



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **201250024**  
Release Date: 12/14/2012

Date: September 20, 2012

XXXXXXXX  
XXXXXXXX  
XXXXXXXX  
XXXXXXXX

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List

501.09-00  
501.09-04

Legend:

Association =  
Date 1 =

Dear XXXXXXX:

This is in response to your request for a ruling dated April 11, 2012, submitted on behalf of Association, concerning Association's continued status as a voluntary employees' beneficiary association (VEBA) under section 501(c)(9) of the Internal Revenue Code (Code).

FACTS:

Based on the information submitted, we understand the relevant facts to be as follows.

Association received an exemption letter on Date 1, from the Internal Revenue Service, stating that it is tax exempt as a voluntary employees' beneficiary association (VEBA) described in section 501(c)(9) of the Code.

Association is a qualified carrier under the Federal Employees Health Benefit Program (FEHBP), pursuant to the Federal Employees Health Benefit Act of 1959, 5 U.S.C. section 8901, *et seq.*, which is administered by the United States Office of Personnel Management (OPM). Association currently provides health, dental, life, and disability benefits to federal employees, annuitants, and their dependents.

Pursuant to section 409 of the Indian Health Care Improvement Act (IHCIA), Association wishes to add common law employees of entitled Indian tribes, tribal organizations, and urban Indian organizations (ITGs) to its membership. Section 409 of the IHCIA entitles ITGs to purchase health coverage for their employees under the provisions applicable to the FEHBP. All ITG employees who are considered common law employees, using the Internal Revenue Service's standard described in Rev. Rul. 87-41, 1987-1 C.B. 296, and who meet the FEHBP requirements will be eligible to enroll in FEHBP and select Association as their coverage option.

OPM generally oversees all of Association's operations, including the implementation of the ITG employees' inclusion in the FEHBP.

#### RULING REQUESTED:

Association requests a ruling that the inclusion of ITG employees and their dependents pursuant to section 409 of the IHCIA, as incorporated and amended by section 10221 of the Patient Protection and Affordable Care Act (ACA), will not adversely impact Association's exempt status as a VEBA under section 501(c)(9) of the Code.

#### LAW:

Section 501(c)(9) of the Code provides that the organizations exempt from income tax under section 501(a) of the Code include a VEBA providing for the payment of life, sick, accident, or other benefits to the members of such 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 1.501(c)(9)-1 of the regulations provides that for an organization to be described in section 501(c)(9) of the Code, it must be an employees' association; membership in the association must be voluntary; the organization must provide for the payment of life, sick, accident, or other benefits to its members or their dependents, and substantially all of its operations must be in furtherance of providing such benefits; and no part of the net earnings of the organization can inure (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a) provides that the membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals.

Section 1.501(c)(9)-2(c)(1) provides, generally, that to be described in section 501(c)(9), there must be an entity, such as a corporation or trust established under applicable local law, having an existence independent of the member-employees or their employer.

Section 1.509(c)(9)-2(c)(2) provides that generally, membership in an association is voluntary if an affirmative act is required on the part of an employee to become a member rather than the designation as a member due to employee status. However, an association shall be considered voluntary although membership is required of all employees, provided that the employees do not incur a detriment as a result of membership in the association.

Section 1.501(c)(9)-2(c)(3) provides that a VEBA must be controlled by its membership; by independent trustee(s); or by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership.

Section 1.501(c)(9)-3(a) provides that the life, sick, accident, or other benefits provided by a VEBA must be payable to its members, their dependents, or their designated beneficiaries.

Sections 1.501(c)(9)-3(b) through (g) detail the types of benefits that a tax-exempt VEBA may provide and who is eligible to receive the benefits.

Section 1.501(c)(9)-3(c) provides that the term "sick and accident benefits" means amounts furnished to or on behalf of a member or a member's dependents in the event of illness or personal injury to a member or dependent.

Section 1.501(c)(9)-4(a) provides 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.

Section 1.501(c)(9)-5(a) provides that in addition to such other records which may be required (for example, by section 512(a)(3) and the regulations thereunder), every organization described in section 501(c)(9) must maintain records indicating the amount contributed by each member and contributing employer, and the amount and type of benefits paid by the organization to or on behalf of each member.

Section 10221 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119, enacted on March 23, 2012, added section 409 to the IHCIA (codified as 25 U.S.C. 1647b) , which provides that notwithstanding the provisions of title 5, United States Code, Executive order, or administrative regulation, an Indian tribe or tribal organization carrying out programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or an urban Indian organization carrying out certain programs under title V of this Act shall be entitled to purchase coverage, rights, and benefits for the employees of such Indian tribe or tribal organization, or urban Indian organization, under chapter 89 of title 5, United States Code, and chapter 87 of such title if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with such Indian tribe or tribal organization, or urban Indian organization, are currently deposited in the applicable Employee's Fund under such title.

XXXXXX XXXXXX XXXXXX

ANALYSIS:

Section 409 of the IHCA, as enacted by Congress, evidences a legislative intent for the employees covered by that legislation to be able to participate with all the rights and privileges of other participants in the FEHBP, including the ability to select Association as their coverage option. Accordingly, based on section 409 of the IHCA, the addition of ITG employees to Association's membership will not cause Association to fail to be described in section 501(c)(9) of the Code, if Association is part of the FEHBP and otherwise meets the requirements of section 501(c)(9) of the Code.

RULING:

Based on the information submitted, representations made, and the authorities cited above, we conclude Association may maintain its tax-exempt status under section 501(c)(9) of the Code if it adds ITG employees to its membership for benefits under the FEHBP, pursuant to section 409 of the IHCA.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on facts as they were presented and on the understanding that there will be no material changes to these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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

In accordance with the Power of Attorney currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Lois Lerner  
Director, Exempt Organizations

Enclosure: Notice 437