***Gordon v. Commissioner, 88 T. C. 630 (1987)***

Distributions from a profit-sharing plan, even those triggered by disability, are taxable as deferred compensation and not excludable under Section 105 as health or accident benefits unless the plan clearly indicates a dual purpose.

**Summary**

George Gordon received a $102,098 lump-sum distribution from his employer's profit-sharing plan upon resignation due to disability. He argued the payment should be excluded from gross income as a disability payment under Section 105(c) of the Internal Revenue Code. The Tax Court held that the distribution was taxable as deferred compensation, not excludable as a health or accident benefit. The court reasoned that a profit-sharing plan does not serve a dual purpose as a health or accident plan without clear indicia, and the distribution amount was not calculated based on the nature of the injury. This ruling impacts how disability-related distributions from profit-sharing plans are treated for tax purposes.

**Facts**

George Gordon, co-owner and former president of United Baking Co. , resigned in December 1978 after the company ceased operations due to labor issues. In March 1980, Gordon requested a lump-sum distribution from the company's profit-sharing plan, citing total disability due to arteriosclerotic heart disease, angina, and hypertension. The plan allowed for full vesting upon disability, and Gordon received $102,098, the total amount credited to his account. He did not report this distribution on his 1980 tax return, asserting it was excludable under Section 105(c) as a payment for permanent loss of bodily function.

**Procedural History**

The Commissioner of Internal Revenue determined a deficiency in Gordon's 1980 federal income tax, leading to a dispute over the tax treatment of the $102,098 distribution. Gordon petitioned the United States Tax Court for a redetermination of the deficiency. The Tax Court, in a decision by Judge Nims, held for the Commissioner, ruling that the distribution was taxable as deferred compensation.

**Issue(s)**

1. Whether the $102,098 lump-sum distribution from the profit-sharing plan can be deemed received under an accident or health plan within the contemplation of Section 105 of the Internal Revenue Code.
2. If so, whether the distribution satisfies the conditions for exclusion from income contained in Section 105(c).

**Holding**

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1. No, because the profit-sharing plan did not serve a dual purpose as a health or accident plan without clear indicia to that effect.
2. No, because even if it were considered under a health or accident plan, the payment amount was not computed with reference to the nature of the injury as required by Section 105(c)(2).

**Court's Reasoning**

The court emphasized that a profit-sharing plan is primarily a plan of deferred compensation. It rejected the notion that such a plan could serve a dual purpose as an accident or health plan without clear provisions indicating this intent. The court distinguished prior cases where plans were found to have a dual purpose, noting the absence of any health or accident provisions in the United Baking plan. Furthermore, the court found that the distribution amount was not calculated based on the nature or severity of Gordon's disability but was simply the total amount credited to his account. The court also referenced Revenue Ruling 69-141, which supports the position that distributions from profit-sharing plans are taxable as deferred compensation, not as health or accident benefits.

**Practical Implications**

This decision clarifies that disability-related distributions from profit-sharing plans are generally taxable as deferred compensation unless the plan explicitly indicates a dual purpose to provide health or accident benefits. Tax practitioners must carefully review plan documents to determine if they contain the necessary indicia of a dual purpose plan. This ruling may affect how employers structure their profit-sharing plans and how employees plan for potential disability distributions. Subsequent cases, such as *Caplin v. United States* and *Christensen v. United States*, have followed this reasoning, reinforcing the principle that the source and structure of the plan, not the circumstances of distribution, determine its tax treatment.

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