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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Release Date: 4/11/2014
Date: January 17, 2014

Uniform Issue List:
501.00-00
501.09-00
501.09-02
501.09-04

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Date 1	=
League	=
Industry	=
Members	=
Tri-state Area	=
Union	=
Workers	=

Dear :

We have considered your ruling request dated Date 1 and subsequent amendments, requesting a ruling that the inclusion of certain employees will not adversely affect your status as a tax-exempt Trust under Internal Revenue Code ("I.R.C.") § 501(c)(9).

FACTS

You are a trust, tax-exempt under § 501(c)(9). You fund a voluntary employees' beneficiary association plan ("VEBA").

You state that you currently provide health coverage to participants, who are covered under collective bargaining agreements ("CBA"), and employed in the Industry.

You propose to add as new participants ("Proposed Participants") to VEBA. Proposed Participants consist of employees of Members. Members are members of League. You state that Proposed Participants "all share an employment-related common bond with respect to the individuals otherwise covered by the Fund".

You state that Proposed Participants "consist solely of common law employees who: (1) are not subject to the terms of a collective bargaining agreement ("CBA") entered into with the [Union]; (2) are employed by organizations whose principals are full or lifetime members of the [League] who are otherwise bound to a CBA with [Union] when employing [Workers]; (3) who work for

[League] located only in the [Tri-state Area]." You state that in other words, the Proposed Participants "will be all non-union common law employees of eligible League organization. They will not include self-employed individuals, sole proprietors, partners, LLC members or any other individuals who are not common law employees of eligible [League] members. "

As a result, Proposed Participants, consist of employees of Members who are not covered under a collective bargaining agreement (Members already has some employees covered under the CBA who are present participants of the VEBA).

Last, you represent that the Proposed Participants will consist only of employees of Members who work in the Tri-state Area. You will monitor closely the non-union participants of VEBA to ensure that, at all times at least 90% of the VEBA's participants are covered by a CBA with Union in accordance with § 1.419A-2T, Q&A-2.

RULING REQUESTED

You requested the following ruling:

That the inclusion of the Proposed Participants located in the Tri-state Area will not adversely impact your exempt status as a VEBA under § 501(c)(9).

LAW

I.R.C. § 501(a) provides that an organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle (IRC Sections 1 et seq.) unless such exemption is denied under §§ 502 or 503.

I.R.C. § 501(c)(9) provides that organizations exempt from income tax under section 501(a) 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.

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 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.

Treas. Reg. § 1.501(c)(9)-2(a)(1), provides that the membership of an organization described in § 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. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer (or affiliated employers), to coverage under one or

more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union. For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications working for certain employers at specified locations and who are entitled to benefits by reason of one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. Employees of a labor union also will be considered to share an employment-related common bond with members of the union, and employees of an association will be considered to share an employment-related common bond with members of the association. Whether a group of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this paragraph. Exemption will not be denied merely because the membership of an association includes some individuals who are not employees (within the meaning of paragraph (b) of this section), provided that such individuals share an employment-related bond with the employee-members. Such individuals may include, for example, the proprietor of a business whose employees are members of the association. For purposes of the preceding two sentences, an association will be considered to be composed of employees if 90 percent of the total membership of the association on one day of each quarter of the association's taxable year consists of employees (within the meaning of paragraph (b) of this section).

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 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 § 1.501(c)(9)-3.

Treas. Reg. § 1-419A,Q&A-2(1) provides that for purposes of Q&A-1, a collectively bargained welfare benefit fund is a welfare benefit fund that is maintained pursuant to an agreement which the Secretary of Labor determines to be a collective bargaining agreement and which meets the requirements of the Secretary of the Treasury as set forth in paragraph 2 below.

Treas. Reg. § 1-419A,Q&A-2(2) provides that notwithstanding a determination by the Secretary of Labor that an agreement is a collective bargaining agreement, a welfare benefit fund is considered to be maintained pursuant to a collective bargaining agreement only if the benefits provided through the fund were the subject of arms-length negotiations between employee representatives and one or more employers, and if such agreement between employee representatives and one or more employers satisfies section 7701(a)(46) of the Code. Moreover, the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund. Finally, a welfare benefit fund is not considered to be maintained pursuant to a collective bargaining agreement unless at least 50 percent of the employees eligible to receive benefits under the fund are covered by the collective bargaining agreement.

Treas. Reg. § 1-419A,Q&A-2(4) provides that notwithstanding the preceding paragraphs and pending the issuance of regulations setting account limits for collectively bargained welfare benefit funds, a welfare benefit fund will not be treated as a collectively bargained welfare benefit fund for purposes of Q&A-1 if and when, after July 1, 1985, the number of employees who are not covered by a collective bargaining agreement and are eligible to receive benefits under the fund increases by reason of an amendment, merger, or other action of the employer or the fund. In addition, pending the issuance of such regulations, for purposes of applying the 50 percent test of paragraph (2) to a welfare benefit fund that is not in existence on July 1, 1985, "90 percent" shall be substituted for "50 percent".

ANALYSIS

You seek to add to VEBA's membership Proposed Participants who work only in the Tri-state Area. Section 501(a) exempts from taxation, in pertinent part, organizations described in § 501(c). Section 501(c)(9) describes VEBAs as providing payment of life, sick, accident or other benefits to their members.

Treas. Reg. § 1.501(c)(9)-2(a)(1), provides that the membership of an organization described in § 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. Typically, those eligible for membership in an organization described in section 501(c)(9) includes among others to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)).

You were established pursuant to a CBA between the League and Union for the purpose of providing health coverage to participants employed in Industry. Under Treas. Reg. § 1.501(c)(9)-2(a)(1), employees covered under a collective bargaining agreement share an employment-related common bond and are deemed as employees.

Further, exemption will not be denied merely because the membership of an association includes some individuals who are not employees (within the meaning of paragraph (b) of this section), provided that such individuals share an employment-related bond with the employee-members. See Treas. Reg. § 1.501(c)(9)-2(a)(1), Thus, although Proposed Participants are not deemed as employee because they are not covered under a CBA for the purpose of Treas. Reg. § 1.501(c)(9)-2(a)(1), they still share an employment-related common bond with present participants of VEBA (CBA covered employees) because both are employees of Members.

Further, an association will be considered to be composed of employees if 90 percent of the total membership of the association on one day of each quarter of the association's taxable year consists of employees (within the meaning of paragraph (b) of this section). See Treas. Reg. § 1.501(c)(9)-2(a)(1), Therefore, because 90% of total membership of VEBA on one day of each quarter of VEBA's taxable year must compose of participants who qualify as employees within the meaning of Treas. Reg. § 1.501(c)(9)-2(a)(1), the addition of Proposed Participants who are not covered under the CBA and who work only in the Tri-state Area to participate in VEBA will not jeopardize your tax-exempt status as an organization described under § 501(c)(9).

You represent that at all times at least 90% of the individuals covered by VEBA are covered by a CBA in accordance with § 1.419A-2T, Q&A-2. Under Treas. Reg. § 1-419A,Q&A-2(4), a welfare benefit fund will not be treated as a collectively bargained welfare benefit fund for purposes of Q&A-1 if and when, after July 1, 1985, the number of employees who are not covered by a collective bargaining agreement and are eligible to receive benefits under the fund increases by reason of an amendment, merger, or other action of the employer or the fund. In addition, pending the issuance of such regulations, for purposes of applying the 50 percent test of paragraph (2) to a welfare benefit fund that is not in existence on July 1, 1985, "90 percent" shall be substituted for "50 percent". Thus, to continue to meet the employment-related common bond requirement based as a collective bargaining agreement veba as provided under Treas. Reg. § 1.501(c)(9)-2(a)(1), 90% of your participants must consist of employees covered under the Union CBA.

RULING:

Based on the information submitted, representations made, and the authorities cited above, we conclude that the inclusion of employees of Members of the League located in the Tri-state Area not covered in the CBA with Union will not adversely impact your exempt status as a VEBA under § 501(c)(9).

This ruling will be made available for public inspection under § 6110 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. I.R.C. § 6110(k)(3) 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.
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,

Ronald Shoemaker
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437