[redacted]

[redacted]

Employer Identification Number: [redacted]
Key District: [redacted]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(9). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are a trust formed on [redacted], for providing a variety of benefits to the employees of [redacted] You are presently only providing a life benefit by an [redacted]

The information submitted shows that [redacted] employees are entitled to receive your life benefit. A participant is entitled to a life benefit of [redacted] times his salary. The information submitted shows that the cost of the owner/employee life benefit is [redacted] of the cost of the life policies. You stated that the life insurance policies are in your name. In a letter dated [redacted], we requested that you submit copies of the insurance policies. However, as of this date we have not received copies of these policies. You will provide for pro rata distribution of your assets upon dissolution.

Section 501(c)(9) of the Code provides for exemption for voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or designated beneficiaries, if no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 505(a) of the Code provides that section 501(c)(9) organizations must meet the nondiscrimination requirements of section 505(b) of the Code unless the participants are a part of a collective bargaining agreement.

Section 505(b)(1) of the Code provides that a VEBA will only meet the nondiscrimination requirements if -

A. each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

B. in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

Section 1.501(c)(9)-4(a) of the Income Tax Regulations states, in part, that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits permitted by section 1.501(c)(9)-3. Whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances.

A section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Thus, the inurement proscription would bar tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual standing in relationship to the organization as an investor for private gain.

In your case, the shareholder/owner of the employer corporation is entitled to over [redacted]% of the cost of the aggregate benefits that are now available under your plan. In addition, by reason of his ownership and control over the employer corporation, your owner/member has ultimate control over the continued existence of the trust.

Under the circumstances, we believe that your owner/member maintains a posture that is incompatible with the inurement proscription of section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with allocation of a dominant share of the cost of the aggregate benefits to the owner/member indicates that you are organized and operated for the benefit of your owner/member and not for any employee group. You are subject to termination at the discretion of the owner/member. By controlling the timing of the trust termination, the owner/member would be able to direct the distribution of his allocable share of the trust assets. Under these circumstances, you would function substantially as an investment fund for the direct personal and private benefit of your owner/member. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA of providing benefits to promote the common welfare of an association of employees, as opposed to the welfare of the owner/member.

An organization described in section 501(c)(9) of the Code must meet the nondiscrimination requirements of section 505(b) to qualify for exempt status unless the participants are part of a collectively bargained agreement. The information submitted shows that your participants are not a part of a collective bargaining agreement. A distribution benefit to your members upon dissolution is under certain circumstances a 501(c)(9) benefit. A dissolution benefit is not a listed benefit that may be based on an uniform percentage of compensation under section 505(b) of the Code. Thus, a dissolution provision that is not equal to all members would not meet the nondiscrimination requirements of section 505(b) of the Code.

You state that you will have a pro rata distribution of your assets upon dissolution. Therefore, you are in violation of the nondiscrimination requirements of section 505(b) of the Code as to your distribution benefit upon dissolution. Thus, you would not qualify for exemption under section 501(c)(9) of the Code for this benefit.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(9) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one,

[redacted]

when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[redacted]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[redacted]

cc: [redacted]