Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:HW
PLR-135080-17

Date:
May 10, 2018

Legend

Taxpayer =

Company =

Date 1 =

Date 2 =

Plan A =

Plan B =

$X =

Dear :

This responds to your representative's letter, dated October 31, 2017, and later correspondence, requesting a ruling as to the federal tax consequences under sections 501(c)(9), 511, and 512 of the Internal Revenue Code ("Code") of a proposed transfer of assets from Taxpayer, currently a separate welfare benefit fund under a collective bargaining agreement as described in section 419A(f)(5), to a newly established subaccount within Taxpayer, to be used to provide for the payment of health benefits for active collectively bargained employees.

FACTS

Taxpayer is a voluntary employees' beneficiary association ("VEBA") under section 501(c)(9). Taxpayer received a determination letter dated Date 1, stating that it is a VEBA under section 501(c)(9). Taxpayer represents that it is a separate welfare benefit fund under a collective bargaining agreement within the meaning of section 419A(f)(5). Taxpayer provides for the payment of postretirement health benefits under Plan A to collectively bargained employees who retire from Company.

Taxpayer represents that at all times since its establishment, and at all times after the transfer of assets to the subaccount within it, Taxpayer has been and will continue to be, a separate welfare benefit fund under a collective bargaining agreement within the meaning of section 419A(f)(5) and section 1.419A-2T of the Income Tax Regulations ("Regulations").

Taxpayer represents that all amendments made to it in conjunction with this ruling will be effective prospectively and will apply only with respect to health benefits newly payable on a prospective basis (for example, no reimbursement will be made with respect to claims for medical expenses that have already been incurred).

Company provides health benefits under Plan B to active employees who are covered by a collective bargaining agreement ("Union Employees") and their eligible dependents. Union Employees are currently not eligible employees under the terms of Taxpayer or of any other VEBA.

The proposed transaction is a one-time transfer of $X to a subaccount within Taxpayer, where the assets in the subaccount will be used to provide for the payment of health benefits under Plan B to Union Employees.

Taxpayer represents that it will be amended to require a one-time transfer of assets to a subaccount within Taxpayer, and that the transfer will be completed by Date 2. Taxpayer represents that it will take approximately three years to exhaust the transferred assets by providing for the payment of Union Employees' health benefits claims under Plan B.

RULINGS REQUESTED

Taxpayer requests the following rulings:

(1) The proposed transfer of assets to the subaccount within Taxpayer will not adversely affect the Taxpayer's tax exempt status under section 501(c)(9) of the Code.

(2) The proposed transfer of assets will not result in unrelated business taxable income ("UBTI") under sections 511 and 512.

LAW

Section 419A(f)(5)(A) of the Code provides that no account limits shall apply in the case of a qualified asset account under a separate welfare benefit fund under a collective bargaining agreement.

Section 1.419-1T, Q&A-2(a), of the Regulations provides that section 419 of the Code generally applies to contributions paid or accrued with respect to a welfare benefit fund after December 31, 1985, in taxable years of employers ending after that date.

Section 1.419-2T, Q&A-1, of the Regulations provides that neither contributions to nor reserves of a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b), or 512(a)(3)(E) of the Code until the earlier of: (i) The date upon which the last of the collective bargaining agreements relating to the fund in effect on the date of issuance of final regulations concerning such limits terminates, or (ii) the date three years after the issuance of final regulations.

Section 1.419A-2T, Q&A-2, of the Regulations states:

> (1) 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.
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> (2) 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 the employee representatives and one or more employers, and if such agreement between employee representatives and one or more employers satisfies Code section 7701(a)(46). 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.
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> (3) In the case of a collectively bargained welfare benefit fund, only the portion of the fund (as determined under allocation rules to be provided by the Commissioner) attributable to employees covered by a collective bargaining

agreement, and from which benefits for such employees are provided, is considered to be maintained pursuant to a collective bargaining agreement.

(4) Notwithstanding the preceding paragraphs and pending the issuance of regulations setting account limits for collectively bargained welfare 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."

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.

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; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(a) of the Regulations provides that the life, sick, accident, or other benefits provided by a voluntary employees' beneficiary association must be payable to its members, their dependents, or their designated beneficiaries. Life, sick, accident, or other benefits may take the form of cash or noncash benefits. A voluntary employees' beneficiary association is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in this section if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Section 1.501(c)(9)-3(c) provides, in pertinent part, 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, in pertinent 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 of the facts and circumstances, taking into account the guidelines set forth in the regulations.

Section 511 of the Code imposes a tax on the unrelated business taxable income (as defined in section 512) of organizations described in section 501(c)(9).

Section 512(a)(3)(A) provides that, in the case of an organization described in section 501(c)(9), the term “unrelated business taxable income” means the gross income (excluding any exempt function income), less the deductions allowed by Chapter 1 which are directly connected with the production of the gross income (excluding exempt function income), both computed with modifications.

Section 512(a)(3)(B)(ii) provides that, in the case of an organization described in section 501(c)(9), “exempt function income” includes all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by such organization computed as if the organization were subject to section 512(a)(1)), which is set-aside to provide for the payment of life, sick, accident, or other benefits, including reasonable costs of administration directly connected with its exempt purpose.

Section 512(a)(3)(E)(i) provides that in general, in the case of an organization described in section 501(c)(9), a set-aside for any purpose specified in section 512(a)(3)(B)(ii) may be taken into account under subparagraph (B) only to the extent that it does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A (without regard to subsection (f)(6) thereof) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

ANALYSIS AND CONCLUSION

The health benefits provided by Taxpayer, including those to be provided through the subaccount, are permissible benefits under section 1.501(c)(9)-3(a) of the Regulations and Taxpayer’s operations are in furtherance of the provision of such benefits.

Based on the information submitted by Taxpayer, we conclude that the transfer of assets to a subaccount within Taxpayer will not result in prohibited inurement to a private shareholder or individual other than through the payment of permissible VEBA benefits to employees and retirees as described in section 1.501(c)(9)-3. Accordingly, the transfer of assets to a subaccount within Taxpayer will not result in prohibited inurement under section 501(c)(9) of the Code.

The assets transferred from Taxpayer to the subaccount within Taxpayer remain within Taxpayer. Accordingly, that transfer will not, in and of itself, result in UBTI.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, this ruling does not address tax consequences of the described transaction to Company.

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

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

We assume, without expressing an opinion, for purposes of this ruling, that Taxpayer has authority to complete the transaction described and that the transaction can otherwise be effectuated and does not fail to meet the requirements of other applicable federal and state law.

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.

Sincerely,

Janet A. Laufer
Senior Technician Reviewer, Health and Welfare
(Employee Benefits)
(Tax Exempt & Government Entities)

cc: