

The Commonwealth of Massachusetts



L. JOYCE HAMPE 18
COMMISSIONER

Department of Revenue
Leverett Saltonstall Building,
100 Cambridge Street, Boston 02204

March 30, 1982

You request a ruling concerning the Massachusetts taxation of contributions to the Retirement Savings Plan.

Under the Retirement Savings Plan, ("Company") makes contributions on behalf of each participating employee to a profit-sharing plan which includes a cash or deferred payment option. The amount contributed is a percentage of the employee's salary. The employee receives the total contribution in cash except to the extent that he directs that the contribution be made to the profit-sharing plan. Distributions from the profit-sharing plan may not be made prior to the employee attaining age 59½ unless he previously becomes disabled, dies, terminates employment, or has severe financial difficulties. You have requested a ruling from the Internal Revenue Service that the profit-sharing plan qualifies under Section 401(a) of the Internal Revenue Code ("Code").

Under the Retirement Savings Plan, the employee may participate in the Company's individual retirement account plan ("IRA"). Each employee may contribute up to \$2,000 per year by means of payroll deduction. You state that for federal tax purposes the employee is allowed to deduct such contributions under Code Section 219.

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Sections 401(k) and 402(a)(8) of the Code provide for the taxation of profit-sharing plans which include cash or deferred payment options. These sections were added to the Code by Public Law 95-600, the Revenue Act of 1978 ("Act"). Although the Act was approved on November 6, 1978, the amendments to the Code made by these sections were applicable to plan years beginning after December 31, 1979.

Massachusetts General Laws Chapter 62, Sections 1 and 2 defines "Massachusetts gross income" as federal gross income under the Code as amended on November 6, 1978 and in effect for the taxable year.

Under the Code as amended and in effect on November 6, 1978, contributions to a plan qualified under Section 401(a) which included a cash or deferred arrangement, were employer contributions where the amounts deferred were distributable only after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance of employment. Employer contributions were included in the employee's gross income in the year in which distributed or made available. Rev. Rul. 497, 1956-2 C.B. 284; Rev. Rul. 180, 1963-2 C.B. 189; Rev. Rul. 89, 1968-1 C.B. 401.

Under Code Section 3401(a)(12)(A), payments by an employer on behalf of an employee to a trust described in Section 401(a), which is exempt from tax under Section 501(a), at the time of such payment, are not "wages" subject to federal income tax withholding.

Employee compensation is subject to Massachusetts income tax withholding if it is taxable under General Laws Chapter 62 and if it constitutes "wages" for federal withholding purposes.

Although Section 219 of the Code allows a deduction for employee contributions to an IRA, Massachusetts General Laws Chapter 62, Section 2(d)(9) expressly disallows the deduction allowed by Section 219 of the Code.

Based on the foregoing, it is ruled that:

1. Amounts contributed by the Company on behalf of its employees to a profit-sharing plan qualified under Code Section 401(a) which includes a cash or deferred payment option are not taxable to the employees for Massachusetts income tax purposes in the year contributed; amounts paid by the Company to its employees under the cash option are taxable to the employees in the year paid.

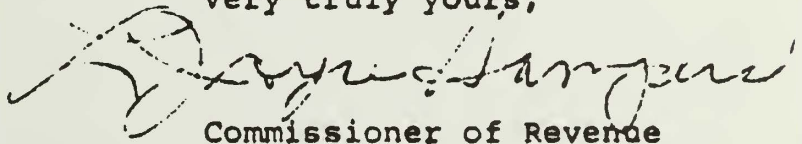
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2. The amounts contributed to the profit-sharing plan are not subject to Massachusetts income tax withholding in the year contributed if they are not subject to federal withholding in that year.

3. Amounts paid to eligible employees from the profit-sharing plan are included in their Massachusetts gross income in the year in which distributed or made available.

4. Amounts contributed by the employees to the Company's IRA are not deductible from the employees' Massachusetts gross income.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Raymond J. Langone".

Commissioner of Revenue

LJH:JD:mf

LR 82-29