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[redacted]

[redacted]

RE: Opinion Letter regarding Administrative Services Agreement with WorXsiteHR Insurance Solutions, Inc.

To Whom It May Concern:

You have requested the opinion of my firm regarding the Administrative Services Agreement with WorXsiteHR Insurance Solutions, Inc. (hereafter WorXsiteHR). Specifically, you are concerned about the validity of the §125 plan, the exclusion from income of subsidized payments received by your employees from Wellness Worx, Inc. (d/b/a Xtension Health), a 501(c)(3) nonprofit corporation, and whether the reimbursed payments are wages subject to employment taxes under Internal Revenue Code §3121(a), §3306(b), and §3401(a). This opinion is only intended for the use of [redacted] and cannot be used for any other entity or individual.

FACTS

[redacted] wishes to enter into an Administrative Services Agreement (hereafter Agreement) with WorXsiteHR Insurance Solutions, Inc. to provide third party administration for a medical and wellness plan. Per the Agreement, WorXsiteHR will administer the employees benefit plan for which the employees shall pay premium on a weekly basis through a payroll deduction. In addition, [redacted] will pay an administrative fee to WorXsiteHR to maintain the plan.

WorXsiteHR has an agreement with Xtension Health (a 501(c)(3) nonprofit corporation) whereby Xtension Health will subsidize a portion of the employee's weekly premium for the plan. Xtension Health will forward the subsidy to [redacted], which will hold the money as a fiduciary for the employees and will distribute the subsidies to each employee on a weekly basis.

[redacted]

ANALYSIS

Generally, gross income includes all income from whatever source derived. See I.R.C §61(a); Treas. Reg. §1.61-1(a). While I.R.C. §61 broadly applies to any accession to wealth, statutory exclusions from gross income are to be narrowly construed. See Commissioner v. Schleier, 515 U.S. 323, 328, 115 S. Ct. 2159, 132 L. Ed. 2d 294 (1995); United States v. Burke, 504 U.S. 229, 233, 112 S. Ct. 1867, 119 L. Ed. 2d 34 (1992); Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431, 75 S. Ct. 473, 99 L. Ed. 483, 1955-1 C.B. 207 (1955).

In general, I.R.C. §106(a) provides that gross income of an employee does not include employer-provided coverage under an accident or health plan. Under I.R.C. §106 (a), an employee may exclude premiums for accident or health insurance coverage that are paid by an employer. Also, under I.R.C. §105 (b), an employee may exclude amounts received through employer-provided accident or health insurance if those amounts are paid to reimburse expenses incurred by the employee for medical care (of the employee, the employee's spouse, or the employee's dependents) for personal injuries or sickness.

I.R.C. §§ 3101 and 3111 impose FICA taxes on "wages" as that term is defined in section 3121 (a), with respect to "employment," as that term is defined in I.R.C. § 3121 (b). The term "wages" is defined in I.R.C. § 3121 (a) for FICA purposes as all remuneration for employment, with certain specific exceptions.

I.R.C. § 3301 imposes FUTA tax on wages paid with respect to employment. The general definitions of the terms "wages" and "employment" for FUTA purposes are similar to the definitions for FICA purposes. See I.R.C. §§ 3306(b) and 3306(c).

I.R.C. § 3402(a), relating to federal income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures. The term "wages" is defined in I.R.C. § 3401 (a) for federal income tax withholding purposes as all remuneration for services performed by an employee for his employer, with certain specific exceptions.

To the extent amounts are excluded from gross income under §105 (b) or 106 (a), they are also excluded from income tax withholding under I.R.C. §3401. In addition, amounts paid to reimburse expenses incurred by the employee for medical care (of the employee, the employee's spouse, or the employee's dependents) for personal injuries or sickness are also excluded from FICA and FUTA taxes under I.R.C. §§3121 (a) and 3306 (b).

I.R.C. § 3121(a)(5)(G) provides an exception from FICA wages for any payment to or on behalf of an employee under a cafeteria plan (within the meaning of §125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if §125 applied for purposes of §3121) §125 would not treat any wages as constructively received. I.R.C. §3306(b)(5)(G) contains a similar exception from wages for purposes of FUTA tax.

A cafeteria plan is defined in I.R.C. §125 as "a written plan under which all participants are employees, and the participants may choose among two or more benefits consisting

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of cash and qualified benefits." I.R.C. §125(f) provides generally that a "qualified benefit" means any benefit which is not includible in the gross income of the employee because of an express provision of the Internal Revenue Code. See, e.g.,§105 and §106 (employer-provided accident and health plans). A salary reduction agreement between the employee and employer in which the employee agrees to contribute a portion of his or her salary on a pre-tax basis to pay for qualified benefit is sufficient to satisfy the "cash" requirement of a cafeteria plan. Therefore, amounts contributed to purchase qualified benefits under a cafeteria plan (i.e., accident and health insurance) are generally not subject to income tax withholding or social security taxes if all of the rules of I.R.C. §125have been satisfied. See I.R.C. §3121(a)(5)(G).

I.R.C §501(a) exempts from tax organizations described in, inter alia, In order to be described in I.R.C. § 501(c)(3), an organization must be both "organized and operated exclusively for" certain specified exempt "purposes", which include religious, charitable, educational, and scientific purposes. I.R.C. § 501(c)(3); Am. Campaign Acad. v. Commissioner, 92 T.C. at 1062-1063.

An organization is organized exclusively for one or more purposes specified in section 501(c)(3) only if its articles of organization (articles) (1) limit the purpose of such organization to one or more purposes specified in that section and (2) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more of those purposes. See sec. 1.501(c)(3)-1(b)(1)(i), Income Tax Regs.

The first step in determining whether (1) the employees can exclude from income the cost of the qualified plan and (2) that the employer is not responsible for income tax withholding or social security taxes, is to make sure that the plan is qualified plan under I.R.C. §125. In this instance, the plan meets all the qualifications I.R.C. §125 and the Treasury Regulations thereunder. Since the cafeteria plan is a valid plan, the next issue that must be addressed is whether the subsidy that is given from Xtension Health to the [redacted] low income employees is permitted under the Internal Revenue Code.

Xtension Health has been determined by the Internal Revenue Service as exempt from federal income tax under Internal Revenue Code §501(c)(3). In order to receive this designation it required that Xtension Health, submitted its Articles of Incorporation, Bylaws and Internal Revenue Service Form 1023 titled Application for Recognition of Exemption under Section 501(c)(3) of the Internal Code (which required a detailed explanation of the operations and the purpose of the company). The purpose of Xtension Health as listed in the Articles of Incorporation and provided to the Internal Revenue Service is "to provide subsidized wellness services including, but not limited to, preventative health services, health risk assessments, chronic disease management, wellness coaching, etc,. to low income employees." The subsidizing of low-income employee's health plans satisfies the purpose and mission of Xtension Health, thus, the payments to the low-income employees would be non-taxable subsidies.

As the payment from Xtension Health would be considered a non-taxable subsidy, [redacted] would not be required to do withholding for income taxes or social

[redacted]

security taxes. It is important that [redacted] establish a separate bank account (such as a payroll account) to receive the funds as a fiduciary on behalf of their employees. Assuming the payments to the employees are segregated this money would not be considered income to [redacted]

CONCLUSION

Based upon the facts, it appears that this is a valid §125 plan which would allow the employees to exclude from income the cost of the qualified plan. Further, if the employees are paying for the plan with pre-tax dollars, [redacted] would not be responsible for income tax withholding or social security taxes. Lastly, employees would not have to recognize income from the subsidy from Xtension Health as it is a 501(c)(3) nonprofit corporation compliant with its purpose and mission.

CAVEATS AND LIMITATIONS

The conclusions reached in this letter represent and are based upon the Firm's best judgment regarding the application of the U.S. federal income tax laws arising under the Internal Revenue Code, judicial decisions, administrative regulations, published rulings and other tax authorities existing at the time of this letter. These authorities may be amended or revoked at any time. Any changes may or may not be retroactive with respect to the transactions entered into prior to the date thereof and could cause this opinion letter to be or become incorrect, in whole or in part, with respect to the U.S. federal income tax consequences described herein. The Firm assumes no obligation to update or modify this letter to reflect any developments that my impact the opinion from and after the date of this letter.

This letter is not binding upon the Internal Revenue Service or the courts and there is no guarantee that the Internal Revenue Service will not successfully assert a contrary position. Furthermore, no assurance can be giving that future legislative or administrative changes, on either a prospective or retroactive basis, would not adversely affect the accuracy of the conclusions stated herein.

This opinion letter is based upon the representations, documents, facts and assumptions that have been included or referenced herein and the assumptions that such information is accurate, true and authentic. This Opinion does not address any transactions other than those described herein. In the event any one of the facts or assumptions is incorrect, in whole or in part, the conclusions reached in this Opinion might be adversely affected.

Very Truly Yours,

Greenberg Law Group, P.A.

By: Ross M. Greenberg, Esq.