



Tax Reduction Letter

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Private Letter Ruling 6801229830A

Gross Income

This is in response to a request for a ruling submitted on your behalf by ***, in a letter dated June 15, 1967. The ruling requested is as follows:

- (1) The premiums for Policies No. 1 and No. 2, both hereinafter described, are deductible by *** as necessary business expenses under section 162 of the Internal Revenue Code of 1954;
- (2) Such premiums are not includible as income to the officers and directors of *** but rather are noncompensatory fringe benefits.

The facts submitted are as follows: *** proposes to purchase liability insurance covering its officers and directors. There are two policies which are sold in a package, the terms of which are incorporated by reference. Policy No. 1 would indemnify *** against damages sustained as a result of wrongful acts committed or allegedly committed by its officers and directors in their official capacities. Policy No. 2 would reimburse the officers and directors for their expenses arising from such wrongful acts. A wrongful act is defined as any error, misstatement, misleading statement, wrongful act, omission, neglect, or breach of duty by the officers and directors or any matter claimed against them in their [*2] individual or collective capacities as officers or directors.

Section 1.162-1(a) of the Income Tax Regulations provides, in part, 'Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than section 162. Among the items included in business expenses are * * * insurance premiums against fire, storm, theft, accident or other similar losses in the case of a business.' Section 61(a)(1) of the Code defines gross income as including compensation for services, including fees, commissions, and similar items.

The premiums in question would be paid to meet an obligation of *** on account of the employment of its officers and directors and are thus connected with the business of *** and ordinary and necessary. Since the premiums would be paid solely to protect the business of *** by limiting its liability for wrongful acts of the officers and directors in the discharge of their official duties and to assure it the officers and directors can make banking business decisions without fear [*3] of legal entanglements, they are noncompensatory in nature.

Accordingly, it is held that the premiums for Policies No. 1 and No. 2 are ordinary and necessary business expenses deductible by *** under section 162 of the Code. Cf. *Union Investment Co. v. Commissioner*, 21 T.C. 659 (1954); *Larchfield Corp. v. U.S.* 373 F.2d 159, (December 20, 1966), affirming and modifying 203 F.Supp. 821 (D.C. Conn., 1962); Rev. Rul. 55-264, C.B. 1955-1, 11. It is further held that the premiums are not includible as income to the officers and directors of *** under section 61 of the Code.

As requested by your power of attorney dated April 28, 1967, copies of this letter are being sent to ***

(signed) L. H. Schweickhardt
Chief, Corporation Tax Branch