



SC PRIVATE LETTER RULING #88-1

TO: XYZ Corporation

SUBJECT: Withholding on XYZ Corporation Long-Term Disability Benefit Plan for Employees

REFERENCE: S.C. Code Ann. Section 12-9-10(4) (Supp. 1986)
S.C. Code Ann. Section 12-9-310(1) (Supp. 1986)
S.C. Code Ann. Section 12-7-435(g) (Supp. 1986)
S.C. Code Ann. Section 12-37-250 (Supp. 1986)

AUTHORITY: Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Whether payments made to recipients under the company's long-term disability benefit plan require the employer to withhold income taxes for South Carolina purposes and report such amounts as compensation on Form W-2?

Facts:

XYZ Corporation provides a Long-Term Disability Benefit Plan for its employees. The pertinent provisions of this plan are as follows:

1. Benefits are payable when "the Participant is permanently disabled and prevented from engaging in his regular occupation" based upon a certified statement from one or two licensed physicians (Section 4.1, as amended in 1987).
2. A disability which occurs during the participant's first 12 months of eligibility as a Participant which results from a pre-existing condition shall not entitle the participant to benefit payments (Section 4.2).
3. No disability benefits are payable to any participant during any period of imprisonment resulting from his conviction of a crime or other public offense (Section 4.4).

4. No disability benefits for a disability caused by or related to stress, mental impairment, or mental illness shall be paid for a period in excess of 24 months unless the participant is confined to a licensed treatment facility (Section 4.4, as amended in 1987).
5. If a participant receiving benefits is subsequently deemed able and qualified to perform another occupation, and such a position is available within the company and within the same geographic area, the company has the right to offer such position to the participant (provided the monthly salary is at least as great as the monthly disability benefit payable), and if the participant does not accept the position, his disability will be deemed to have ceased and he shall no longer be eligible for benefits (Section 4.1).
6. The company may, at its discretion, consider a participant who has suffered a disability to be on rehabilitation status for up to 12 months during any one period of disability, in which rehabilitation status the participant may engage in any gainful occupation and any benefits otherwise payable under the plan shall be reduced by 50% of the participant's earnings from such employment (Section 4.3).
7. As explained in Section 4.4, the benefit payout is a percentage of monthly compensation, and both the percentage amount and the duration of benefit payments are determined by years of service with the company.

During the period that an employee is eligible to receive long-term disability payments he technically continues in this status as an employee. Thus, for retirement plan purposes, he has not had a "severance from service" [South Carolina Electric & Gas Company Retirement Plan Sub-Section 4.1(e)(2) and 4.3(b)], and thus "service" and "benefit service" are inclusive of periods of eligibility under the company's long-term disability plan.

Also during the period that an employee is eligible to receive long-term disability payments:

- a. the employee continues to be eligible for health benefits under the company employee health care plan on the same footing as are active employees.
- b. the employee continues to be covered under the company group life insurance plan -- a benefit of twice annual salary on the same footing as are active employees.

Discussion:

The South Carolina Code indicates in Section 12-9-310(1) that wages are subject to withholding. The term wages is defined in Section 12-9-10 to include all remuneration for services performed by an employee but to exclude "remuneration paid to or under an employee benefit plan not included in South Carolina taxable income as defined in Article 4, Chapter 7 of Title 12". South Carolina Code Section 12-7-435(g) allows a deduction from South Carolina taxable income for "the amount received for disability retirement due to permanent and total disability by any person who could qualify for the homestead exemption under Section 12-37-250 by reason of being classified as totally and permanently disabled".

The term "permanently and totally disabled" as used herein shall mean the inability to perform substantial gainful employment by reason of a medically determinable impairment, either physical or mental, which has lasted or is expected to last for a continuous period of twelve months or more or result in death.

S.C. Code Ann. Section 12-37-250 (Supp. 1987)

Consideration must be given to whether XYZ Corporation's Long-Term Disability Benefit Plan can be classified as disability retirement within the meaning of Code Section 12-7-435(g). XYZ Corporation asserts that their plan is not a retirement plan because the employee remains eligible for health and group life insurance benefits on the same footing as active employees. This factor is not determinative of whether the plan constitutes disability retirement within the meaning of Section 12-7-435(g). The South Carolina Disability Plan also allows employees to remain eligible for health and group life insurance benefits and it qualifies as a retirement plan. Thus, if an employee becomes permanently and totally disabled within the meaning of Section 12-7-435(g), no withholding is required to be deducted. Pursuant to a memorandum dated September 28, 1979 from C. H. Brooks, Director of the Income Tax Division to all Income Tax Division personnel, a statement from a qualified physician attesting to the permanent and total disability must be provided by the taxpayer. In lieu of a doctor's statement, a copy of the taxpayer's Homestead Exemption would be sufficient evidence.

Conclusion

Payments to long term disability recipients are subject to withholding, however, payments to long term disability recipients who are permanently and totally disabled do not require the employer to withhold income taxes for South Carolina purposes. The exclusion from withholding does not eliminate the employer's requirement to file an information return. South Carolina will accept a copy of the W-2 issued for Federal purposes.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/John M. Rucker

John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
January 6, 1988