



March 7, 2008
Pennsylvania Personal Income Tax
No. PIT-08-002
Health, Accident or Death Plans
Same-Sex Domestic Partner Benefits

ISSUES

1. Whether payments made by an employer for a nondiscriminatory health, accident or death plan in order to provide benefits to the same-sex domestic partners and the children of same-sex domestic partners of employees are excludible from compensation for Pennsylvania Personal Income Tax purposes?
2. Whether such benefits received as a result of hospitalization, sickness, disability or death are excludible from compensation for Pennsylvania Personal Income Tax purposes?

CONCLUSIONS

1. Yes.
2. Yes.

FACTS

A plan provides certain health and welfare benefits to participants and their spouses and dependents. The plan is in the process of being amended to provide benefit coverage to same-sex domestic partners of participants and to children of same sex domestic partners of participants ("Domestic Partner Benefits"). The plan is an "employee welfare benefit plan," as that is defined under ERISA, and the purpose of the plan is not to provide a replacement for the regular wages or salaries of plan participants.

The plan believes that it qualifies as a "health, accident or death plan" pursuant to Department regulations.

DISCUSSION

Article III of the Tax Reform Code (the Personal Income Tax) provides, in part, that:

"Compensation" means and shall include salaries, wages, commissions, bonuses and incentive payments whether based on profits or otherwise, fees, tips and similar remuneration received for services rendered, whether directly or through an agent, and whether in cash or in property.

The term "compensation" shall not mean or include: . . . payments made by employers or labor unions, including payments made pursuant to a cafeteria plan qualifying under section 125 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 125), for employee benefit programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits or strike benefits: Provided, That the program does not discriminate in favor of highly compensated individuals as to eligibility to participate, payments or program benefits;

72 P.S. § 7301(d)(vi)(emphasis added).

Department regulations provide that "[p]ayments made by an employer or labor union or elective contributions deemed to be made by an employer under a cafeteria plan for a nondiscriminatory health, accident or death plan" are not included in compensation. 61 Pa. Code § 101.6(c)(6). In addition,



“[p]rogram benefits payable on condition of hospitalization, sickness, disability or death under a health, accident or death plan” are not compensation. 61 Pa. Code § 101.6(c)(12).

Department regulations define “health, accident or death plan” and “employee welfare benefit plan” to mean:

Health, accident or death plan—

(i) The term means:

- (A) An accident, health or term life insurance policy issued by an insurance company.
- (B) A self-insured employee welfare benefit plan under which benefits are payable upon hospitalization, sickness, disability or death or for the prevention of sickness or disability.

(ii) The term does not include a program under which benefits are payable either upon hospitalization, sickness, disability, death or for the prevention of sickness or disability; or upon separation from employment or some other contingency.

Employee welfare benefit plan—

(i) A plan established or maintained to provide to eligible employees or their beneficiaries plan benefits, such as:

[†] *Plan*—A cafeteria plan or other wage and salary supplemental[†] or replacement program or arrangement established or maintained by an employer or by an employee organization, or by both, for the benefit of eligible employees or their beneficiaries. The term includes temporary or permanent programs or arrangements covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, social security retirement, a trust that forms part of a plan, and a contract of insurance.

61 Pa. Code § 101.1 (relating to definitions).

[†] *Wage or salary supplement—*

- (i) Employer-provided coverage under a plan.
- (ii) Separation pay, vacation pay, holiday pay, guaranteed pay, reimbursement for personal expenses, an employer payment to provide benefits under a plan and any other amount paid, under an agreement, to one or more of the following:
 - (A) An independently controlled trust or pooled fund established or maintained for the purpose of funding or providing benefits under the plan.
 - (B) An insurance company for the purchase of insurance.
 - (C) A third party for the benefit of the employee.
- (iii) Any benefit under a plan to the extent attributable to plan coverage or contributions by the employer which were not includible in income of the employee.
- (iv) Any benefit under a plan which is directly paid by the employer.

61 Pa. Code § 101.1 (relating to definitions).

- (A) Medical, surgical or hospital care or benefits in the event of sickness, accident or disability.
- (B) Death benefits.
- (C) Scholarships.
- (D) Personal expense reimbursements, advancements or allowances such as rental vehicle, dependent care, food or housing allowances.

(ii) The term does not include:



(A) Plans that offer a benefit that defers the receipt of compensation or operate in a manner that enables participants to defer the receipt of compensation.

(B) Plans established or maintained to provide fringe benefits described in § 101.6a (relating to fringe benefits in the form of use of property or services).

61 Pa. Code § 101.1 (relating to definitions)(footnote added).

The Department interprets the term “beneficiary,” as it is used in the definition of “employee welfare benefit plan”, to mean a person designated by a participant, or by the terms of an employee welfare benefit plan, who is or may become entitled to a benefit thereunder.

In contrast to Federal income tax rules, whether the beneficiary of a nondiscriminatory health, accident or death plan is an employee’s spouse or dependent for Federal or Pennsylvania Personal Income Tax purposes is not relevant to the determination of whether employer payments for the plan or benefits received under the plan are excludible from compensation. The only requirement is that the employee has a legal or moral duty to support the beneficiary.

Based on the facts provided, assuming the plan qualifies as a “nondiscriminatory health, accident or death plan” pursuant to Department regulations, payments made for the plan in order to provide benefits to the same-sex domestic partners and the children of same-sex domestic partners of employees are excludible from compensation for Pennsylvania Personal Income Tax purposes. As a result, the plan does not have an obligation to withhold Personal Income Tax from participants who elect Domestic Partner Benefits. In addition, Domestic Partner Benefits received under the plan as a result of hospitalization, sickness, disability or death are not includable in a participant’s compensation for Pennsylvania Personal Income Tax purposes.