

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TE/GE:EB:HW PLR-107969-03

Date:

June 10, 2003

### Legend

Company =

Prior Plan =

Plan =

Dear

This responds to your ruling request, dated December 13, 2002, on behalf of the Company, that payments to participants under the Plan are excluded from the income of participating employees.

The Company established the Prior Plan in 1992, and received a favorable private letter ruling in 1994. The Prior Plan was amended, restated and renamed the Plan, effective January 1, 2001. The Plan was subsequently amended by a First Amendment dated February 6, 2002. The Plan is intended to provide educational assistance under sections 127 and 132 of the Internal Revenue Code (the Code) to all regularly employed full and part-time employees of the Company. Full and part-time employees include all individuals working 20 or more hours per week on a regular basis who are in good standing with the Company and are not currently on unpaid leaves of absence (except individuals under the Family and Medical Leave Act, who remain eligible for benefits). Employees who enroll in an educational course must maintain their status as full or part-time employees during the term of the course to remain eligible to participate in the Plan.

A participant desiring to receive benefits under the Plan must submit a written request to

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the Plan administrator prior to the regularly scheduled first day of the course for which the benefit is requested. Upon completion of the course, the participant is required to provide original receipts for all items for which he or she seeks reimbursement. The amount reimbursed is reduced by any financial assistance, scholarship, or any other financial benefit derived from public or private programs that apply toward educational costs. The participant must also attain a grade of "C" or better in order to receive benefits under the Plan. If an application to participate in the Plan is denied, the Plan provides a procedure through which the participant may appeal the denial.

The Plan provides that during the calendar year, an employee is permitted to receive reimbursement for no more than two courses a semester or quarter. This reimbursement covers educational assistance described in section 127(c)(1) and section 1.127-2(c) of the Income Tax Regulations. The Plan further provides that to the extent the benefits provided by the Plan exceed the cap on benefits allowable under section 127 of the Code or are for educational expenses not permitted to be covered under section 127, then it is intended that the Plan be treated as a fringe benefit plan providing educational assistance as a working condition fringe benefit pursuant to section 132(j)(8) of the Code.

The Plan provides that the Company shall contribute the amount required to pay educational benefits out of the general assets of the Company at the time the benefits are to be paid. There is no special fund out of which the benefits are paid, nor are participants required to make a contribution as a condition of receiving benefits.

The Plan states that not more than 5 percent of the benefits paid or incurred each year under the Plan for educational courses shall be attributable to principal (5 percent) shareholders or owners of the Company in accordance with section 127(b) of the Code.

You represent that the Company has provided reasonable notification of the availability and terms of the Plan to all eligible employees through notices and the benefits section of the Company's website.

Based on the foregoing, you request rulings that all payments under the Plan are excluded from the gross income of participating employees under section 127(a) of the Code or sections 132(d) and 132(j)(8) of the Code, and that all payments by the Company under the Plan are deductible by the Company under section 162(a) of the Code as ordinary and necessary business expenses.

Section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in section 127(b).

Section 127(b)(1) requires a separate written plan of the employer for the exclusive benefit of the employees to provide such employees with educational assistance.

Section 127(b)(2) and section 1.127-2(e) of the regulations provide that the program shall benefit employees who qualify under a classification set up by the Secretary not to be

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discriminatory in favor of employees who are officers, owners, or highly compensated, or their spouses and dependents who are themselves employees. However, a program shall not be considered discriminatory because members of the prohibited group in fact utilize the program to a greater degree than eligible employees who are not within the prohibitive group; or, because with respect to a course of study for which benefits are otherwise available, successful completion of the course, attaining a particular course grade, or satisfying a reasonable condition subsequent (such as remaining employed for one year after completing the course) are required or considered in determining the availability of benefits.

Section 127(b)(3) provides that not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

Section 127(b)(4) provides that a program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income.

Section 127(b)(5) states that a program referred to in section 127(b)(1) is not required to be funded.

Section 127(b)(6) requires that reasonable notification of the availability and terms of the program must be provided to eligible employees.

Based on the information submitted, representations made and authorities cited, we conclude that the Plan qualifies as an educational assistance program as described in section 127 of the Code. Payments made under the Plan up to a maximum amount of \$5,250 during a calendar year are excludable from the gross income of participating employees under section 127(a) of the Code, as employer-provided educational assistance. All payments by the Company under section 127 are deductible by the Company under section 162(a) of the Code as ordinary and necessary business expenses.

You also requested a ruling regarding the excludability of amounts paid under the Plan under section 132(d) of the Code, as working condition fringe benefits. Because of the inherently factual nature of such determinations, we are unable to provide the requested ruling. See section 7.01 of Rev. Proc. 2003-1, 2003-1 I.R.B. 1, at 17, and sections 2.01 and 4.02(1) of Rev. Proc. 2003-3, 2003-1 I.R.B. 113, at 113 and 120. Although we are not providing a ruling on this issue, please note that in testing whether educational benefits qualify as a working condition fringe, under section 1.132-5(a)(2) of the regulations, it is not sufficient that the tuition, if paid by the employee, would be deductible as a trade or business expense.

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The tuition benefits must relate to the employee's trade or business as an employee of the employer providing such benefits.

Except as expressly provided herein, no opinion is expressed or implied with respect to the application of any other provision of the Code or regulations to the benefits described.

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

Sincerely,

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

Enclosure:  
Copy for section 6100 purposes