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Revenue Ruling 58-90

Section 162. Trade or Business Expenses.

January 1958

Treatment for Federal income tax purposes of amounts paid as premiums on, and amounts received as benefits under, individual insurance policies covering sickness and disability protection (1) where the premiums are paid by a corporate employer for the benefit of a key employee and (2) where the premiums are paid by an individual sole proprietor of an unincorporated business for his own benefit.

Advice has been requested as to the treatment for Federal income tax purposes of amounts paid as premiums on, and amounts received as benefits under, the two insurance policies referred to in the following examples. Neither policy is part of a group insurance plan.

Example (1). A corporation purchases an individual insurance policy for a key employee. The only benefit provided by the policy is income replacement payments in the event the employee becomes sick or disabled. The employee, who is not a stockholder in the corporation, has all the rights of ownership in the policy, and no part of the benefits under the policy are payable to the corporation. The corporate employer pays the premiums on the policy only so long as the employee remains in its employ.

Example (2). An individual sole proprietor of an unincorporated business purchases for his own benefit the same type of insurance coverage described in example 1 above.

Since the facts presented in example (1) indicate that the taxpayer corporation is not directly or indirectly a beneficiary under the policy, it is concluded that the amount it pays as premiums on the insurance policy there involved may be deducted by the corporation as an ordinary and necessary business expense under section 162 (a) of the Internal Revenue Code of 1954, or section 23 (a) (1) of the 1939 Code, if it can be shown (1) that the premiums were paid in consideration of personal services actually rendered by the employee, and (2) that the total amount paid the employee, including the premiums, was not unreasonable compensation for his services. See G. C. M. 8432, C. B. IX-2, 114 (1930), and cases cited therein; Rev. Rul. 210, C. B. 1953-2, 114; Arthur R. Womrath, Inc. v. Commissioner, 22 B. T. A. 335; and C. F. Smith Co. v. Commissioner, T. C. Memo 1954-86.

The amount of the premiums paid by the corporation should be excluded from the gross income of the employee for taxable years beginning after December 31, 1953, and ending after August 16, 1954, under the provisions of section 106 of the 1954 Code. The amount of the premiums paid by the corporation in prior taxable years should be included in the gross income of the

employee for the taxable year in which paid under the provisions of section 39.22 (a)-3 of Regulations 118.

In example (2), above, the insurance premiums paid by the sole proprietor on insurance in behalf of himself are not ordinary and necessary business expenses. Instead, such amounts are personal expenses which are nondeductible under section 262 of the 1954 Code and section 24 (a) (1) of the 1939 Code.

Income payments received under the above policies constitute amounts received through accident or health insurance within the meaning of sections 104 (a) (3) and 105 (a) of the 1954 Code and section 22 (b) (5) of the 1939 Code.

It is concluded, therefore, that (1) the income payments received during taxable years to which the 1939 Code is applicable under either of the above policies may be excluded from the gross income of the insured under section 22 (b) (5) of the 1939 Code; (2) the income payments received during taxable years to which the 1954 Code is applicable under the policy in example (1) may be excluded from the gross income of the insured employee to the extent provided by section 105 (d) of the 1954 Code; and (3) the income payments received during taxable years to which the 1954 Code is applicable under the policy in example (2) may be excluded from the gross income of the insured sole proprietor under section 104 (a) (3) of the 1954 Code.