

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: February 06, 2014

to: Thomas E. Stevens
Tax Attaché

from: M. Grace Fleeman
Senior Technical Reviewer, Branch 1
(International)

subject: Reporting of Health Care Contributions by Mission

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent. This advice was coordinated with the Health and Welfare branch in the Office of Division Counsel (Tax Exempt and Government Entities).

ISSUE

Whether amounts paid directly by the U.S. Embassy and American Consulates in (collectively "Mission ") to certain employees and used by such employees to obtain health coverage in should be reported as wages in Box 1 of Form W-2.

CONCLUSION

Amounts paid directly by Mission to certain employees and used by such employees to obtain health coverage in should not be reported as wages in Box 1 of Form W-2. These amounts should, however, be reported in Box 12 of Form W-2 pursuant to section 6051(a)(14).

FACTS

You have advised us that Mission employs non-diplomatic staff members who are known as Locally Employed Staff ("LES"). LES employees include both

citizens and citizens of other countries (including U.S. citizens) who are permanent residents of the Federal Republic of . Upon being hired, LES employees must choose either to participate in the government's compulsory health insurance plan or to obtain health insurance from a private insurer. In either case, Mission contributes to the cost of obtaining the health coverage by making payments directly to the employees ("employer contributions"), which the employees are then required to transmit to the health carrier.

Mission has measures in place to ensure that the employer contributions are used to obtain health coverage and are properly transmitted by the employees to the health carrier. Once an LES employee chooses to participate in a particular health plan, the Human Resources Office (HR Office) in the Embassy or Consulate, as the case may be, issues a statement to the health carrier. The statement includes the employee's proposed basic monthly salary on which the employee's monthly contributions to the plan will be based. In order to verify that an LES employee has been successfully enrolled in a health care plan, the HR Office requires LES employees to submit copies of their registration forms to the HR Office. The HR Office also requires all newly hired LES employees to sign a consent form that authorizes the HR Office to contact their health care providers directly at any time in order to verify the status of their coverage.

When the HR Office receives information from a health care provider concerning payments made (or not made) by an LES employee, the HR Office may contact the employee and verify the accuracy of the provided information. An employee's failure to comply with the obligation to make payments to the plan (including the contributions paid by Mission directly to the LES employee) results in a written reprimand as to the first violation. The second violation results in immediate termination.

Every year, the HR Office issues a salary statement to the local tax office with respect to each LES employee. The statement shows taxable wages for the previous calendar year. The employer contributions are excluded from taxable wage income for purposes and are not included in the taxable wages that are reported to the health carriers.

LAW AND ANALYSIS

Section 106 provides that "[e]xcept as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan." Amounts that are excluded under section 106 are not subject to income tax withholding. See Rev. Rul. 56-632, 1956-2 C.B. 101.

Rev. Rul. 61-146, 1961-2 C.B. 25, considered a situation in which employees were not covered by a group health plan maintained by their employer. These employees participated in other plans for which they paid the premiums directly to the insurer. The employer reimbursed the employees for the employer's share of the premiums upon

proof that the insurance was in force and was being paid for by the employees. Under these circumstances, the reimbursements by the employer could be considered to be contributions by the employer to accident or health plans for the employees so as to result in the exclusion of such payments from the gross income of the employees under section 106.

Based on the facts set forth above, we conclude that for U.S. federal income tax purposes, because Mission verifies that the employer contributions are used to purchase health insurance, the employer contributions are excluded under section 106 from the gross income of employees who are U.S. citizens or resident aliens.

Amounts that are excluded from gross income under section 106 are not wages that are subject to income tax withholding. See Rev. Rul. 56-632, 1956-2 C.B. 101. Consequently, amounts excluded under section 106 should not be reported in Box 1 of Form W-2. See section 6051(a)(3).

Even though the employer contributions are not reportable as wages in Box 1 of Form W-2, the contributions are reportable in Box 12, Code DD. See section 6051(a)(14). The aggregate cost of coverage is reported with Code DD regardless of whether some or all of the cost of coverage is paid with employee or employer contributions and regardless of whether the coverage is taxable. See Notice 2012-9, 2012-1 C.B. 315.

Although the arrangement providing for the reimbursement of premiums by Mission is an employer payment plan for purposes of Notice 2013-54 (2013-40 IRB 287), as a governmental plan, the requirements of chapter 100 of the Code do not apply. See section 9831(a)(1).

If Mission is unable to confirm that the employer contributions to a particular LES employee were used to purchase health insurance, the contributions should be treated as wages within the meaning of section 3401 that are reportable in Box 1 of the Form W-2 issued to the employee.

Please call (202) 317-6933 if you have any further questions.