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Date 8-20-84
Surname [redacted]

[redacted]

[redacted]

[redacted]

JUN 14 1984

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code.

The information furnished shows that you are a trust formed to provide welfare benefits to eligible employees of [redacted] (Corporation). Currently there are two individuals eligible to receive benefits:

1. [redacted] is President and Director of the Corporation, owns [redacted] percent of its stock and his annual compensation is $[redacted] as of [redacted].

2. [redacted] is not an officer of the Corporation, owns no stock in it and has annual compensation of $[redacted].

Your Trust was established by the Corporation. [redacted] are the Trustees. The Corporation exercises general control over your operations and has the right to terminate the Trust anytime in its sole discretion.

The benefits provided to employees who were employed by the Corporation on [redacted], or are projected to be employed for an average of [redacted] hours per year are as follows:

(1) Covered Employees shall receive a self-insured Medical Reimbursement Benefit with the following dollar limitation per fiscal year: $[redacted].

(2) Covered Employees and their spouses shall receive a medical insurance benefit and a post-retirement medical insurance benefit, upon reaching Normal Retirement Age, comparable to those benefits included in the Blue Cross-Blue Shield High Option Plan, but only to the extent the either the Covered Employee or his spouse, or both, are not then currently covered by a comparable plan.

[redacted]

(3) Covered Employees shall receive a Disability Benefit and a post-retirement Disability Benefit, upon reaching a Normal Retirement Age, as follows:

(A) An insured benefit as provided under any insured plan of disability maintained by the Corporation;

(B) Plus 50% of normal salary for a period of sixty (60) months without regard to the insurance benefits collected.

(C) "Salary" shall mean the employee's average weekly total draw (averaged over the fifty-two [52] weeks previous to the disability).

(4) Covered Employees shall receive a pre-retirement and an insured or a self-insured post-retirement Group Term Life Insurance Benefit, either insured by a commercial insurance company or self-insured by the Corporation, in a face amount equal to forty-eight (48) times the Covered Employee's monthly compensation for the month preceding the Covered Employee's date of death, or the month preceding the Covered Employee's retirement, whichever is appropriate.

(5) Covered Employees shall annually receive Vacation Pay Benefits in an amount equal to two (2) times their then current monthly salary.

(6) If the Corporation requires a Covered Employee to relocate in the course of his employment, a Covered Employee shall receive a Job Relocation Allowance in an amount equal to his then annual salary multiplied by one-half (1/2).

(7) If in any fiscal year of the Corporation, the gross receipts of the Corporation fall by ten percent (10%) of the amount of its gross receipts for the immediately preceding fiscal year resulting in a situation where a Covered Employee would receive less salary in the current fiscal year than he received in the immediately preceding fiscal year, a Covered Employee shall be entitled to an Income Maintenance Payment of the difference between his current fiscal year salary and his salary for the immediately preceding fiscal year. This payment shall be made no later than ninety (90) days after the close of the current fiscal year.

[redacted]

(3) If, after three (3) Years of Service with the Corporation, a Covered Employee terminates service with the Corporation for reasons other than for cause or reaching Normal Retirement Age, then a Covered Employee shall be entitled to receive a Severance Payment in an amount equal to twice the Covered Employee's annual compensation during the fiscal year immediately preceding the year in which his service is terminated. Said payments are to be made and computed in accordance with the provisions of 29 C.F.R. §2510.3-2(b)(1)(iii) and -2(b)(2).

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such associations 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 1.501(c)(9)-2(a)(2)(i) of the Income Tax Regulations provides, in part, that eligibility for benefits may be restricted on the basis of objective conditions related to the type or amount of benefits offered, provided that the conditions do not have the effect of entitling officers, shareholders or highly compensated employees to benefits that are disproportionate to the benefits to which other members are entitled.

Section 1.501(c)(9)-2(a)(2)(ii)(F) and (G) of the regulations provide, as a generally permissible restriction, for the provision of death and disability benefits as a uniform percentage of compensation. (Emphasis added.)

Section 1.501(c)(9)-3(f) provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of voluntary or mandatory retirement. A benefit will be considered as such if it provides for deferred compensation that becomes payable by reason of the passage of time rather than as a result of an unanticipated event.

Section 1.501(c)(9)-4(a) of the regulations provides that no part of the net earnings of a VEBA may inure to the benefit of any private shareholder or individual other than through the payment of permissible benefits. Whether prohibited inurement has occured is a question to be determined based on all the facts and circumstances.

Section 1.501(c)(9)-4(b) of the regulations states, in part, that for the purposes of determining whether prohibited inurement has occurred, the payment to any member of disproportionate benefits, where such payment is not pursuant to objective and nondiscriminatory standards, will not be considered a benefit

[redacted]

within the meaning of section 501(c)(9) of the Code. For example, the payment to highly compensated personnel of benefits that are disproportionate in relation to benefits received by other members of the association will constitute prohibited inurement.

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

Section 1.501(c)(9)-2(a)(2) of the regulations prohibits exemption under section 501(c)(9), where the eligibility for membership or benefits is administered in a manner that limits membership or benefits to officers, shareholders, or highly compensated employees. Here your plan favors the highly compensated shareholder-owner-employee by providing to him a dominant share of the aggregate benefits of the trust. With the exception of your medical benefits, all of your other benefits are based upon percentages of compensation. The effect of using a percentage of compensation arrangement here is to favor the highly-compensated owner-employee with a disproportionately large share of benefits. This arrangement, we conclude, based upon all of the facts and circumstances, is neither reasonable nor non-discriminatory, and results in disproportionate benefits within the meaning of section 1.501(c)(9)-4(b) of the regulations.

In addition, we conclude that [redacted] maintains a posture that is incompatible with the inurement proscription set forth in section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with allocation of a dominant share of benefits to an owner/member indicates that the Trust is organized and operated for the benefit of that person and not for an employee group. The Trust would be subject to termination at the discretion of the owner/member. By controlling the timing of termination, the owner/member would be able to direct the distribution of his allocable share of the Trust assets. Under these circumstances, the VEBA would function as an investment fund providing deferred compensation payable by reason of the passage of time for the direct and personal benefit of the owner/member. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA to provide benefits and promote the common welfare of a voluntarily-associated group of employees rather than the one employee who is the owner-member.

Accordingly, based on all the facts and circumstances, we conclude that your trust and plan does not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. You are, therefore, required to file federal income tax returns.

[redacted]

You have a 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 principal officers, must be submitted within 21 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 principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If we do not hear from you within 21 days, this ruling will become final and copies of it will be forwarded to the District Director, Baltimore, Maryland, which is your key district for exempt organizations matters. 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: [redacted]. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[redacted]

[redacted]

Chief, Exempt Organizations
Rulings Branch

cc: [redacted]

cc: [redacted]

cc: [redacted]

[redacted]