

Rev. Rul. 56-249, 1956-1 CB 488

Rev. Rul. 56-249, 1956-1 CB 488 -- IRC Sec. 3306 (Also Sections 61, 3121, 3401.)

[CAUTION: This Rev Rul has been amplified by Rev Rul 60-330, 1960-2 CB 46 and Rev Rul 77-347, 1977-2 CB 362.]

Reference(s): Code Sec. 3306;

Advice is requested whether benefits paid, under certain circumstances, to individuals by trustees of a trust created pursuant to the provisions of a supplemental unemployment benefit plan established by M Company constitute "wages" for purposes of the taxes imposed under the Federal Unemployment Tax Act and the Federal Insurance Contributions Act, and for purposes of the Collection of Income Tax at Source on Wages (chapters 23, 21, and 24, respectively, subtitle C, Internal Revenue Code of 1954). A further inquiry has been received as to whether such benefits paid by the trustees are includible in the gross incomes of the recipients.

Under section 3306(b) of the Federal Unemployment Tax Act, the term "wages" means, with certain exceptions not here material, all remuneration for "employment." The term "employment," as defined in section 3306(c) of such Act, means any service performed by an employee for the person employing him, with certain exceptions and limitations.

Pursuant to an agreement entered into with O Labor Union, The M Company established a plan designed to supplement State system unemployment benefits payable to certain former employees of M Company who have been laid off by the Company by reason of a reduction in force or the discontinuance of a plant or an operation.

Under the terms of the plan, M Company is to make, for each pay period, a contribution to a fund held and administered by an independent trustee equal to x cents, multiplied by the total number of hours for which its eligible employees shall have received pay from the company for such pay period. The company's obligation to make such contributions ceases, however, whenever the total of amounts held by the trustee in the fund equals a maximum level determinable under the terms of the plan. The size of the fund created under the plan is limited to a specified maximum amount, such amount being dependent upon the number of employees who are in the active service of M Company and the number of laid-off employees who have credit units under the plan. No employee of M Company has any right, title, or interest in or to any of the assets of the fund or in or to any Company contribution thereto unless and until he is qualified and eligible to receive a benefit therefrom. M Company's contributions will be irrevocable; and M Company will not have any ownership therein during the ordinary operation of the plan, or in the assets comprising the fund. Legal title to said assets, as well as to Company contributions, rests in the trustee, who will use the assets solely in the interests of the employees. Upon a termination of the plan, the amounts in the fund will be used to pay benefits to employees already or subsequently laid off. The fund is the sole source of benefit payments. M Company is required to make specified payments to the fund but is in no way liable for additional contributions to such fund or otherwise, or for the payment of benefits should the assets of such fund prove insufficient.

The benefits payable from the fund are to be in varying amounts and for varying periods, depending on the size of the fund, duration of layoff of an employee, time worked prior to layoff, amount of State unemployment benefits available, and the base hourly-rate of the individual employee, less taxes withheld. Generally, the benefits <Page 490> payable under the plan to a beneficiary in a State where the amount thereof will not reduce or cancel State unemployment benefits shall be such sum which, together with the State unemployment compensation benefit and other remuneration (which cannot be in an

amount equal to or in excess of that amount which would disqualify the beneficiary for such State benefit), equals the lesser of (a) a prescribed percentage of the employee's current straight-time weekly pay after withholding of all taxes and contributions, or (b) w dollars.

The duration of benefits to an individual under the plan is related to, among other factors, the number of credit units which the individual has accumulated by reason of his service with M Company. For each week worked subsequent to the effective date of the plan, each employee is credited with z units; but he shall never accumulate more than 52 z units. For each weekly benefit received under the plan, an individual is charged a number of accumulated credit units, such charge being governed by (a) the level of the fund at the time of such payment and, if such level is not equal to the maximum level prescribed, (b) the number of years during which the individual worked for M Company. That is, if the level of the fund is equal to the prescribed maximum, all eligible individuals under the plan are charged the same number of accumulated credit units for each weekly benefit. If, however, the level of the fund is less than the maximum (but more than a minimum below which no payments may be made from the fund), the number of accumulated credit units charged an eligible individual for each weekly benefit payment is determined on the basis of the number of years of continuous service with M company. No benefit can be paid from the fund to any individual who has no available credit units. Any unused credit units are cancelled at the expiration of y months of continuous layoff.

The plan specifies the particular conditions under which benefits are payable. Benefits are paid only to former employees who have been laid off because of certain enumerated conditions such as a reduction of the working force or the discontinuance of a plant by M Company. Furthermore, benefits are payable only after a "waiting period" of v weeks. However, neither layoff nor resulting unemployment alone is sufficient to entitle a former employee of M Company to benefits. Nor are benefits payable to employees who, although not in a work status during a particular week, are in a "standby" capacity in the sense that their availability for work is limited to M Company.

To be eligible for a benefit, a former employee must report to and register for employment with the State Employment Service. All requirements of State unemployment compensation laws designed to limit the payment of benefits to individuals who are "unemployed" and genuinely available for any suitable work are incorporated as eligibility requirements for the receipt of supplemental unemployment benefits from the fund.

While a prior period of service with the employer is required in order that an individual be eligible for benefits, the mere existence of such prior relationship, as such, does not establish such individual's eligibility for benefits. His eligibility is also dependent on his continuously <Page 491> meeting conditions subsequent to the termination of his employment with M Company. During this period of unemployment, an individual must be continuously able to work and available for work and he must continue to meet specific periodic reporting requirements. He must satisfy other specific conditions which are applicable at all times when unemployed. He is ineligible to receive supplemental unemployment benefits from the fund if he is ineligible to receive or is disqualified from receiving State unemployment compensation benefits, except in three limited situations, viz., where he has insufficient wage credits under the State law, where he has exhausted the duration under the State law, or where the State law requires "a waiting period" of more than v weeks. But even in such cases, supplemental benefits are payable only if he would otherwise have been eligible for State unemployment compensation and also has complied with the other conditions incorporated in the plan. If by reason of the payment of such supplemental unemployment benefits, however, an individual would be ineligible to receive State unemployment benefits, the plan provides for the payment of a substitute benefit.

Similarly, although payments by M Company to the fund are measured in part by total hours worked by all employees, eligibility for benefits does not depend on whether contributions have been made with respect to hours worked by a specific employee. A former employee may receive benefits although no contributions have been made during the entire period of his employment with M Company (contributions are not made when the fund reaches a specified level). Conversely, a former employee, on the basis of whose employment contributions have been made to the fund, may not be eligible to receive benefits

when unemployed, because of his failure to satisfy the conditions of eligibility during his period of unemployment or because the fund is then below a certain specified level.

Under the plan, the amount of supplemental unemployment benefits paid from the fund is dependent on many conditions. The plan does not provide for a benefit fixed solely on the basis of an individual's prior earnings. The amount of the supplemental unemployment benefit paid from the fund to any former employee depends on the size of the State unemployment benefit to which he is entitled and the amount of other remuneration received which is allowable under State unemployment compensation law, his marital status, the number of his dependents, as well as his wage rate at the time of layoff. An individual who is eligible for a supplemental unemployment benefit will receive a weekly benefit (not in excess of w dollars) in the amount necessary to supplement his State unemployment benefit, plus other allowable remuneration received, up to a stated percentage of his straight time take- home pay.

As observed above, the period for which benefits are paid to a laid-off worker who meets the conditions of eligibility is dependent upon the fund position. When the program is in full operation with the fund at the maximum level, all employees with one or more years of continuous employment with M Company since the effective date of the plan are entitled to the same potential duration of benefits. However, <Page 492> if the fund position is less than a stated percentage, the laid-off employee's seniority becomes a factor in determining the period for which benefits are paid.

An analysis of the information presented discloses that pursuant to the supplemental unemployment benefit plan (1) the benefits are paid only to unemployed former employees of M Company who are on layoff from the Company; (2) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with M Company; (3) benefits are paid by the trustees of independent trust funds; (4) the amount of a weekly benefit payable under the plan is based upon (a) the amount of the weekly benefit payable under the appropriate State unemployment compensation laws, (b) the amount of other remuneration allowable under such State unemployment compensation laws, and (c) the amount of straight-time weekly pay after withholding of all taxes and contributions; (5) the duration of weekly benefits payable under the plan depends upon a combination of (a) the number of accumulated credited units, and (b) the fund position; (6) a right, if any, to benefits does not accrue until a prescribed period after the termination of the employment relationship with M Company has elapsed; (7) the benefits ultimately paid are not attributable to the rendering of particular services by the recipient during the period of his employment; and (8) no employee has any right, title, or interest in or to any of the assets of the fund or in or to any Company contributions thereto until such time as he is qualified and eligible to receive a benefit therefrom.

In view of the foregoing, and on the basis of all the facts and circumstances set forth herein, it is concluded that the benefits paid to former employees of M Company under the terms of the supplemental unemployment benefit plan do not constitute "wages" for purposes of the Federal Unemployment Tax Act.

It is also concluded that the benefits paid to former employees of M Company under the terms of the supplemental unemployment benefit plan do not constitute "wages" for purposes of the Federal Insurance Contributions Act and the Collection of Income Tax at Source on Wages.

Notwithstanding the foregoing conclusions, it is further held that the benefits paid to former employees of M Company under the terms of the supplemental unemployment benefit plan are includible in the gross incomes of such former employees for Federal income tax purposes for the year in which received.