



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

December 13, 2013

Number: 201410038
Release Date: 3/7/2014

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

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XXXXXXXXXX
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Uniform Issue List

501.09-00

Legend:

Trust =
Association =
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Date 1 =
Date 2 =
Date 3 =

Dear :

This is in response to your request for a ruling dated September 30, 2013, submitted on behalf of Trust, concerning Trust's continued status as a voluntary employees' beneficiary association (VEBA) under § 501(c)(9) of the Internal Revenue Code.

FACTS:

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

Trust is tax-exempt under § 501(a). Trust describes itself as an § 501(c)(9) organization established to fund a VEBA plan ("Plan").

Plan provides self-insured benefits as described under § 501(c)(9) to Plan's participants. These benefits include health insurance, life insurance, and prescription drug benefits ("§ 501(c)(9) Benefits").

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Plan's participants consist of employees of employer-members ("individually as Employer, collectively as Employers") of an organization described under § 501(c)(6) ("Association"). Employers consist of unrelated Taxpayers who fund Trust to benefit Plan's participants.

Currently, Plan "has approximately \$aa in assets which consist exclusively of surplus from favorable claims experience and investment earnings accumulated to present." On Date 1, Trust's Committee "unanimously approved a motion authorizing [Trust] to cease providing insurance coverage to participants effective [Date 2] (with a run-out period ending [Date 3]).

Trust has paid all outstanding benefits claims and current obligations. Trust's Committee passed a motion to terminate Trust and liquidate remaining assets of Trust. Trust proposes to use Trust's remaining asset thereafter paying Plan's associated expenses to pay health benefits insurance carriers to provide health insurance benefits to Plan's participants until Trust's remaining assets is exhausted.

Trust will allocate the Trust's assets between the Employers as follows, "[d]istributions would be made on a pro rata basis, based upon each employer's participant contributions collected for the five (5) years prior to termination of the insurance benefits. Thus, the allocated amount for each year that each participating employer was a member will be a fraction of the total VEBA net trust assets, the numerator of which is the employer's participant contribution for the five (5) year period (2002-2006) and the denominator of which is the total participant contributions for the five (5) year period."

After paying administrative expenses and liabilities associated with Plan, Trust will then use Trust remaining assets to provide current health insurance benefits for current participants until the total amount of each Employer's allocation is exhausted. Thus:

- Each Employer must submit its monthly health insurance premium statement, from its health insurance carrier to the Trust Committee or its designated administrator.
- The Trust Committee or its designated administrator will remit payment of the participants' health insurance premium cost directly to the respective health insurance provider.
- Each Employer must submit a copy of their current benefits invoice and certify that;
 - a. That the benefits invoice pertains to purchase of health insurance that cover life, disability, sickness or accident benefits as permitted under Treas. Reg. § 1.501(c)(9)-3 in a manner that does not provide disproportionate benefits between officers, owners, highly compensated employees and non-owners, non-highly compensated employees.
 - b. Any health insurance benefits must be provided on equal basis between highly compensated employees, officers, owners and non-highly compensated employees.

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- c. Any life insurance or wage replacement benefits, if not provided equally to all employees, must be based uniformly upon employee participant compensation.

If any Employer cannot be located, or does not agree to the terms and conditions of the Trust's termination and settlement agreement, such Employer's allocable participants' amount will revert back to the corpus of the Trust's assets and be allocated among remaining Employers' participants. Once the Trust's assets are exhausted, Trust will terminate.

The State in which Trust and Plan are located has approved Trust's plan regarding Trust proposal to distribute Plan's assets and Trust and Plan's termination.

RULING REQUESTED:

1. The proposed transaction will not adversely affect the tax exempt status of the VEBA trust under § 501(c)(9).
2. The payment of health insurance benefits on behalf of participants as detailed in the proposed transaction constitute permitted disbursements in accordance with Treas. Reg. § 1.501(c)(9)-3(c).

LAW:

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 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.

Treas. Reg. § 1.501(c)(9)-1 provides that for an organization to be described in § 501(c)(9), 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; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(9)-3(c) defines "sick and accident benefits" for purposes of § 501(c)(9) as amounts furnished to or on behalf of a member or a member's dependents in the event of illness or injury to a member or a member's dependent. Such benefits may be provided through reimbursement to a member or a member's dependent for amounts expended because of illness or personal injury, or through the payment of premiums to a medical benefit or health insurance program.

Treas. Reg. § 1.501(c)(9)-3 (b) defines life benefits as a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent. A life benefit may be provided directly or through insurance.

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Treas. Reg. § 1.501(c)(9)-4(a) provides, generally, 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 Treas. Reg. § 1.501(c)(9)-3.

Treas. Reg. § 1.501(c)(9)-4(d) provides that it will not constitute prohibited inurement if, on termination of a plan established by an employer and funded through an association described in § 501(c)(9), any assets remaining in the association, after satisfaction of all liabilities to existing beneficiaries of the plan, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other benefits within the meaning of Treas. Reg. § 1.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer.

ANALYSIS:

First, under Treas. Reg. § 1.501(c)(9)-4(a), a voluntary employees' beneficiary association will jeopardize its exempt status under § 501(c)(9) if any part of its net earnings inures to the benefit of any private shareholder or individual other than through the payment of benefits permitted by Treas. Reg. § 1.501(c)(9)-3. Under Treas. Reg. § 1.501(c)(9)-4(d), it will not constitute prohibited inurement if, on termination of a plan established by an employer and funded through an association described in § 501(c)(9), any assets remaining in the association, after satisfaction of all liabilities to existing beneficiaries of the plan, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other benefits within the meaning of Treas. Reg. § 1.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer.

Plan decided to terminate but prior to termination, Trust will pay off any administrative expenses and liabilities associated with Plan. Trust will use Plan's remaining assets thereafter paying off Plan's administrative expenses and liabilities to continue providing § 501(c)(9) Benefits.

Employers will contract health insurance providers who will provide healthcare insurance benefits to employees of Employers who are current participants of Plan. Trust via Trust Committee or a designated administrator will make payments from Trust's assets (from each Employer's allocation of Trust's assets) directly to these insurance providers. None of Trust's assets will revert back to Employers.

Accordingly, based on Treas. Reg. § 1.501(c)(9)-4(a) and Treas. Reg. § 1.501(c)(9)-4(d), Trust's proposal to use Trust's remaining assets thereafter payment of administrative expenses and liabilities associated with Plan to pay healthcare insurance carriers directly to continue to provide § 501(c)(9) Benefits to current participants of Plan until Trust's assets is exhausted will not cause Trust to fail to be described under § 501(c)(9).

Second, Treas. Reg. § 1.501(c)(9)-3(c) defines "sick and accident benefits" for purposes of § 501(c)(9) as amounts furnished to or on behalf of a member or a member's dependents in the event of illness or injury to a member or a member's dependent. Such

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benefits may be provided through reimbursement to a member or a member's dependent for amounts expended because of illness or personal injury, or through the payment of premiums to a medical benefit or health insurance program. Treas. Reg. § 1.501(c)(9)-3 (b) defines life benefits as a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent. A life benefit may be provided directly or through insurance.

Prior to Plan's decision to terminate, Plan has always used Trust's assets to provide health insurance, life insurance, and prescription drug benefits. These benefits are permissible under § 501(c)(9). Trust in its proposal to terminate, plans to use Trust's assets, to continue provide benefits permissible § 501(c)(9) (health insurance).

Accordingly, based on Treas. Reg. § 1.501(c)(9)-3(c) and Treas. Reg. § 1.501(c)(9)-3 (b), under Trust's proposal, Trust will use Plan's remaining assets thereafter payment of administrative expenses and liabilities associated with Plan to provide health insurance benefits. This benefit is permissible under § 501(c)(9). Thus, providing these permissible benefits under § 501(c)(9) will not cause Trust to fail to be described under § 501(c)(9).

RULINGS:

Based on the information submitted, representation made and the authorities cited above, we conclude as follows:

1. The proposed transaction will not adversely affect the tax exempt status of the VEBA trust under § 501(c)(9).
2. The payment of health insurance benefits on behalf of participants as detailed in the proposed transaction constitute permitted disbursements in accordance with Treas. Reg. § 1.501(c)(9)-3(c).

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 the facts as they were presented and on the understanding that there will be no material changes in 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.

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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 Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437