

Internal Revenue
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Department of the Treasury
Internal Revenue Service

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TREASURY DEPARTMENT

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26 CFR 1.61-2: Compensation for services, including fees commissions, and similar items.

Amounts paid by an employer pursuant to a leave-sharing plan. Amounts paid by an employer pursuant to a leave-sharing plan are includible in the gross income of the recipient as compensation for services provided by the recipient to the employer and are wages for employment tax purposes.

Rev. Rul. 90-29

ISSUE

What are the federal income tax consequences to employees under the leave-sharing plan described below?

FACTS

An employer established a plan whereby its employees who suffer "medical emergencies" may qualify as recipients of leave surrendered to the employer by other employees or leave deposited by its employees in an employer-sponsored leave bank. A "medical emergency" is defined under the plan as a medical condition of the employee or a family member of the employee that will require the prolonged absence of the employee from duty and will result in a substantial loss of income to the employee because the employee will have exhausted all paid leave available

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apart from the leave-sharing plan. Under the provisions of the plan, a written application describing the medical emergency must be submitted to the employer by or on behalf of the employee requesting additional paid leave under the leave-sharing plan. After the application has been approved and the employee has exhausted all of his or her paid leave, the employee is eligible to receive additional paid leave (to be paid at his or her normal rate of compensation) with respect to leave surrendered to the employer or leave deposited in the leave bank. The plan contains restrictions on the amount of leave that may be surrendered to the employer or deposited in the leave bank and also contains rules as to the manner in which surrendered or deposited leave will be granted to eligible leave recipients.

HOLDING

The amounts paid by the employer to a leave recipient pursuant to the plan are includible in the gross income of the recipient under section 61 of the Code as compensation for services provided by that recipient to the employer. These amounts are considered "wages" for purposes of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, the Railroad Retirement Tax Act, the Railroad Unemployment Repayment Tax, and income tax withholding, unless excluded therefrom under a specific provision of the Code. An employee who surrenders leave to the employer or deposits leave in the leave bank does not realize any income and incurs no deductible expense or loss either upon the surrender or deposit of the leave or its use by the recipient. The holding and underlying rationale of this ruling apply only to bona fide employer-sponsored leave-sharing arrangements.
