Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET2
PLR-143178-10

Date:
May 20, 2011

LEGEND:

Taxpayer:

Dear :

As discussed in our phone conversation on May 5, 2011, this letter ruling revokes private letter ruling 201005014 (PLR-122803-09) issued to Taxpayer on February 5, 2010, and substitutes the following letter ruling. In addition, this letter limits the revocation's retroactive effect pursuant to section 7805(b) of the Internal Revenue Code (Code).

In a letter ruling request dated April 23, 2009, and supplemented by letters dated June 30, August 20, and September 15, 2009, Taxpayer requested a ruling that the value of certain articles of clothing and accessories provided by Taxpayer to employees are excluded from gross income as de minimis fringe benefits under Code section 132(a)(4). Code section 132(a)(4) states that a de minimis fringe benefit is "any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable."

In a letter dated February 5, 2010, the Internal Revenue Service (Service) issued a ruling that concluded that these items would be excludable de minimis fringe benefits. The Service largely based this conclusion on representations that Taxpayer made in its series of 2009 letters that each of the items covered by the ruling request were de minimis fringe benefits.

In a letter dated January 6, 2011, the Service advised Taxpayer that it was reconsidering the February 5, 2010 letter ruling. In response to a request from the Service, Taxpayer provided additional information in a memorandum dated March 11, 2011. The memorandum demonstrated that there were variations attending the acquisition and distribution of the clothing and accessories by departments of Taxpayer. Based on those variations the Service can not conclude, on a categorical basis, that the items at issue in the ruling request were de minimis fringe benefits.

The Service has authority to decline to issue a letter ruling when issuing that ruling request would not be appropriate "in the interest of sound tax administration." See Rev. Proc. 2011-1, I.R.B. 1, section 6.02. After carefully reviewing the statement of facts and statement of law set forth in the original ruling request, supplemental letters, and the memorandum, the Service has concluded that it is inappropriate to rule in this case, because of the inherently factual nature of the problem involved.

In the light of the above discussion, the February 5, 2010, ruling issued to Taxpayer is hereby revoked.

Code Section 7805(b) provides that the Secretary of the Treasury may prescribe the extent, if any, to which any ruling or regulation relating to the internal revenue laws may be applied without retroactive effect.

Section 11.05 of Rev. Proc. 2011-1 provides, in part, that if a letter ruling is revoked, the revocation applies to all years open under the statute, unless the Service uses its discretionary authority under section 7805(b) to limit the revocation's retroactive effect.

Sections 11.06 of Rev. Proc. 2011-1 provides that, unless the revocation or modification of a letter ruling is due to: (1) a misstatement or omission of material facts; (2) the facts at the time of the transaction are materially different from the facts on which the letter ruling was based; or (3) the transaction involves a continuing action or series of actions and the controlling facts change during the course of the transaction, the revocation of a letter ruling will generally not be applied retroactively to the taxpayer for whom the letter ruling was issued provided that: (1) there has been no change in the applicable law; (2) the letter ruling was originally issued for a proposed transaction; and (3) the taxpayer directly involved in the letter ruling acted in good faith in relying on the letter ruling, and revoking or modifying the letter ruling retroactively would be to the taxpayer's detriment.

The factors in section 11.06 of Rev. Proc. 2011-1 must be satisfied in order to limit the retroactive effect of a revocation of a prior letter ruling. In this case, each of the factors has been satisfied.

Accordingly, pursuant to the authority contained in section 7805(b), the revocation of the February 5, 2010, letter will not be applied retroactively.

Accordingly, we decline to rule on your request. We regret any inconvenience our inability to rule in this matter may cause.

Sincerely,

Paul Carlino
Chief, Employment Tax Branch 1
Tax Exempt and Government Entities