

COA Opinion: Ford's contributions to the Voluntary Employees' Beneficiary Association were not taxable

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Prior to 1997, Ford Motor Co. paid for healthcare services rendered to its employees, and it correctly reported those payments as employee compensation, which was taxable under the Single Business Tax. From 1997 through 1999, Ford continued to pay directly for healthcare services and also continued to pay taxes on that amount, but the company added another step. During those years, Ford first set aside money in the Voluntary Employees' Beneficiary Association (VEBA), which was a trust that acted as a savings fund; then, when an employee needed reimbursement for healthcare bills, Ford would pay the bill (as it had before) and then seek reimbursement from VEBA. Ford did not report the money it put into VEBA as employee compensation. The Department of the Treasury concluded that both the money that Ford put into VEBA *and* Ford's payments for healthcare services counted as employee compensation and therefore taxed Ford on both amounts, while allowing Ford to offset the VEBA amounts against actual payments. Ford paid the tax liability—\$21.7 million—under protest. In *Ford Motor Co. v. Department of Treasury*, No. 283925 (published May, 20, 2010), the Court of Appeals held that the payments to VEBA were not taxable.

As Judge Zahra explained for the panel, the payments into the trust fund did not fall within the definition of "compensation" set out in MCL § 208.4(3). Additionally, the money in the trust fund was only potential compensation; it did not benefit the employees just by sitting in the fund. After all, even if the fund lost all its value, Ford would still be required to meet its obligations under its healthcare benefit plan. And finally, the Treasury Department's approach of offsetting the payments had no basis in the statute, showed that the Treasury knew its approach could amount to double taxation, and ignored the fact that some money put into the trust fund would be used to make payments during different tax years. Accordingly, the Court reversed the summary disposition the trial court had granted in the Department's favor.