



November 20, 2007

CC:PA:LPD:PR (REG 148393-06)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Room 5203
Washington, D.C. 20044

Re: Comments on Proposed Regulations – Accident and Health Benefits Under Qualified Plans

Dear Sirs and Mesdames:

The American Benefits Council (the Council) appreciates the opportunity to comment on the proposed regulations (72 Fed. Reg. 46421, Aug. 20, 2007,) and supports the need to clarify the tax treatment of accident and health insurance under qualified retirement plans. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

With regard to the proposed regulations, we are concerned that they could affect a wide variety of common practices that our members use to provide and protect on a nondiscriminatory basis the qualified retirement plan income of disabled employees. These practices include:

- the provision of continued employer-funded defined benefit pension accruals for employees on long-term disability,
- the provision of continued defined contribution plan accruals for employees on long-term disability – with funding from employer contributions, the purchase of a special long-term disability policy designed for DC plans, or from a companion welfare benefit trust.

We are concerned that the proposal could conceivably tax employees currently on the "coverage" of such disability contingencies. We are also concerned that the proposal could subject these beneficial practices to complex administrative requirements, and that the complexity of those requirements could easily lead to

administrative errors potentially endangering the tax qualification of plans. The Preamble invites comments on the need for limited exceptions in this area, such as provisions that have the effect of a waiver of premium for disability. In this context, the concept of waiver of premium originated in the insurance field as a mechanism for a policyholder to continue to accrue the benefits provided under the policy (for example, annuity benefits) without the payment of premiums during periods of disability. We believe all of the above-described practices have this effect. Because the practices ensure that employees continue to accrue retirement benefits without interruption during disability, they do not provide a current benefit to covered employees and therefore should not result in a current inclusion in their gross income either.

We do not believe the proposal was intended to affect defined benefit plan accruals (such as “qualified disability benefits”), but it might well impact the defined contribution plan practices described above. Favorable clarification of all these issues is desirable. For example, it appears that the proposal (Prop. Reg. § 1.402(a)-1(e)(1)(i)) could impute current tax on plan participants during the period prior to disability when they are covered by a plan provision that ensures continued accruals to their accounts during disability. It further appears that the proposal (Prop. Reg. § 1.402(a)-1(e)(1)(ii)) would deem disabled participants to constructively receive the amounts that will be paid into their accounts in order for them to then be subjected to the numerous qualified plan rules for participant contributions. These potential outcomes conflict with the holdings of recent private letter rulings on insured LTD programs (see LTR 200031060 and LTR 200235043) and add considerable complexity to their administration, not only for plans and participants, but for the IRS as well.

The Council cannot identify any basis for subjecting these disability protection features to the concepts that Treasury and the Service have developed to address the treatment of health insurance. We are concerned that this proposed regulatory approach will prevent employers from continuing to maintain or add disability protection features to their qualified plans. Instead, the regulations should be designed to encourage the provision of broad-based disability protection in individual account plans through all of the methods in use today. The Council believes such encouragement is consistent with good tax and retirement policy because

- the focus of this protection is to maintain long-term retirement savings, not the provision of a current benefit,
- unlike health insurance, the amounts must be paid into the disabled participant's account – regardless of the source in an insurance policy, a welfare trust or the employer's own funds – and will accumulate and be taxed in full on distribution,
- there should be no difference in the tax treatment of these practices based on whether the employer, the plan, or the participant has paid for the “waiver” protection, and

- the provision of continuing accruals during disability under defined benefit plans is decreasing and underscores the need to encourage such continuing accruals under defined contribution plans.

Accordingly, the Council strongly recommends that the final regulations make it clear that the prescribed tax consequences (e.g., taxation of current coverage/premiums or deemed receipt/contributions of funds for disability accruals) do not apply to various disability waiver practices. This could be done by amending the first sentence of Prop. Treas. Reg. § 1.402(a)-1(e)(1)(i) to read as follows:

“The payment of premiums from a qualified trust for accident or health insurance, including a qualified long-term care insurance contract under section 7702B, but excluding an arrangement that provides for continuing accruals under either a defined benefit or a defined contribution plan during periods of disability, constitutes a distribution under section 402(a) to the participant against whose benefit the premium is charged.”

Furthermore, the final regulations should clarify that they do not alter the tax treatment of the arrangements described in PLRs 200031060 and 200235043.

* * *

We appreciate your attention to this letter and would be pleased to respond to any questions you may have.

Sincerely,



Lynn D. Dudley
Vice President, Retirement Policy