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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Cincinnati

DATE: [redacted]

SURNAME [redacted]

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GOV... ...IT ENTITIES
...ION

Date: SEP 04 2003

Contact Person:
[redacted]
Identification Number:
[redacted]
Contact Number:
[redacted]

[redacted]

Employer Identification Number: [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 the purpose of providing benefits for eligible employees of [redacted]

The [redacted] ("Trust"), which provided employee benefits through [redacted] terminated as of [redacted] The Trust had not been recognized as exempt under section 501(c)(9) of the Internal Revenue Code. The assets of the Trust were to be distributed on a pro-rata basis to VEBA's, taxable welfare trusts, insurance companies or multiemployer plans. Recipients were to use the assets to provide welfare benefits to the employees of the participating employer. The assets distributed consisted of [redacted] shares from the company's demutualization and cash from the Trust.

You are funded by assets distributed from the Trust. The amount received by you, .14% of the Trust's assets, was calculated based on [redacted]'s contributions to the Trust for [redacted] The shares were to be sold and the monies deposited into a bank account to be used in connection with the payment of future benefit premiums for your employee-participants. Any additional income would be from interest accruals on the monies deposited.

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You were established in order to provide medical benefits and certain other benefits, including life, sickness, accident and similar benefits. Seventy five percent of the monies were to be used to pay for the following benefits:

1. Health;
2. Life;
3. Sickness;
4. Accident;
5. Disability; and,
6. Other similar benefits.

Twenty five percent of the monies were to be used to pay for the following activities related to the administration of the Trust:

1. Setting up a bank account to collect money from [redacted]
2. Setting up an account at a brokerage to collect stock from [redacted]
3. Monthly reconciliation of funds; and,
4. Meeting of Trustee and [redacted] to administer trust activities.

There are two individuals eligible for your welfare benefit trust, [redacted] and [redacted]. [redacted] receives compensation of $[redacted] per year while [redacted] receives compensation in the amount of $[redacted] per year. You provide health, dental and disability benefits. The term "other similar benefits" is not defined. Both [redacted] and [redacted] are eligible for long-term disability benefits. Benefits are based on 60% of their respective salaries. Premiums for benefits and administration costs for the welfare benefit trust are to be paid until all assets are depleted. Thereafter, [redacted] and [redacted] will continue to pay for the long-term disability insurance.

[redacted] and [redacted] are married. Information concerning the percentage of ownership held in the business by them was not provided. [redacted] serves as Trustee for the welfare benefit trust.

Section 501(c)(9) of the Code describes a voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and in which no part of its net earning inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(a) of the Income Tax Regulations provides that an organization is not described in Section 501(c)(9) of the Code if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by section 1.501(c)(9) of the regulations.

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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 facts and circumstances.

Section 1.501(c)(9)-4(b) of the Income Tax Regulations provides that any payment to any member of disproportionate benefits, where such payment is not pursuant to objective and nondiscriminatory standards, will not be considered a benefit within the meaning of section 1.5019c)(9)-3 of the regulations, even though the benefit otherwise is one of the type permitted by that section. For example, payments to highly compensated personnel constitute prohibited inurement unless the difference can be justified on the basis of objective and reasonable standards adopted by the association.

Based on the information submitted, we conclude that you are not a voluntary employees' beneficiary association as that term is used in section 501(c)(9) of the Code.

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 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). Disproportionate benefits to the highly compensated personnel, unless paid pursuant to an objective and nondiscriminatory standard, would be considered inurement.

The information that you submitted did not establish that your highly compensated employee is not receiving a larger share of benefits in relationship to his salary than to the salary of the other employee. Your welfare benefit trust covers two employees, with the dominant share of the benefits accruing to [redacted] In addition, the two employees that are covered are husband and wife so that your welfare benefit trust appears to be organized and operated to benefit [redacted] rather than any employee group. Thus, you have not established that you do not violate the inurement proscription of section 1.501(c)(9)-4(a) or violate the disproportionate benefits requirement of section 1.501(c)(9)-4(b) of the Income Tax Regulations.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(9) of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, 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

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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 a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

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

Internal Revenue Service
Attn: [redacted], T:EO:RA:T:2, 3M1
1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[redacted] [redacted]