

Internal Revenue Service

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, ID No.

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Refer Reply To:
CC:TEGE:EB:HW
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Date: February 24, 2006

LEGEND

Taxpayer =

Plan =

Dear :

This is in reply to your letter dated October 14, 2005, in which you requested a ruling on whether the Plan qualifies as an educational assistance program under section 127 of the Internal Revenue Code (Code).

The Taxpayer is an entity organized under section 501(c)(6) of the Code. Taxpayer is a bargaining agent and has established the Plan pursuant to a collective bargaining agreement with employees. The Plan covers only employees covered by the collective bargaining agreement and provides each eligible employee up to \$15,000 per plan year toward tuition, fees, and books to complete one or more courses successfully at an "eligible educational institution" within the meaning of section 529(e)(5).

All bargaining unit employees are eligible to participate in the Plan provided they are credited with a year of service under the retirement plan and are otherwise active on certain dates of the year. To be reimbursed, the employee must complete the course and earn a grade of C or better. No one eligible to participate in the Plan owns more than five percent of the stock or the capital or profits interest in the employer. The plan does not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. The Plan is not funded. The Taxpayer

distributes a notice to each eligible employee of the availability and terms of the Plan on an annual basis.

Section 127(a) of the Code provides that 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 subsection (b).

Section 127(b)(2) of the Code provides that the program must benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are highly compensated employees or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

Section 1.127-2(e)(2) of the Income Tax Regulations provides that 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 prohibited group. Nor will reasonable conditions, such as successfully completing the course, remaining in the employment of the employer after completing a course, or attaining a specific grade, be evidence of discrimination in coverage.

Section 127(b)(3) of the Code states 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 owns more than 5 percent of the stock or of the capital or profits interest in the employer.

Section 127(b)(4) of the Code 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) of the Code provides that a program is not required to be funded.

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

Section 127(c)(1) of the Code provides that "educational assistance" means (A) the payment, by an employer, or expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar

payments, books, supplies, and equipment), and (B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment), but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation.

The type of benefits provided under the Plan meet the definition of educational assistance, and no eligible employee is a five percent shareholder or owner. The employees are not offered a choice between educational assistance and other remuneration includible in gross income, and reasonable notice of the availability and terms of the Plan are provided on an annual basis. In addition, the Plan satisfies the eligibility test under section 127(b) of the Code.

Accordingly, based on the information provided and representations made, we conclude that the first \$5,250 in educational assistance provided to an employee during a calendar year under the Plan will not be included in the employee's gross income pursuant to section 127(a) of the Code.

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,

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