provided group term insurance on the life of an employee or retiree (employee) is governed by section 79 of the Code. Assuming a group term plan meets the non-discrimination requirements of section 79(d), $50,000 of such coverage is excludable from the each employee's income. For coverage above $50,000, section 79 requires an employee to include in income an amount equal to the cost of life insurance provided under a policy carried directly or indirectly by his or her employer (less any amounts paid by the employee toward the purchase of such insurance). Section 79(c) requires the "cost" of the insurance to be computed by using the uniform premiums prescribed in Table I of the section 79 regulations.

Section 1.79-1(a) of the Income Tax Regulations sets forth the conditions that must be met before a policy of life insurance will be considered group term life insurance for purposes of section 79 of the Code. The condition relevant to this ruling request is that the life insurance be "provided under a policy carried directly or indirectly by the employer." Section 1.79-1(a)(3) of the regulations.

Section 1.79-0 of the regulations provides that the term "policy" includes two or more obligations of an insurer (or its affiliates) that are sold in conjunction. Obligations that are offered or available to members of a group of employees are sold in conjunction if they are offered or available because of the employment relationship. These obligations of the same insurer are aggregated despite actuarial sufficiency of the premiums charged for each obligation, and even if the obligations are contained in separate documents. Thus, as a general rule, to test whether insurance coverage is provided under a policy carried directly or indirectly by the employer, all obligations of the same insurer that are offered to members of a group of employees must be aggregated. The regulations, however, allow an employer to elect to treat two or more obligations, each of which provides no permanent benefits, as separate policies if the premiums are properly allocated among such policies.

Assuming premiums are properly allocated among two or more obligations of an insurer that provide no permanent benefits, and assuming the employer elects to treat them as separate policies, each policy must be tested separately to determine if it is "carried directly or indirectly by the employer." If a policy is not carried directly or indirectly by the employer, no income will be imputed to an employee under section 79 of the Code on account of the insurance provided under that policy.

Section 1.79-0 of the regulations provides that a policy of life insurance is carried directly or indirectly by the employer if: (a) the employer pays any part of the cost of the life insurance directly or through another person; or (b) the employer or two or more employers arrange for payment of the cost of the life insurance by their employees and charge at least one employee less than the cost of his or her insurance, as determined under Table I of section 1.79-3(d)(2), and at least one other employee more than the cost of his or her insurance, determined in the same way.

Section 61(a)(1) of the Code provides that, except as otherwise provided by law, gross income includes all income from whatever source derived, including compensation for services, fringe benefits, and similar items.

Section 1.61-21 of the regulations generally governs the taxation of fringe benefits not otherwise specifically governed by another section of the Code. While that regulation does not define the term "fringe benefit," it gives the following as examples of fringe benefits: "an employer-provided automobile, a flight on an employer provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, an employer-provided discount on property or services, an employer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event."

Pursuant to section 1.61-21(a)(3) of the regulations, a fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for such services.

Pursuant to section 1.61-21(a)(5) of the regulations, the "provider" of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example a client or customer of the employer or of an independent contractor. For convenience, the term "employer" includes any provider of a fringe benefit in connection with the payment for the performance of services, unless otherwise specifically provided in section 1.61 of the regulations.

In general, an employee must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of (1) the amount paid for the benefit by or on behalf of the recipient, and (2) the amount, if any, specifically excluded from

gross income. Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee. (Section 1.61-21(b)(1) of the regulations.)

Special rules apply when the fringe benefit provided to the employee is group term life insurance. For group term life insurance on the life of an individual other than an employee (such as the spouse or dependent of the employee) provided in connection with the performance of services by the employee, section 1.61-2(d)(2)(ii)(b) of the regulations states that the "cost" of the insurance is includible in the gross income of the employee. The "cost" of dependent group term life insurance must be determined under Table I of section 1.79-3(d)(2) of the regulations. The uniform premium rates in Table I, which are computed using the age of the insured, are based on average costs for employer-provided group life insurance. Thus, if the dependent group term coverage provided by the Association to the Taxpayer's employees is determined to be a fringe benefit subject to taxation under the section 61 regulations, an employee purchasing such insurance must include in income an amount equal to the difference between the "cost" of the dependent coverage (as determined under Table I) and the amount paid by the employee for the insurance. (Nothing is includible, however, if such amount is "de minimis." See Notice 89-110, 1989-2 C.B. 447.)

Applying the above rules to the group term life insurance on the lives of employees available through the Association, the Taxpayer's basic insurance coverage and the supplemental insurance coverage provided available through the Association are available to the eligible employees because of the employment relationship. In addition, both the basic coverage and the supplemental coverage are purchased from the same insurer. Therefore, the obligations contained in the Taxpayer's basic coverage and the supplemental coverage available through the Association will be treated as a single "policy" for purposes of section 79, unless the requirements have been met to elect to treat such obligations as separate policies. Because neither the basic coverage nor the supplemental coverage contains permanent benefits, the only requirement for electing separate treatment is that the premiums be properly allocated among the policies.

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

1. It can be determined that the premiums are properly allocated among the policies (thus permitting the Taxpayer to treat the Association's policies as separate policies from the Taxpayer's basic life insurance programs), if for each policy year, it can be shown that the premiums charged to the Taxpayer for the basic coverage are developed independently from any amount charged with respect to the supplemental insurance programs offered through the Association, that the Association performs separate actuarial computations in developing and establishing the total annual amount of the member contributions so as to ensure that the total member supplemental insurance contributions under each of the

subsets of the Association's two insurance policies for its U.S. and Location M employees (which in the U.S. includes subsets for Active Supplemental Life, Retiree Supplemental Life, Accidental Death & Dismemberment, and Dependent Life, and which in Location M includes only Active Supplemental Life Plans) equal or exceed the total life insurance benefits payouts under the corresponding policy subset for each policy year (or series of years), that there are no subsidies or credits being exchanged between or among the Association's policies (or between any of the Association's policies and any of the Taxpayer's policies), and no policy dividends paid with respect to any one policy (including each of the Association's policies as well as the Taxpayer's insurance policies) are allocated to another policy. For example, the experience rating for each group term life insurance plan is separately developed based on historic mortality, interest income, administrative expenses and similar factors; reserves are not shifted between policies; no premium loading expenses allocable to one plan are included in the premiums of the other plan; and the dividend and rate credits attributable to each of the plans are determined separately from each other, based on independent retrospective adjustments.

2. Assuming that the Taxpayer elects to treat its basic employee life insurance programs as separate policies from the Association's supplemental employee group term life insurance, the supplemental employee group term life insurance provided by the Association to the active, retired and disabled former employees of the Taxpayer will not be treated as provided under a policy carried directly or indirectly by the Taxpayer within the meaning of section 79(a) of the Code. Accordingly, no income will be imputed under section 79(a) of the Code to those employees purchasing the supplemental life insurance offered by the Association.

3. The group term life insurance coverage provided by the Association on the lives of the spouses and children of the Association members paid for entirely by the members on an after-tax basis is not "provided in connection with the performance of services" by the Association members within the meaning of that phrase in section 1.61-2(d)(2)(ii)(B) of the regulations. Accordingly, no amount is includible in the gross income of an employee of the Taxpayer on account of the group term life insurance coverage provided by the Association on the lives of the spouse and children of the employees.

These rulings are contingent on the receipt of a determination from the Service that the Association is a VEBA described in section 501(c)(9) of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of the transaction under any other provision of the Code or regulations.

This letter ruling is directed only to the Taxpayer who requested it. Code section 6110(k)(3) 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 the taxpayer's representative.

Sincerely,

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

cc: