Internal Revenue Service

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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:EEE:EB:QP4
PLR-112964-19

Date:
March 03, 2020

In Re:

Legend

Taxpayer =
HRA Plan =
DC Plan =

Dear :

This letter responds to your authorized representative's letter dated May 29, 2019, and supplemented on February 21, 2020, requesting a private letter ruling related to the HRA Plan and the DC Plan.

The following facts and representations have been submitted under penalties of perjury in support of your request:

The HRA Plan is a medical expense reimbursement plan, funded through a trust ("Trust") that is represented to be a voluntary employees' beneficiary association ("VEBA") as described in section 501(c)(9) of the Internal Revenue Code. Under this plan each participant has a health reimbursement arrangement ("HRA"). Each HRA may be used by the participant to provide reimbursement of qualified medical expenses under section 213(d).

The DC Plan is a qualified profit-sharing plan under section 401(a) with a calendar-year plan year. Both plans are maintained pursuant to collective bargaining agreements.

Pursuant to the collective bargaining agreements, the HRA Plan and DC Plan require participating employers to make contributions according to a contribution schedule (the

total of which is the “employer contribution”). Taxpayer is a union representing employees of these participating employers. Additionally, Taxpayer, in its capacity as an employer, contributes to each of the plans on behalf of its own employees (who are not covered by the collective bargaining agreement), according to a contribution schedule contained in a separate participation agreement.

Taxpayer, through collective bargaining, is proposing to amend the HRA Plan and the DC Plan so that, of the employer contribution, there will be a set minimum contributed to the HRA Plan. The remaining portion of the employer contribution (“the discretionary contribution”) will be allocated between the DC Plan and the HRA plan pursuant to an annual election by the employee before the beginning of the plan year. In the absence of an election, a default uniform fixed contribution will be allocated to the DC Plan and the remaining portion of the discretionary contribution will be allocated to the HRA Plan.

You request the following rulings:

1. The proposed amendment to the DC Plan will not cause the DC Plan to be treated as offering a cash or deferred arrangement pursuant to section 401(k).

2. The proposed amendment to the HRA Plan will not affect the treatment of contributions to and payments made from the Trust to the HRA Plan that are used to pay and reimburse qualified medical expenses (as defined in section 213(d)) of employees, retired employees, and their spouses and dependents as amounts excludable from the gross income of employees, retired employees, and their spouses and dependents under sections 105(b) and 106.

Ruling Request 1

With respect to the first ruling request, section 401(a) provides that a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries constitutes a qualified trust under that section if a series of conditions are met.

Section 401(k)(2)(A) provides, in pertinent part, that a qualified cash or deferred arrangement is any arrangement which is part of a profit sharing plan or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan, which meets the requirements of section 401(a), and under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash.

Section 1.401(k)-6 of the Income Tax Regulations defines non-elective contributions as employer contributions (other than matching contributions) with respect to which the employee may not elect to have the contributions paid to the employee in cash or other benefits instead of being contributed to the plan.

Section 1.401(k)-6 defines elective contributions as contributions made pursuant to a cash or deferred election under a cash or deferred arrangement.

In the present case, the annual irrevocable election will allow an employee to decide a participating employer's contribution rate to both the DC Plan and HRA Plan. While employees are permitted to make an annual irrevocable election regarding to which plan the contributions are to be made, they are not permitted to elect to have the contributions paid in cash or some other taxable benefit. Accordingly, the proposed amendment to the DC Plan will not cause the plan to be treated as offering a cash or deferred arrangement pursuant to section 401(k).

Ruling Request 2

With respect to the second ruling request, section 61(a)(1) and section 1.61-21(a)(3) provide that, except as otherwise provided in Subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items.

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

Section 105(b) states that except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts attributable to employer-provided coverage (1) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in section 213(d)) of the taxpayer or the taxpayer's spouse or dependents (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) and any child (as defined in section 152(f)(1)) who has not attained age 27 as of the end of the taxable year. Section 1.105-2 provides that only amounts that are paid specifically to reimburse the taxpayer for expenses incurred by the taxpayer for the prescribed medical care are excludable from gross income. Thus, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of whether the taxpayer incurs expenses for medical care.

In Rev. Rul. 2002-41, 2002-2 C.B. 75, an employer sponsors an HRA that is paid for solely by the employer and not through salary reduction contributions. The HRA reimburses substantiated medical care expenses (as defined in section 213(d)) of participating employees and their spouses and dependents (as defined in section 152) up to a maximum annual reimbursement amount. Unused amounts from one coverage period are carried forward to subsequent coverage periods. Participating employees have no right to receive cash or any other benefit in lieu of medical expense reimbursements. In Situation 2 of Rev. Rul. 2002-41, the maximum reimbursement amount under the HRA that is not applied to reimburse medical care expenses before an employee retires or otherwise terminates employment continues to be available after retirement or termination for any medical care expense under section 213(d) incurred by the former employee or the former employee's spouse and dependents. The ruling concludes that coverage and reimbursements made under the HRA are excludable from the gross income of participating employees under sections 106 and 105.

Notice 2002-45, 2002-2 C.B. 93, provides that an HRA is an arrangement that: (1) is paid for solely by the employer and not pursuant to salary reduction; (2) reimburses the employee for medical care expenses (as defined in section 213(d)) incurred by the employee and the employee's spouse and dependents (as defined in section 152); and (3) provides that any unused portion of the maximum dollar amount available during the coverage period is carried forward to subsequent periods. Notice 2002-45 also provides that benefits under an HRA must be limited to reimbursements of section 213(d) expenses and that all such expense reimbursements must be substantiated to be excludable under section 105. Notice 2002-45 further provides that medical care expense reimbursements under an HRA are excludable under section 105(b) if the reimbursements are provided to the following individuals: current and former employees (including retired employees), their spouses and dependents (as defined in section 152 as modified by the last sentence of section 152(b)), and the spouses and dependents of deceased employees.

Under the HRA Plan, if the employee timely makes an irrevocable annual election to have an employer contribute amounts to the HRA Plan in lieu of the DC Plan, such amounts are paid solely by the participating employers and not pursuant to salary reduction elections or otherwise. The amounts may be used to provide benefits that reimburse qualified eligible medical expenses and will not be used to provide for the payment of death benefits, bonuses, or separation pay. In addition, amounts may not be used to provide other taxable or nontaxable benefits. Thus, the HRA Plan meets the requirements of Rev. Rul. 2002-41 and Notice 2002-45, and the amounts are excludable from the gross income of employees, retired employees, and their spouses and dependents under sections 105(b) and 106.

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, as specified in Rev. Proc. 2020-1, 2020-1 I.R.B. 1,

section 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2020-1, section 11.05.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This letter expresses no opinion as to whether the DC Plan satisfies the requirements to be qualified under section 401(a), including, but not limited to, the eligibility, vesting, and distribution rules, contribution limits, and coverage and nondiscrimination testing.

This letter ruling is directed only to the taxpayer who requested it. 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 your authorized representative.

Sincerely,

Joyce Kahn, Branch Chief
Qualified Plans Branch 4
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: