Internal Revenue Service

Department of the Treasury

Washington, DC 20224

[redacted]

Person to Contact:
[redacted]

Telephone Number:
[redacted]

Refer Reply to:
[redacted]

Date:

AUG 6 1984

Dear Applicant:

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

You are a trust established by your employer ([redacted]) to provide sick, accident, life, disability and/or other welfare-type benefits under one or more plans established by your employer in conjunction with this trust for the benefit of eligible participants.

A group death benefits plan and a severance pay plan have been established. The group death benefits plan is a plan of group term life insurance which provides death benefits for eligible employees. The benefits provided under this plan are to be funded by your employer and may include insurance underwritten by any legal reserve insurance company. Each eligible employee's benefits will be equal to [redacted] times annual salary to a maximum of $[redacted].

The severance pay plan provides severance pay for eligible employees. The benefits are funded by your employer. Total benefits payable to a participant under the plan would not exceed [redacted] weeks of severance pay and are payable upon termination of employment for whatever cause.

[redacted] employees are currently entitled to receive benefits. Their annual compensation, official title, percentage of ownership and years of service are described below:

Name	Annual Compensation	Official Title	Percentage of Ownership	Years of Service
[redacted]	$[redacted]	President	[redacted]%	[redacted]
[redacted]	$[redacted]	Employee	[redacted]%	[redacted]

Pursuant to your trust agreement, your employee-owner, [redacted], has been appointed as your trustee and may be removed by your employer, [redacted]. Also, your employer is empowered to hold, invest, and reinvest the trust fund in property of any kind. Further, your employer reserves the right to amend and/or terminate your trust and plans at any time.

[redacted]

Section 501(c)(9) of the Code provides for exemption for voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of the 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)-(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)-3(a) of the regulations provides that life, sick, accident, or other benefits of a voluntary employees' beneficiary association must be payable to its members, their dependents, or their designated beneficiaries.

Section 1.501(c)(9)-4(a) of the regulations provides, in part, that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-3(i) of the regulations provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory retirement, or a benefit that is similar to a benefit provided under a stock or profit-sharing plan. This paragraph provides that for the purposes of section 501(c)(9) and the regulations thereunder, a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit-sharing plan 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.

For an organization to be described in section 501(c)(9), no part of its net earnings can inure to the benefit of any private shareholder other than through the payment of permissible benefits. The term "net earnings" is given a broad interpretation, subjecting all of the assets of an organization to the inurement prohibition. See, Knollwood Memorial Gardens v. Commissioner, 46 T.C. 764 (1969), appeal dismissed nolle pros. Section 1.501(a)-1(c) of the Income Tax Regulations provides that the "words private shareholder or individual in section 501 refers to persons having a personal or private interest in the activities of the organization." The word "private" is the antonym of "public" --used merely to distinguish a private individual from the general public--and is intended to limit the scope of those persons who personally profit from the organization to the intended beneficiaries of the allowable activities. Clearly, an individual related to a VEBA as trust administrator or trustee, member-beneficiary,

[redacted]

and owner of the contributing employer, has a personal interest in the VEBA's activities and is subject to the section 501(c)(9) inurement proscription.

Whether a VEBA meets the definitional requirement that no part of its net income can inure to the benefit of any individual is a question to be determined with regard to all the facts and circumstances. Prohibited inurement arises when a VEBA serves the use or benefit of an individual other than through the proper performance of functions characteristic of organizations described in section 501(c)(9). A VEBA functions primarily as a cooperative device for pooling funds, and distributing risks and benefits to a defined group of employees sharing an employment-related common bond. While an organization may provide benefits to promote the common welfare of an association of employees in a manner consistent with section 501(c)(9), the inurement proscription bars the tax-exempt treatment of an organization predominantly organized and operated to promote the interest of individuals standing in relationship to the organization as investors for private gain.

Your VEBA is comprised of a small number of members and it provides a dominant share of aggregate benefits to your highly compensated member, [redacted], who is also the owner of your contributing employer.

Your VEBA is also controlled by [redacted], since he is the sole trustee and can only be removed by his own action. Also, he has the power to amend and/or terminate your plans and trust at any time.

Under the circumstances described above, [redacted] maintains a posture incompatible with the inurement proscription. With this control, he has the power and authority to use the VEBA as his personal investment fund. He can manage the trust's property and investments and determine when the VEBA will be terminated. An organization functioning in this manner is inconsistent with the exempt purposes of a VEBA in providing benefits to promote the common welfare of an association of employees as opposed to the welfare of a single employee.

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.

You have the right to protest this ruling if you think 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 in duplicate 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 Practices Procedures.

[redacted]

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, San Francisco, which is your key district for exempt organization matters. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[redacted]
Internal Revenue Service
1111 Constitution Ave., N. W.
Washington, D. C. 20224

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

Sincerely yours,

(Signed) [redacted]

[redacted]
Chief, Exempt Organizations
Rulings Branch