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Subject: Cafeteria Plans and Flexible Benefits

1. Question: Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. If any amount is left at the end of the year, the employee loses the money. Must the withheld amount be counted as earned income?

Answer: Yes, it must be counted as earned income when withheld. The money is legally obligated and otherwise payable to the employee at that time.

2. Question: Some companies make credits available to employees. The credits may be used for a variety of things, e.g., to buy health insurance, life insurance, annual leave, or sick leave, but the employee cannot elect to receive a cash payment. If the expense costs more, the employee pays the extra. If the employee does not use the credits, the employee loses them. The amount shows up on the pay stub when used. Are these flexible benefits counted as income?

Answer: No. They are not legally obligated and otherwise payable to the employee as earnings.

/s/

Thomas O'Connor

Director

Program Development Division