199929043

Internal Revenue Service

Department of the Treasury

Index Number:
132.03-00

Washington, DC 20224

CC:EBEO:B02

Person to Contact:

Telephone Number:

Refer Reply To:

Date: APR 22 1999

Legend

Company =

Plan =

Dear Mr.

This is in response to your letter of October 20, 1998, requesting a ruling regarding section 132 of the Internal Revenue Code (the Code). You ask whether the fair market value of financial counseling services provided to survivors of deceased eligible employees and family members of eligible employees diagnosed with a terminal illness will be excludible from the gross income of the recipient of the services or the employee under section 132(a)(3) of the Code. If we rule that the benefits are not excludible under section 132(a)(3), you ask whether the fair market value of the services is includible in the gross income of the recipient of services, or whether the value of the services is includible in the employee's gross income.

The Company is a professional services firm . Pending issuance of the requested ruling, the Company intends on adopting a plan to provide personal financial counseling services to survivors of deceased employees and eligible employees diagnosed with a terminal illness (the Plan). Financial counseling services will not be provided to employees diagnosed with a terminal illness.

Eligible employees include both full and part time employees who have been employed by the Company for more than three months. "Survivor(s)" of an eligible employee include the deceased or terminally ill employee's spouse and legal dependents (as defined under Code section 152) and other appropriate persons as determined by the Company.

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The following services will be provided under the Plan at no cost to the survivor(s). Upon an eligible employee's death or diagnosis with a terminal illness, the employee's survivor(s) will be entitled to a meeting with a Company financial planner for the purpose of assisting the survivor(s) in planning their financial affairs. The meeting will cover benefit election forms, tax aspects of benefit plan distributions, and applying for employer and government benefits; budgeting and cash flow; understanding the estate settlement process; investing life insurance proceeds and other beneficiary distributions; and estate tax planning. The financial planner will prepare a financial plan and a long-term cash flow analysis. Following a one-on-one review of the plan with the financial planner, the survivor(s) will receive proactive periodic contact to offer additional support and guidance. Survivor(s) will also be entitled to access to the Company financial counseling hotline. In addition, written materials will be provided regarding personal financial planning.

Section 61(a) of the Code defines "gross income" as, unless otherwise excluded, all income from whatever source derived, including (but not limited to) compensation for services such as fees, commissions, fringe benefits, and similar items. Section 1.61-1(a) of the Income Tax Regulations provides that gross income includes income derived in any form, whether in money, property, or services.

Section 1.61-21(a)(1) of the regulations provides that a fringe benefit may include, for example, an employer-provided discount on property or services. Section 1.61-21(a)(4) of the regulations provides that a taxable fringe benefit is included in the income of the person performing the services in connection with which the fringe benefit is furnished. Thus, a fringe benefit may be taxable to an employee even though that employee did not actually receive the fringe benefit.

Section 132(a)(3) of the Code excludes from gross income any fringe benefit that qualifies as a working condition fringe. Section 132(d) defines "working condition fringe" as any property or services provided by an employer to an employee to the extent that, if the employee paid for the property or services, the payment would be allowable as a deduction under section 162 (concerning trade or business expenses) or 167 (concerning depreciation).

For purposes of working condition fringe benefits, section 1.132-1(b)(2) of the regulations provides that the term "employee" includes any individual who is currently employed by the employer providing the benefit. This section does not include within the definition of "employee" the widow or widower, or dependents of a deceased or living employee. By contrast, for purposes of other section 132 fringe benefits, such as no-additional-cost services and qualified employee discounts, the term "employee" includes a widow or widower or a dependent child. Treas. Reg. § 1.132-1(b)(1). The

definition of "employee" is narrower for working condition fringes because of the requirement under section 132(d) that the hypothetical payment be in connection with the employee's performance of services for the employer. Thus, benefits provided to family members or other dependents of employees may not be excluded from gross income based upon section 132(a)(3).

Section 102(a) of the Code provides that gross income does not include the value of property acquired by gift. However, section 102(c) provides that the exclusion in section 102(a) does not apply to any amount transferred by an employer to, or for the benefit of, an employee. Because the financial counseling services will be provided for the benefit of an employee, the value of the services will not be excludible under section 102(a).

Based upon the foregoing, we rule as follows:

1. Benefits provided to a survivor of a deceased employee may not be excluded from gross income under Code section 132(a)(3). Therefore, the fair market value of these services provided to survivors of a deceased employee are includible in the recipient's gross income under section 61.

2. Nor may benefits provided to a survivor of a terminally ill employee be excluded under Code section 132(a)(3). But in the case of a terminally ill employee, the fair market value of these services provided to a survivor is includible in the employee's gross income under section 1.61-21(a)(4) of the regulations.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code. This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

JERRY E. HOLMES
Chief, Branch 2
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes

cc: District Director, New Jersey District
Chief, Examination Division