S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

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Opinion No. 07-53

Payroll Deduction Under Tenn. Code Ann. § 8-23-204(a)(2) for Personal Computers Purchased Through a Tennessee State Employees' Association Program

QUESTION

The Tennessee State Employees' Association (TSEA) has an arrangement with a computer vendor under which state employees may purchase a personal computer[1] and pay for the computer through payroll deductions. In this situation, does Tenn. Code Ann. § 8-23-204(a)(2) require the Department of Finance and Administration (F&A) to make payroll deductions for an individual's payments on a computer purchased under TSEA's program?

OPINION

The payroll deduction of an amount equal to a periodic payment for the purchase of a personal computer is not a "benefit premium" as contemplated by Tenn. Code Ann. § 8-23-204(a)(2). Thus, the statute does not require the Department of Finance and Administration to deduct this amount from payroll.

ANALYSIS

F&A and TSEA provided the following factual information.

TSEA has a program that allows its members to purchase a personal computer and pay for it through payroll deductions.[2] TSEA sends State Payroll (part of F&A's Division of Accounts) a list of employee members and the deductions to be made for these employees' membership dues and benefit premiums. F&A had assumed that "benefit premiums" meant premiums for insurance programs. Around the beginning of 2006, however, the State learned that TSEA was submitting deductions for its personal computer purchasing program. According to F&A, this practice has

[1]For individual use, not work-related.

[2]The following notice is on TSEA's web site: "Computer Offer: How does owning a brand new computer sound? How about having 18 months to pay it off with no interest, and have the payment through payroll deduction? This is one of the most exciting advantages TSEA has ever offered. Visit ECP2 at www.tsea.epc2.com. or call 1-800-537-3134."

caused problems in garnishment and bankruptcy cases in discerning the status of this deduction under applicable law and court orders.

The TSEA reads the term "benefit premiums" to include a benefit or premium, such as the computer purchase program. F&A reads the term to mean premiums for insurance programs. F&A asked TSEA to discontinue the computer purchase-related payroll deductions. TSEA contends that this deduction is authorized, even required, by statute and has stated that it does not have to discontinue the computer-related deductions. Both cite the statute as support for their position.

Tenn. Code Ann. § 8-23-204 addresses payroll deductions for certain associations, like TSEA. The statute states, in pertinent part, as follows:

> Any employee of a state agency may authorize deductions for the payment of [association] **membership dues and benefit premiums** to be made from the employee's compensation for payment to an employee association . . . .

Tenn. Code Ann. § 8-23-204(a)(2) (emphasis supplied). The pivotal point on which F&A's and TSEA's question turns then is the meaning of the term "benefit premiums" in Tenn. Code Ann. § 8-23-204(a)(2).

Our objective is to determine what the legislature intended when it enacted Tenn. Code Ann. § 8-23-204(a)(2). To ascertain the legislature's intent, we first look at the statutory language itself and give it a plain and natural reading. *Austin v. State*, 831 S.W.2d 789, 791 (Tenn. App. 1991). If the statute is unambiguous, our inquiry ends. *See, e.g., Saturn Corp. v. Johnson*, 197 S.W.3d 273, 276 (Tenn. 2006). To resolve the issue at hand, however, we assume that the statute may be susceptible to both TSEA's and F&A's interpretations, and that we may look behind the statutory language for the legislative intent. In doing this, "[o]ur construction of [this] statute is more likely to conform with the General Assembly's purpose if we approach the statute presuming that the General Assembly chose its words purposely and deliberately." *See, e.g., Tidwell v. Servomation-Willoughby* Co., 483 S.W.2d 98, 100 (Tenn. 1972).

The statute says "benefit premiums." Tenn. Code Ann. § 8-23-104 does not define this term, nor have we found a definition for the term in other parts of the Tennessee Code. The phrase "benefit premiums," however, offers guidance to its meaning itself. "Benefit" operates as an adjective and "premium" is the noun it modifies. Thus, the statute allows payroll deductions for the payment of a premium for a benefit.

Common payroll deductions for state employees are for health insurance, dental insurance, life insurance, long term health care insurance and optional special accident insurance. Payroll deductions may also include other items, such as membership in the state retirement system, contributions to the state deferred compensation program, participation in the flexible benefits plan

and the BEST[3] program.[4] Obviously, the amount deducted for the items listed in the first sentence are for premiums to purchase insurance coverage. The amount deducted for the items listed in the second sentence are not premiums but are the employee's contributions to his retirement plan and the employee's payment into voluntary state employee savings programs.[5]

TSEA argues that "premium" may mean a "bonus" or "reward" and a "benefit" may be "an advantage; profit; fruit; privilege; gain; interest." *Black's Law Dictionary* (6th ed.).[6] But those definitions do not make sense in this context — because the payor of the premium here is the employee. The employee is not paying a bonus or reward to the company selling the personal computer. He is making a payment to reduce a debt. In its second definition of "premium," *The Webster's Collegiate Dictionary* defines the word "premium" as "the consideration paid for a contract of insurance." That definition fits here, given the adjective modifying "premium," *i.e.*, "benefit." In the employment context, the word "benefit" is a commonly used word and is understood to mean employee benefits such as health, life and dental insurance, which require the payment of premiums, and other benefits which do not (recreational facilities, sick leave, profit-sharing plans, paid holidays and the like). All these benefits are incidents of the individual's employment, as an addition to wages, and are not benefits unrelated to the employment, such as the purchase by an employee of a computer for personal use. *See, e.g.,* Op. Tenn. Att'y Gen. No. 05-052 (April 20, 2005). The legislative history supports this interpretation.

F&A reviewed the legislative history tapes for this statutory provision in the State Archives. Here is what F&A reported after its search:

> In the House Calendar and Rules Committee March 29, 1989, meeting, Representative Naifeh, a sponsor of the House bill, characterized the amendment as being for payment of "medical benefits." In the Senate State and Local Government committee meeting of May 9, 1989, Senator Atchley, a sponsor of the bill, spoke at length about the purpose of the bill. He said that it was to allow state employees to purchase disability insurance. He spoke of the importance of disability insurance and how this would help state employees.

F&A found no discussion of the issue in the House State and Local Government committee meeting on March 21, 1989, or the House session held on April 5, 1989. F&A heard no mention of the purchase of computers or other consumer goods in any legislative proceeding. The legislative history

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[3] Baccalaureate Education System Trust Program.

[4] *See, e.g.*, Employment information of the Tennessee Department of Personnel at http://www.gov/personnel and Middle Tennessee State University at http://www.mtsu.edu.

[5] The flexible benefits plan is not a savings *per se*. It is the employee's allocation of income to gain certain federal tax advantages. *See* 26 U.S.C. § 125(d).

[6] *Black's* goes on to define several terms in which the word "premium" is found. Almost all are related to the payment of an insurance premium.

clearly supports interpreting "benefit premiums" as meaning insurance premiums and like charges for employee benefits.

We conclude that "benefit premiums" means premiums paid by an employee for an insurance policy or like benefit. Thus, an employee's periodic payment for his privately purchased computer is not a payroll deduction required by Tenn. Code Ann. § 8-23-104(a)(2).

ROBERT E. COOPER, JR.
Attorney General

MICHAEL E. MOORE
Solicitor General

KATE EYLER
Deputy Attorney General

Requested by:

Commissioner M.D.Goetz, Jr.
State Capitol
Nashville, TN 37243-0285

The Honorable John G. Morgan
Comptroller of the Treasury
State Capitol
Nashville, TN 37243