

No Protest received
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1-17-97
K. Downs

[REDACTED]

[REDACTED]

CP:E:EO:T:5
AUG - 8 1996

Employer Identification Number: [REDACTED]
Key District: [REDACTED]

Dear Applicant:

We have considered your application for exemption from Federal income tax under section 501(c)(9) of the Internal Revenue Code of 1986. You do not qualify under that section of the Code for the reasons explained below.

You are a trust created on [REDACTED] by the [REDACTED] and the [REDACTED]. Your purpose is to receive and administer funds contributed in accordance with collective bargaining agreements. You provide health benefits on a self-insured basis with a stop loss insurance policy. You also provide vision, dental and life benefits. You cover a broad spread of businesses. These businesses include appliance stores, hardware stores, cabinet makers, and various other retail stores; also ministers, school teachers, janitors, bookkeepers, various clerical people, nurses, podiatrists, and real estate brokers and salespersons. Employers in [REDACTED] and [REDACTED] contribute to your trust for medical benefits for their employees. There are [REDACTED] employees covered by your plan, including [REDACTED] active corporate officers and managers. You state that there are no partners or other self-employed individuals covered by the programs. Your trustees include [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

[REDACTED] is [REDACTED] of the [REDACTED]. He was also a candidate for [REDACTED].

[REDACTED] was incorporated in [REDACTED] on [REDACTED] for the purpose, among others, to promote mutually advantageous relations between members of the [REDACTED] and labor organizations through collective bargaining by the [REDACTED] for and on behalf of its members. The membership fee for [REDACTED] membership is \$ [REDACTED] per month for [REDACTED].

[REDACTED]
[REDACTED]
each employee covered by a collective bargaining agreement. [REDACTED]

[REDACTED] was created and held its first election of officers in [REDACTED]. Its geographical jurisdiction is all [REDACTED]. Membership dues are \$ [REDACTED], all withheld by payroll deduction and paid under collective bargaining agreements. Under [REDACTED], of the [REDACTED], A person shall only be eligible for nomination (for office) if he/she has attended at least [REDACTED] membership meetings in the [REDACTED] months prior to the time of the nomination, unless excused in writing by [REDACTED].

You have furnished [REDACTED] representative copies of collective bargaining agreements [REDACTED] has entered into with employers and employers' associations. Generally the collective bargaining agreements require the employees to join the union to be eligible for medical coverage from you. One collective bargaining agreement was furnished showing that coverage under the medical plan was not part of the agreement. The agreements cover wages, vacation days, working conditions and grievances. It was indicated that one agreement showed that a wage increase was negotiated. Another, was with a union to provide representation solely with respect to medical benefits.

You have furnished data showing new members for [REDACTED] ([REDACTED]). One entry suggested to us that [REDACTED] had joined the trust as a sole employer member. You have responded that he joined with an addendum to the master collective bargaining agreement with [REDACTED] and furnished a copy of the bargaining agreement and the addendum. The data also has a large category of members under the heading of self-employed. [REDACTED] will negotiate with associations of businesses to represent their employees on working conditions and coverage under your medical plan. The member companies will have to sign an addendum to be included in the plan.

For the calendar year ending [REDACTED] you had gross receipts of \$ [REDACTED]. You paid \$ [REDACTED] health benefits, \$ [REDACTED] legal fees and \$ [REDACTED] in other expenses.

On [REDACTED] [REDACTED] with [REDACTED] was created. It is located at [REDACTED] the same address as [REDACTED].

Section 501(9) provides "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)-2 of the Regulations provide,
(a) Membership--(1) In general. 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. 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 employees 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).

1.501(c)(9)-4 Voluntary employees' beneficiary associations; inurement.

(a) General rule. 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 Sec. 1.501(c)(9)-3. The disposition of property to, or the performance of services for, a person for less than the greater of fair market value or cost (including indirect costs) to the association, other than as a life, sick, accident or other permissible benefit, constitutes prohibited inurement. Generally, the payment of unreasonable compensation to the trustees or employees of the association, or the purchase of insurance or services for amounts in excess of their fair market value from a company in which one or more of the association's trustees, officers or fiduciaries has an interest, will constitute prohibited inurement. 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 this section. The guidelines and examples contained in this section are not an exhaustive list of the activities that may constitute prohibited inurement, or the persons to whom the association's earnings could impermissibly inure. See Sec. 1.501(a)-1(c).

Section 7701(46) of the Code provides "Determination of whether there is a collective bargaining agreement. ***. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bona fide employee representatives and 1 or more employers."

In T. D. 7750, 1977-2 C.B. 338, The Preamble to the final regulations under section 501(c)(9) of the Code states that "allowing section 501(c)(9) to be used as a tax-exempt vehicle for offering insurance products to unrelated individuals scattered throughout the country would undermine those provisions of the Internal Revenue Code that prescribe the income tax treatment of insurance companies."

Whether a group of individuals is defined by reference to a permissible standard or standards for membership in a 501(c)(9) organization is a question to be determined with regard to all the facts and circumstances in the case.

[REDACTED]
[REDACTED]

[REDACTED] can not provide bona fide representation of employees in [REDACTED]. Members of [REDACTED] can not participate in the monthly meeting in [REDACTED] because of the travel requirements. Therefore, they can not run for office in the union. A large number of members of the union are signed up by employers belonging to associations that bargain with [REDACTED]. The employers sign addendum to the master agreement and there is no showing that any collective bargaining takes place. While employees authorize payroll deductions for union dues this is required to obtain the medical coverage. The category of self-employed members is unexplained as well as the addition of the sole member of the electronic business that has his name. Entering into an agreement to provide medical representation for employees belonging to another union shows your primary interest is providing medical coverage. Under these facts and circumstances, it is apparent [REDACTED] accepts memberships in its local to aid the insurance business and not to better the working conditions of its members. See American Postal Workers Union, AFL-CIO v. U.S. (1991) 925 F2d 480. Your plans are not collective bargaining plans.

Without collective bargaining status, your members have no employment related common bond within the meaning of 1.501(c)(9)-2 of the Regulations.

Collecting and paying over to [REDACTED] and the [REDACTED] the dues and fees paid under the agreements constitutes inurement under section 1.501(c)(9)-4 of the Regulations as your trustees are officers of these organizations and the sole benefit is medical coverage.

Accordingly, you are not an organization described in section 501(c)(9) of the Code and you are required to file Federal income tax returns.

You have the right to protest this ruling if you believe 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 officers, must be submitted within 30 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 officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status 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:

Internal Revenue Service
Attn: CP:E:EO:T-5, room 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

(signed) ~~Garland A. Carter~~

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 5

[REDACTED]