

[REDACTED]

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

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 corporation formed on [REDACTED] for providing a variety of benefits to the employees of [REDACTED]. You are presently planning to provide life, vacation and educational benefits.

The information submitted shows that [REDACTED] employees are entitled to receive your life, vacation and educational benefits. [REDACTED] is the [REDACTED]% owner of the company. His current salary is \$[REDACTED]. The other employee salary is \$[REDACTED]. You did not submit the formula for determining your life benefits. You also did not submit copies of your insurance policies or the cost of the life benefit for each employee. You also did not describe your vacation benefits.

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)-4(a) of the Income Tax 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.

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

In your case, you did not submit the formula for determining your benefits and the cost of these benefits to your shareowner/owner of the employer corporation in relationship to the other employees. Thus, you did not establish that your shareholder/owner of the employer corporation will be receiving less than ~~one~~ of the benefits under your plan. In addition, by reason of his ownership and control over the employer corporation, your owner/member has ultimate control over the continued existence of the corporation.

Under the circumstances, we believe that your owner/member maintains a posture that is incompatible with the inurement proscription of section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with allocation of a dominant share of the aggregate benefits to the owner/member indicates that you are organized and operated for the benefit of your owner/member and not for any employee group. You are subject to termination at the discretion of the owner/member. By controlling the timing of the corporation termination, the owner/member would be able to direct the distribution of his allocable share of the corporation assets. Under these circumstances, you would function substantially as an investment fund for the direct personal and private benefit of your owner/member. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA of providing benefits to promote the common welfare of an association of employees, as opposed to the welfare of the owner/member.

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

[REDACTED]

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]

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

Sincerely,

[REDACTED]