

Mr. Henry Gordon
Excise Tax Unit

Section 12202
Annotate

July 21, 1989

David H. Levine

This is in response to your mini-memo dated July 6, 1989. You have included a response from this taxpayer to your letter dated [redacted] and you ask whether the plans referred to in the accompanying IRS letters would meet both criteria of Section 12202. For example, you note that one letter is in reference to Section 401 and not specifically Section 401(a), and that the names of the plans in two other letters do not necessarily suggest a pension or profit sharing plan.

In reviewing the IRS letters supplied by taxpayer, it appears that taxpayer had submitted its policies to the IRS and asked if such plans would be acceptable under IRC Section 401. Thus, in a statement that is representative of the statements in the other letters, one letter states:

"Our opinion as to the acceptability of the form of plan does not constitute a ruling or determination of the qualification of an employer's plan under section 401(a) of the Code, or of the exemption of the related trust or custodial account under section 501(a). An employer adopting the form of plan who wants a determination must file an application with the District Director of Internal Revenue on Form 5307, Short Form Application for Determination for Employee Benefit Plan."

This means that the form of this policy is acceptable to the IRS for purposes of a favorable determination. However, that favorable determination would be sought by the employer/policyholder based upon the specific facts of that employer's plan. The name indicated on these letters under "Name of Plan" is the name

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of the type of policy taxpayer will issue and not the name of a specific pension or profit-sharing plan. These letters are not responsive to your letter of

Although these letters do indicate that the amounts at issue may be entitled to the reduced rate, they are not sufficient. What we need from the taxpayer is confirmation that the amounts at issue were actually received from policies issued to pension or profit-sharing plans which were exempt or qualified under the relevant IRC sections and not that the amounts at issue are from policies that would be acceptable to the IRS for these purposes but may not have been issued to qualifying pension or profit-sharing plans.

DHL:jb

cc: Mr. E. L. Sorensen, Jr.

Mr. Monte Williams

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