

INTERNAL POLICY DIRECTIVE 2005-4

December 14, 2005

SINGLE BUSINESS TAX COMPENSATION; PERSONAL LIABILITY INSURANCE PREMIUMS

POLICY ISSUE

Are insurance premiums for Directors and Officers liability coverage and/or personal liability coverage for employees, officers and directors considered compensation for purposes of the SBT add back? Are the paid premiums considered compensation for purposes of the Small Business Credit? Are the paid premiums compensation for purposes of the statutory exemption when paid for the benefit of shareholders who are also employees?

POLICY DETERMINATION

The answer is yes for all three questions, as the insurance is purchased to protect employees, officers and directors from personal liability.

DISCUSSION

MCL 208.4 states in pertinent part:

Except as otherwise provided in subsection (4), "compensation" means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to state and federal unemployment compensation funds, payments under the federal insurance contribution act and similar social insurance programs, payments, including self-insurance, for worker's compensation insurance, payments to individuals not currently working, payments to dependents and heirs of individuals because of current or former labor services rendered by those individuals, payments to a pension, retirement, or profit sharing plan, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payments of fees for the administration of health and welfare and noninsured benefit plans

The purpose of Directors and Officers liability insurance and personal liability insurance is to protect employees, officers and directors, from being personally liable for incidents arising from their employment or duties, that in the absence of the policy, could lead to the employee, officer or director being liable for any remedy imposed in a civil action. As a result, the policy serves the purpose of paying the costs for defense as well as any money damages assessed against the employee, officer or director.

Accordingly, the insurance premiums are "payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayer" and therefore qualify as compensation.