

LANGIND E
DOCNUM 9412155
REPLACES
TYPEKEY R
AUTHORDV LEGS
AUTHORJSZESZ
DESCKEY 5
RATEKEY 1
REFDATE 940726
ETADYEAR
ETADSORT
ADMINACC LEGS
ACCESSLV LEGS99
SUBJECT HEALTH AND WELFARE TRUSTS
SECTION 6(1)(a)
SECTION 18(1)
SECTION
SECTION
SECTION
\$\$\$\$

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the Department.
Prenez note que ce document, bien qu'exact au moment Èmis, peut ne pas reprÈsenter la position actuelle du ministere.

PRINCIPAL ISSUES:

Whether the (continued) existence of a surplus in a health and welfare trust jeopardizes the status of the trust as a H & W trust and, if so, what steps are normally taken to reduce the surplus.

POSITION TAKEN:

The mere existence of a surplus does not itself affect the status of the trust. If the surplus is seen to be permanent a premium or contribution holiday can serve to reduce it over time.

REASONS FOR POSITION TAKEN:

If a surplus continues it indicates that the level of annual contributions by participating employers exceeds that which is needed to operate the trust and meet ongoing obligations, a situation which could affect the deductibility of contributions to the trust.

941215

XXXXXXXXXX J.A. Szeszycki

Attention: XXXXXXXXXXXX

July 26, 1994

Dear Sirs:

Re: Health and Welfare Trust

This is in reply to your letter of May 27, 1994 in which you requested our views on the consequences to a health and welfare trust in maintaining a surplus in the trust.

In considering the issue you have asked us to assume the following facts:

1. The trust qualifies as a health and welfare trust, as described in interpretation bulletin IT-85R2, and funding is provided by one or more participating employers.
2. The trust assumes some of the actuarial risk associated with the benefits that it provides to employees of the participating employers. The required level of contributions by participating employers is determined by a qualified actuary on the basis of future expected experience.
3. The actual experience may be higher or lower

than the expected experience and could therefore produce a deficit or surplus in the trust.

4. The assets of the trust are invested in securities the value of which will fluctuate with the movement on the applicable stock exchange. These fluctuations can result in a deficit or surplus position in the trust.

5. The trust liabilities also periodically undergo an actuarial valuation and may result in a deficit or surplus in the trust.

6. The objective of the trust is to break even over a time frame of about 10 years.

You have asked to what extent and for how long a surplus produced by fluctuations can be maintained without jeopardizing the status of the trust as a health and welfare trust. You also enquire as to the steps that should be taken, if any, to maintain the status of the trust as a health and welfare trust under these circumstances.

We are unable to provide you with a definitive response from the hypothetical facts presented. It would appear that there may be a factual situation involved that has prompted your enquiry. If so, we

would recommend that you provide the local district taxation office with all relevant information and documentation for a more specific response to the specific circumstances. We are prepared, however, to provide you with some general comments on the subject.

We will assume from the facts set out above that the trust was established in the proper manner as a health and welfare trust, for the purposes of administering the health and welfare benefits of employees. We would emphasize here that the primary purpose of establishing a health and welfare trust is to facilitate the provision of certain benefits to employees. As a result, we would expect that temporary accumulations of cash would be placed in relatively liquid short term investments rather than higher risk, longer term investments so that funds will be available to meet the expected claims experience. We recognize that under normal circumstances the actual experience of the trust in any given period will not match precisely the expected experience determined by an actuary and used in the calculation of contributions required for the trust to meet its anticipated obligations.

The obligations of the trustee(s) of a health and welfare trust are to administer the plans held in the

trust by managing its resources and satisfying the claims made pursuant to those plans. This trust management may include arrangement of a periodic assessment of the level of contributions required to the trust by the employer(s) in order to meet its ongoing commitments.

The existence of a surplus (or deficit) in any given year will not, in itself, affect the status of the trust as a health and welfare trust. Where a deficit exists, the level of contributions by the participating employer may have to increase in order to meet the plan's obligations as those obligations are indicated by the plan's experience. Where a surplus exists in any given year, a review of all the circumstances would generally be undertaken in order to determine whether the surplus can be expected to be temporary or of a more or less permanent nature. Where the surplus is seen to be relatively permanent, the most common mechanism for its reduction is a premium (contribution) holiday. Where such a step is not taken within a reasonable time, the level of annual contributions by participating employers may be seen as being in excess of that which is needed to meet their obligations under the health and welfare plan administered by the trust and, as a result, may jeopardize the deductibility of contributions to the

trust by the participating employers.

We hope our comments will be of assistance to you.

Yours truly,

P.D. Fuoco
for Director
Business and General Division
Rulings Directorate
Policy and Legislation Branch
??