

MEMORANDUM

Novak | Francella
 LLC CERTIFIED PUBLIC ACCOUNTANTS

DATE December 24, 2004
TO New York City District Council of Carpenters Vacation Fund
FROM Brian Francella & Louis Verzella
SUBJECT Rules on Constructive Receipts of Income on Vacation Benefits Earned

Gentlemen:

At the most recent Trustee's meeting for the Vacation Fund we were asked to respond to an issue regarding the reporting of vacation benefits to employees of delinquent employers of benefit contributions. The following is our analysis.

QUERY: When should a cash basis taxpayer report as taxable income a vacation benefit? In the year the benefit is earned or the year it is paid, if different.

Does the constructive receipt of income doctrines apply to an employee who has earned a vacation benefit but is not paid by the Vacation Fund in the same year because the employee's employer is delinquent in paying its contributions to the Vacation Fund?

Facts and Circumstances:

Employees of participating employers to the Vacation Fund earn vacation benefits based on the number of hours worked. The employers report as taxable income the vacation benefit earned, which is added to their taxable wages on a calendar year basis.

Participating employers pay the contributions to the Vacation Fund for vacation benefits earned by their employees which results in taxable income to their employees.

The Vacation Fund pays the participating employees only the vacation benefits that were received from the participating employers. If a participating employer becomes delinquent on their vacation benefits, the Vacation Fund is only obligated to pay the vacation benefits that have been received for each participant even through the employee has earned these benefits.

December 24, 2004

DRAFT

TO: Participating Vacation Fund Employers
FROM: New York City District Council of Carpenters Vacation Fund
SUBJECT: Vacation Benefits Form W-2 Reporting and Form 941 Filings

It has come to our attention that contributing employers to the New York City District Council of Carpenters Vacation Fund have been including the entire vacation benefit amount for the year in an employees annual wage reporting, Form W-2, when the employer may be on a payment plan with the Fund for part of these benefits. Those employers with payment plans with the Fund for delinquent benefit contributions should only report the amount of vacation benefits, as taxable income on an employee's Form W-2, that have actually been earned and paid to the Fund on a calendar year basis.

Our independent accountants have determined that the constructive receipt of income doctrines does not apply to vacation benefits earned by an employee for which an employer has not paid this benefit to the Vacation Fund in the same calendar year.

Please review your procedures for reporting vacation benefits on your employees Form W-2 and your Form 941 filing, if your have a payment plan with the Fund.

If you have any questions, please do not hesitate to contact our accounting department or our independent accountants, Brian Francella at 212.279.4262. Thank you for your cooperation.

Analysis:

Constructive receipt of Income - General Rule - Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdrawal had been given.

A cash basis taxpayer is not in constructive receipt of income when the taxpayer's control of the receipt of the income is subject to substantial limitation or restriction. A substantial limitation or restriction, sufficient to prevent constructive receipt, exists if the income is not available to the taxpayer, so that the taxpayer cannot draw against or secure possession.

Conclusion:

A vacation benefit that has not been paid in the same year as it was earned is not taxable income for that year and should not be included on the employee's Form W-2. There is no constructive receipt of income due to the fact that the employee cannot draw his vacation benefit against the Vacation Fund unless the Vacation Fund has received the contribution in the same year as earned. The employer should report the vacation benefit as taxable income on the employee's Form W-2 in the year it is paid by the Vacation Fund.

We have prepared a memorandum to be distributed to all contributing employers of the Vacation Fund to inform them of this employee reporting issue.