Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Release copies to District
Date [redacted]
Surname [redacted]
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[redacted]

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:2

DO: [redacted]
EIN: [redacted]

Date: FEB 2 1999

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(5) of the Internal Revenue Code.

You are an association established under [redacted] law by [redacted] to provide for the payment of pension benefits to its white collar and blue collar employees. You are funded by both employer and employee contributions.

According to the collective bargaining agreement between the company and its employees, employees contribute about one-third of the pension costs needed to fund the agreed pension benefits and the Company contributes two-thirds of such costs.

In accordance with [redacted], your governing instrument provides for a Board of Directors in which the representatives of the employer and the employees have an equal number of votes. The Board is responsible for making policy decisions regarding the Fund. The company appoints six representatives to the Board and [redacted] appoints sever representatives. The votes are weighted, so that the voting power of the employer's side and of the employees' side is equal and no action can be taken unless both the employer's representatives and the employees' representatives agree.

[redacted] represents all the company employees and has various rights regarding changes in the pension plan including consultation and veto rights. Its membership consists of 20 representatives who are elected from among [redacted] employees. You have represented that all employee representatives on your Board are union members. You state that "[l]abor unions' influence has been significant in the negotiation of [redacted] collective bargaining agreement and in the decisions made by the Fund's board."

Re: [redacted]

The information you have submitted indicates that your primary activity involves the payment of pension benefits. However, an individual who has emigrated or will shortly be emigrating can receive an "once-off" payment from you in lieu of a pension.

Section 501(c)(5) of the Code provides for the exemption of labor, agricultural, and horticultural organizations.

Section 1.501(c)(5)-1(a) of the Income Tax Regulations provides the organizations contemplated by section 501(c)(5) as entitled to exemption from income taxation are those which:

(1) have no net earnings inuring to the benefit of any member, and

(2) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Effective December 21, 1995, section 1.501(c)(5)-1(b)(1) of the regulations provides that, in general, an organization is not an organization described in section 501(c)(5) if its principal activity is to receive, hold, invest, disburse or otherwise manage funds associated with savings or investment plans or programs, including pension or other retirement savings plans or programs.

Section 1.501(c)(5)-1(b)(2) indicates that certain dues-funded labor organizations are excepted by the provisions of 1.501(c)(5)-1(b)(1). These excepted organizations are those established and maintained by another labor organization, funded by membership dues and not by employer contribution, and not directly or indirectly established or maintained by employers or governmental units.

The accompanying Treasury Decision, T.D. 8726, 1997-34 I.R.B. 7, emphasizes that the new regulations clarify certain requirements of section 501(c)(5) of the Code and are not a change in the Service's position.

In Portland Co-operative Labor Temple Association, 39 B.T.A. 450 (1939) acq., 1939-1 (Part 1) C. B. 28; the petitioner owned an office building. The member labor unions and councils owned all the petitioner's capital stock, and its building was wholly devoted to their purposes and uses. The court indicated that the term labor organization for the purposes of section 501(c)(5) embraces the common acceptance of the term, including labor unions and councils and the groups which are ordinarily organized to protect and promote the interests of labor. The term labor

organization calls for a liberal construction and is not a technical word nor a term of art.

Rev. Rul. 62-17, 1962-1 C.B. 87, holds that the payment of employee-funded sick, accident, death or similar benefits by a labor organization, otherwise described in section 501(c)(5) of the Code does not preclude exemption under that subsection and is an appropriate activity for an exempt labor organization to engage in.

Rev. Rul. 67-7, 1967-1 C.B. 137, holds that an organization established and controlled by a labor union to provide strike and lockout benefits, on a mutual basis, to its members is exempt under section 501(c)(5) of the Code. The ruling concludes that strike benefits are directed to furthering a labor union's primary purpose of representing its members in matters of wages, hours of labor, working conditions, and economic benefits.

Rev. Rul. 76-420, 1976-2 C.B. 153, holds that an organization controlled by private individuals and not by a section 501(c)(5) labor organization, which contracted with members of the organization to pay a weekly income to those members in the event of a lawful strike called by the member's labor union, did not qualify for exemption under IRC 501(c)(5). The organization did not represent its members in matters relating to their employment, such as wages, hours of labor, working conditions, or economic benefits, and was not controlled by, or connected with, any of the labor organizations to which its members belonged.

Rev. Rul. 77-46, 1977-1 C.B. 147, in denying recognition of exemption to a collective bargained savings plan, sets forth the general test for establishing exemption under section 501(c)(5) of the Code. The test requires that in order for an organization to qualify as an exempt labor organization, it is necessary that its activities be those commonly or historically recognized as characteristic of labor organizations, or be closely related and necessary to accomplishing the principal purposes of exempt labor organizations. This organization did not qualify for recognition of exemption under section 501(c)(5) because it did not negotiate wages, hours, and working conditions or provide mutual benefits.

Morganbesser v. United States, 984 F. 2d 560 (2nd Cir. 1993); nonacq 1995-2 C.B. 2, held that a multiemployer pension trust operating pursuant to a collective bargaining agreement qualifies for recognition of exemption under section 501(c)(5) of the Code. Judge Miner, in dissenting from the majority opinion, recognized that under the Service's revenue rulings, connection to a traditional labor entity is necessary to support the granting of labor organization exemption. He continued to state

that, "there can be no such connection where, as here, a pension plan is funded totally by employers, is not controlled by a labor union but by an independent board of trustees . . . and does not support or supplement the union in any way." Morganbesser, 984 F. 2d at 565 (Miner, dissenting).

In Stichting Pensioenfonds Voor de Gezondheid, Geestelijke en Maatschappelijke Belangen v. United States of America (PGGM), 129 F.3d 195 (D.D.C. 1997) cert denied, 119 S. Ct. 43 (October 5, 1998) (hereinafter referred to as PGGM), the Court held that the fund was not exempt from federal income taxes as a labor organization described in section 501(c)(5)of the Code. This decision specifically found the analysis in Morganbesser v. United States, supra, unpersuasive and emphasized that an organization that "fulfills no representational role on behalf of labor nor is controlled by such as organization does not fall within the common understanding of the term." See also Tupper v. United States, 134 F.3d 444 (1st Cir. 1998).

Section 501(c)(5) of the Code, the regulations, revenue rulings, and court decisions, state that organizations are labor organizations if they are labor unions in the traditional sense or if their principal activity is engaging in employee representation. Other organizations can qualify as labor organizations if they engage in activities appropriate to labor organizations and are controlled by one or more labor organizations. See Portland Co-operative Labor Temple Association, and PGGM, supra. In order for an activity to be considered appropriate to a labor organization, that activity must be commonly or historically recognized as characteristic of labor organizations, or closely related to and necessary to accomplishing the principal purposes of exempt labor organizations. See Rev. Rul. 77-46, supra, (savings plan not considered commonly or historically recognized as a mutual labor organization activity). Where the activities are otherwise appropriate to a labor organization, but there is no significant connection to a labor organization, exemption is not available. See Rev. Rul. 76-420, supra.

The Internal Revenue Service position is that administering employer-provided pension benefits is not an appropriate activity for an exempt labor organization. Section 401 and other pension provisions of the Code contain stringent and detailed requirements for qualification for favorable tax treatment, including tax exemption for a pension trust. Allowing section 501(c)(5) exemption in these situations would effectively undermine the Congressional intent in enacting ERISA provisions of the Code. See PGGM, supra.

The information you have submitted indicates that your primary purpose is to hold, administer and invest funds and pay

out retirement and other benefits to your members. The provision of partially employer-funded pension benefits appears to be your primary activity. In addition, some of the benefits you provide appear to be payable in the event a participating member voluntarily terminates their employment relationship with your sponsor i.e. emigrates. The payment of such a benefit, is basically similar to the savings plan which was denied exemption under section 501(c)(5) of the Code in Rev. Rul. 77-46, supra. Furthermore, you do not offer benefits on a mutual basis. You are not funded exclusively by dues paid by your employee/members and are not controlled by your members.

Where the principal activities are not those appropriate to a labor organization, the organization is not described in section 501(c)(5). Under section 1.501(c)(5)-1(b)(1) of the regulations the provision of partially employer funded pension benefits is not an appropriate labor organization activity. Therefore, you cannot qualify for recognition of exemption under section 501(c)(5) of the Code. Similarly, the provision of benefits which are payable upon the emigration of an individual are in the nature of a savings program and do not qualify for exemption under section 501(c)(5) of the Code. See Rev. Rul. 77-46, supra.

Your situation is distinguishable from that of the organization described in Rev. Rul. 62-17, supra, in which the Service granted exempt labor organization status to a union that provided mutual, employee-funded health and welfare benefits with funds contributed by its members. Significantly, as noted above, you are not a union, nor are you controlled by a union. Further, you principally provide pension benefits as opposed to health and welfare benefits, and you do not provide mutual benefits, which are historically associated with unions and labor organizations. Finally, the funds contributed towards the payment of benefits are not provided exclusively by employees who have arranged with you or other related organizations to provide for the payment of retirement benefits.

Although you have stated that you provide a forum for collective bargaining, you do not represent employees in bargaining for benefits. Rather, your main activity appears to be ministerial, in that you perform the administrative function of paying pension benefits. Accordingly, your organization is similar to the savings plan described in Rev. Rul. 77-46, supra. Neither your organization nor the savings plan described in Rev. Rul. 77-46 accomplish the principal purposes of an exempt labor organization.

Therefore, we have concluded that you do not qualify for recognition of exemption under section 501(c)(5) of the Code. Unless, otherwise exempted you are subject to the withholding

Re: [redacted]

requirements set forth in section 1442 of the Code. See also section 894 with regard to the applicability of any treaty obligations effecting rates or taxability of United States source income.

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, 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 Director. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: OP:E:EO:T:2 JJ, Room 6539. These symbols do not refer to your case but rather to its location.

Sincerely yours,

(signed) Garland A. Carter

Garland A. Carter
Chief Exempt Organizations
Technical Branch 2

cc: [redacted]

cc: [redacted]

OP:E:EO T:2 OP:E:EO T:2

[redacted]