



[CLICK HERE](#) to return to the home page

Rev. Rul. 78-185

A company has a stock purchase plan for its full-time employees that does not qualify either as an employee stock purchase plan under section 423 of the Internal Revenue Code of 1954, or as a qualified pension, profit-sharing, or stock bonus plan under section 401. At the end of each month the company makes contributions to the plan on behalf of each participant in an amount equal to a percentage of the dollar amount of the participant's contributions into the plan for that month. On the same day the employer then credits the employee's account with the number of whole and fractional shares of the employer's common stock that the sum of the employer's and the employee's contributions for that month would purchase based <Page 305> upon the average of the closing prices of that stock on the New York Stock Exchange for each trading day of the month. There is no forfeiture provision for either the employee or employer contributions to the plan.

Section 3121(a) of the Federal Insurance Contributions Act and section 3306(b) of the Federal Unemployment Tax Act provide, with certain exceptions, that the term "wages" means "all remuneration for employment." Section 3401(a) of the Code, relating to income tax withholding, contains a similar definition.

Section 31.3121(a)-1(e) of the Employment Tax Regulations, relating to FICA, and section 31.3306(b)-1(e) of the regulations relating to FUTA, state, "Remuneration paid in items other than cash shall be computed on the basis of the fair value of such items at the time of payment." Section 31.3401(a)-1(a)(4) of the regulations relating to income tax withholding, contains a similar statement.

Held, the excess of the fair market value of the stock on the date of the crediting of such stock to the employee's account over the amount of the employee's contribution is "wages" for purposes of FICA, FUTA, and income tax withholding. Compare Rev. Rul. 58-269, 1958-1 C.B. 344, which holds, in part, that the fair market value of any stock an individual receives from a corporation for services as an officer of that corporation is wages for purposes of the FICA and the Collection of Income Tax at Source on Wages.