

[REDACTED]

[REDACTED]

[REDACTED]

Employer Identification Number:  
Key District:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(9). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are a trust formed on [REDACTED] for providing medical, life, disability and other benefits for the employees of [REDACTED]

The information submitted shows that you will be providing benefits to six employees. You state that one employee is highly compensated and is a [REDACTED] Inc. You state that you have no benefits at the present time. You state that you plan to offer medical, life, disability, temporary living expense loans at times of disaster, educational and recreational benefits in the future. You state that you have no formula for determining your life and disability benefits. You did not submit information describing your educational, your temporary living expense loans and your recreational benefits. You state that you will have a separate account for each employee and that money not spent in an employee's account will be paid to the employee.

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)-3(a) of the Income Tax Regulations provides that an organization is not described in section 501(c)(9) of the Code if it systematically and knowingly provides

[REDACTED]

benefits (of more than a de minimis amount) that are not permitted by section 1.501(c)(9) of the regulations.

Section 1.501(c)(9)-3(d) of the Regulations states that the term "other benefits" includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if-

- (1) It is intended to safeguard or improve the health of a member or a member's dependents, or
- (2) It protects against a contingency that interrupts or impairs a member's earning power.

Section 1.501(c)(9)-3(f) of the Regulations describe benefits that are nonqualifying other benefits. Deferred compensation is not a qualifying other benefit because deferred compensation is payable by the passage of time, rather than the result of an unanticipated event.

Section 1.501(c)(9)-4(a) of the Regulations states, in 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.

Section 1.501(c)(9)-4(b) of the Regulations provides that any payment to any member of disproportionate benefits, where such payment is not pursuant to objective and nondiscriminatory standards, will not be considered a benefit within the meaning of section 1.501(c)(9)-3 of the regulations even though the benefit otherwise is one of the type permitted by that section. For example, the payment to highly compensated personnel constitute prohibited inurement unless the difference can be justified on the basis of objective and reasonable standards adopted by the association.

A section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Thus, the inurement proscription would bar tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual

[REDACTED]

standing in relationship to the organization as an investor for private gain.

You state that you will be contributing cash to each employee that does not use his benefits. This arrangement is similar to a saving provision and a deferred compensation arrangement and thus is not a permissible "other benefit" within the meaning of sections 1.501(c)(9)-3(d) and 1.501(c)(9)-3(f) of the Income Tax Regulations. Since you have not submitted the formulas for your disability and life benefits, you have not established that these benefits do not violate inurement proscription of section 1.501(c)(9)-4(a) or violate the disproportionate benefits requirement of section 1.501(c)(9)-4(b) of the Income Tax Regulations. You also did not describe your recreational and your temporary living expense loans at the times of disaster to establish that these benefits will meet the requirements of section 501(c)(9) of the Code and the regulations thereunder.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(9) of the Code and you must 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.

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:

[REDACTED]

[REDACTED]

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

Sincerely,

[REDACTED]

[REDACTED]