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Code Secs. 61, 402

* Sec. 61 Issues: Gross income v. not gross income -- Investment capital v. income.
* Sec. 402 Issues: Taxability of beneficiary of employee's trust (time and manner of taxation) -- Amounts distributed or made available to beneficiary.

<<FULL TEXT>>

This is in response to the letter dated January 31, 1990, and subsequent correspondence, submitted on your behalf by your authorized representative, requesting rulings concerning the federal income tax consequences of proposed amendments to the Health Care Fund, the Pension Plan and the Pension Trust.

It is represented that the Pension Plan is a multiemployer plan which is qualified under section 401(a) of the Internal Revenue Code (the Code) and covers employees represented by certain local unions. The Health Care Fund is a multiemployer plan that provides medical, dental, vision, group term life insurance and disability benefits to substantially the same employees as are covered under the Pension Plan. Both the Pension Plan and the Health Care Fund are administered by boards of trustees appointed in part by the employers and in part by the unions. Contributions are made by employers to the Pension Plan and the Health Care Fund on behalf of participants at a cents per hour rate as set forth in the collective bargaining agreements between the unions and the participants' employers. The contribution rate to the Pension Plan varies depending upon the particular collective bargaining agreement covering the work performed by the participants.

Many participants in the Health Care Fund receive health and medical coverage under other plans (e.g., those covering a spouse or other relative) which duplicate the coverage provided by the Health Care Fund. Consequently, the trustees intend to revise the Health Care Fund and Pension Plan and Trust to allow participants who have accident and health coverage under another multiemployer or an employer-sponsored plan which is similar to the coverage provided by the Health Care Fund to elect, on an annual basis and prior to the start of each plan year, to forgo coverage under the Health Care Fund and, in lieu thereof, to have such contributions made to the Pension Plan instead. The election would be irrevocable except in the event the participant has a change in family status (defined to include marriage, divorce, death of a spouse or child, birth or adoption of a child and termination of a spouse's employment). Employees eligible to make the election to have their Health Care Fund contributions made to the Pension Plan would have to demonstrate to the satisfaction of the Health Care Fund's trustees that they have similar accident and health plan coverage available elsewhere.

Section 61(a) of the Code provides that except as otherwise provided, gross income means all income from whatever source derived, including

compensation for services, fees, commissions, fringe benefits, and similar items.

Section 402(a)(1) of the Code provides that, generally, the amount actually distributed to any distributee by any employees' trust described in section 401 which is exempt from tax under section 501(a) shall be taxable to him, in the year in which so distributed, under section 72.

Section 1.402(a)-1(a)(1)(i) of the Income Tax Regulations provides that if an employer makes a contribution for the benefit of an employee to a trust described in section 401(a) for the taxable year of the employer which ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), the employee is not required to include such contribution in his income except for the year or years in which such contribution is distributed or made available to him.

In the instant case, employees who have similar health and medical coverage available under another plan have the right to choose to have employer contributions made either to the Pension Plan or to the Health Care Fund. Employer contributions to the Pension Plan do not constitute immediate income to the employee but will be ordinary income and taxable at some future date when amounts are actually distributed to the employee or a beneficiary.

A gratuitous anticipatory assignment of income does not shift the burden of taxation and the donor is taxable when the income is received by the donee. See, Helvering v. Horst, 311 U.S. 112 (1940) and Lucas v. Earl, 218 U.S. 111 (1930).

In Commissioner v. P.G. Lake, Inc., 356 U.S. 260 (1958), the taxpayers assigned the right to a specified sum of money, payable out of a specified percentage of oil, or the proceeds received from the sale of such oil, if, as and when produced in return for cash. The Court concluded that, while the oil payments were interests in land, the consideration received for the oil payment rights was taxable as ordinary income because the lump sum consideration was essentially a substitute for what would otherwise be received at a future time as ordinary income. The Court stated:

"We have held that if one, entitled to receive at a future date interest on a bond or compensation for services, makes a grant of it by anticipatory assignment, he realizes taxable income as if he had collected the interest or received the salary and then paid it over ... As we stated in Helvering v. Horst, supra, 311 U.S. 117, 61 S.Ct. 147, "the taxpayer has equally enjoyed the fruits of his labor or investment and obtained the satisfaction of his desires whether he collects and uses the income to procure those satisfactions, or whether he disposes of his right to collect it as the means of procuring them." There, the taxpayer detached interest coupons from negotiable bonds and presented them as a gift to his son. The interest when paid was held taxable to the father. Here, even more clearly than there, the taxpayer is converting future income into present income."

In Rev. Rul. 69-471, 1969-2 C.B. 10, pursuant to a community property settlement agreement under a divorce decree, a wife relinquished her rights in her husband's retirement pay. The Service concluded that because the interest transferred was a right to future income, the transfer by the wife of her interest in her husband's retirement benefit payments was an assignment of income under the rule of Commissioner v. P.G. Lake, Inc. Therefore, the consideration received was includible in the wife's gross income as ordinary income in the years received.

If an employee elects to have employer contributions made to the Health Care Fund where the option also exists to have those contributions made to the Pension Plan, the employee is forgoing the contributions to the qualified plan. However, contributions to the qualified plan do not constitute a nontaxable benefit. The tax on the contributions is merely deferred until the amounts are distributed to the employee at a future date. When an employee has similar health and medical coverage under another plan but nevertheless elects to have contributions made to the Health Care Fund (by not demonstrating the existence of such similar coverage to the Health Care Fund's trustees), the employee is merely assigning future income (qualified plan distributions) for consideration (Health Care Fund benefits) and thus, is treated as currently receiving the future pension plan distributions for which the accident and health insurance coverage is a mere substitute. Because the receipt of pension plan distributions constitutes a taxable event, analogous to the situations in P.G. Lake and Rev. Rul. 69-471, the employee has converted future income into present income notwithstanding that that income may be used to purchase a nontaxable benefit.

Accordingly, we conclude that because the proposed amendments to the Health Care Fund and the Pension Plan and Pension Trust will allow employees who have similar health and medical coverage available under another plan the option of either receiving employer contributions at a future date as qualified plan distributions or immediately as Health Care Fund benefits, such employees, if they elect Health Care Fund coverage (whether or not they are required to establish the availability of other health and medical coverage), will have contributions to the Health Care Fund includible in their gross incomes in the taxable year in which they are contributed by the employer.

Except as specifically ruled upon above, no opinion is expressed or implied with regard to the application of any provisions of the Code or regulations to the transactions described. Specifically, no opinion is expressed or implied with regard to whether the amended Health Care Fund will constitute an accident and health plan for purposes of section 106 of the Code, whether the amended Pension Plan will be qualified under section 401(a) of the Code, or whether the amended Pension Trust will be tax exempt under section 501(a) of the Code. The proposed amendments may adversely impact on the qualified status of the Pension Plan and Pension Trust. Jurisdiction over qualified plan status is reserved to the Key District Director's Offices and you may wish to seek a determination letter with respect to the continued qualified status of the amended

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Pension Plan and Pension Trust.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

<<END RULING>>