

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

NO PROTEST RECEIVED

Please copies to [redacted]

Date [redacted]

Surname [redacted]

Contact Person: [redacted]

Telephone Number: [redacted]

In Reference to: [redacted]

Date: [redacted]

DO: [redacted]

EIN: [redacted]

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code.

Based on the information you have submitted we have concluded that you do not qualify for recognition of exemption under section 501(c)(9) of the Code.

You are a master trust established to provide benefits to the employees of any employer who joins the [redacted] you have established and who elects to adopt your plan. The Brokers of Record for the Trust and Plan are [redacted] and [redacted] and the Plan is to be marketed by these entities. Your plan was created and developed as a proprietary product for the clients of these entities. The Plan will be marketed solely to these entities by client referrals, word of mouth and personal communication. Those marketing the Plan are compensated exclusively by the commissions generated by the sale of life insurance contracts from insurance companies.

You have represented in your letter of [redacted], that [redacted] is a financial planning and benefits advisory firm. The firm is a registered investment advisor and insurance agent. It specializes in the custom design and implementation of tax-qualified plans, executive compensation programs, financial, tax and estate planning. The main business of [redacted] is the sale of insurance products to the [redacted] is the president of [redacted] and the president of [redacted] is his daughter.

Participation in this program is to be available to employers, in the tri-state area of [redacted] and [redacted], who wish to participate in the Plan and Trust. Only

[REDACTED]

"C" corporations are allowed to participate in the plan. It appears that any corporation involved in the business of "contracting" will be entitled to join the Association and obtain insurance. The employees of participating employers have no control over the Trust and do not participate in any decision made by their employer to join this program. In order to participate they must complete and adopt the Adoption Agreement and make contributions to pay the premiums on such life insurance contracts. They must also join the [REDACTED]. It appears that all dues to the Association will be paid by the participating employers. The president of this association is a client of [REDACTED]. Although requested we have no documents regarding the operation of the Association or how the president was elected. The trustee of the Plan is [REDACTED]. You represented in your letter of [REDACTED] you had no members at that time.

Life insurance benefits will be provided to the eligible employees of the participating employers through a policy or policies of universal life insurance issued on the life of each employee. The life insurance benefit will be based on a uniform percentage of compensation with the applicable multiplication factor being selected by each participating employer for the benefit of its employees. It is anticipated that in the future you may also provide sick, accident or other benefits, as defined in section 501(c)(9) of the Code, for eligible employees of participating employers. The Trustee may also purchase annuity contracts for employees who are either uninsurable or insurable only as substandard risks. All premiums are to be paid by the participating employer. The policies are to be held by the Trust. Any employee upon termination of employment may purchase an individual insurance contract for its available cash surrender value.

An employer will be permitted to voluntarily terminate his participation in the program. To be eligible for a voluntary termination a participating employer must be facing adverse business conditions; experienced a death of any majority shareholder; sold his stock to an unrelated third party; transferred substantially all of the assets of the business or merged with an unrelated third party or terminated his business operations. Termination can be accomplished by a duly authorized vote of the employer's Board of Directors.

Section 7.02 of the Master Trust provides that the Trustor (the Association) may at any time or times, and without the prior consent of the Participating Employers, the Participating Employees and their Beneficiaries, the Trustee or any other persons or entities, amend the Trust to any extent and in any manner it may deem necessary or advisable by delivering to the

[REDACTED]

Trustee and the Administrator a written notification of which amendment, together with a copy of the resolution of the board of directors of the Trustor adopting the same.

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 Income Tax Regulations provides that for an organization to be described in section 501(c)(9), 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)-2(a) of the Federal Income Tax Regulations emphasizes that there must be a voluntary association of members present. Similarly it is clear from the regulations that a valid trust must be present.

Section 1.501(c)(9)-2(a)(1) of the regulations provides that membership of any 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 are defined by reference to a common employer, coverage under one or more collective bargaining agreements or employees of one or more employers engaged in the same line of business in the same geographic locale. For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications 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 employers provide benefits. 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 in the case.

[REDACTED]

Section 1.509(c)(9)-2(c)(3) of the regulations provides that to be described in section 501(c)(9) of the Code an organization must be controlled by its membership, an independent trustee or trustees, at least some of whom are designated by, or on behalf of the membership.

Section 1.501(c)(9)-3(f) 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 or voluntary retirement. For the purposes of section 501(c)(9) 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 the result of an unanticipated event.

In general the term trust as used in the Internal Revenue Code refers to an arrangement created whereby trustees take title to property for the purpose of protecting or conserving it for the beneficiaries. See section 301.7701-4 of the Procedure and Administrative Regulations. In essence three requirements must be met. There must be an arrangement, corpus and beneficiaries.

T.D. 7750, 1977-2 338 introduces and discusses the final regulations under section 501(c)(9) of the Code. In discussing membership requirements it 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."

Based on the information submitted, we are unable to conclude that your members have an employer related common bond for the purposes of section 501(c)(9) of the Code.

Whether a group of individuals satisfies the affiliation or employer related common bond requirements of section 501(c)(9) of the Code is determined with regard to all facts and circumstances. As expressed in T.D. 7750, supra, section 501(c)(9) was not designed to establish exemption for an insurance company. By requiring that the members of a VEBA have an employment related common bond the type of organization that can qualify for exemption under this subsection is limited.

The information you have submitted indicates that as proposed the plan, the only common employment related bond your members may have appears to be through their participation in your benefit program and the Association. There is no common union affiliation and although the term "contractor" has not been

[REDACTED]

defined by you, the everyday meaning of the term would seem to exceed the common employment related bond concepts of section 501(c)(9). Furthermore, your members will apparently be solicited by the plan sponsor who formed this association. Accordingly, it appears that, when operational, you appear to be more in the nature of an insurance company than a VEBA.

Accordingly, you do not qualify for recognition of exemption under section 501(c)(9) of the Code because it does not appear that your members will have an employment related common bond.

In addition, we are unable to conclude that all of the benefits you will provide will be qualifying benefits within the meaning of section 501(c)(9) of the Code.

Your program provides that in the event an individual terminates his employment relationship with a participating employer or an employer terminates his or her contractual arrangement with you or the association each participant is entitled to purchase the policy at the cash surrender value. This right is present in the event of either voluntary or involuntary terminations.

Section 501(c)(17) defines a severance benefit as one occurring in the event of involuntary termination of employment. Although a severance benefit is a permissible section 501(c)(9) benefit, because you permit the transfer of the policy upon voluntary termination, this aspect of your program is more in the nature of a savings or retirement plan. Therefore, it appears that certain of the benefits you provide are similar to a savings or retirement plan and savings or retirement plans are not qualifying benefits within the meaning of section 501(c)(9) of the Code.

Furthermore, you have submitted no information establishing that any individuals or employers participate in the program. Therefore, one of the key elements of a VEBA is missing, you have no trust beneficiaries. Accordingly, we have concluded that you cannot qualify for recognition of exemption under section 501(c)(9) of the Code.

Finally, it does not appear that as established your employee/members will control your activities. Although your trustee is [REDACTED], it appears that your activities are controlled by the Association, which appears to be controlled by your Brokers of Record. The president of the Association appears to have been appointed by the Brokers of Record and participating employers appear to control the pursestrings. Section 7.02 of the Master Trust provides that the Trustor (the Association) may at any time or times, and without the prior

[REDACTED]

consent of the Participating Employers, the Participating Employees and their Beneficiaries, the Trustee or any other persons or entities, amend the Trust to any extent and in any manner it may deem necessary or advisable. This is not the extent of membership control contemplated by section 1.509(c)(9)-2(c)(3) of the regulations.

Accordingly, as stated above, we have concluded that you do not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. Therefore, 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 principal 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 principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Procedures.

If we do not hear from you within 30 days, this ruling will become final and a copy of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status of the filing of tax returns should be addressed to that office.

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: [REDACTED] [REDACTED] These symbols do not refer to your case but rather to its location.

[REDACTED]

Sincerely yours,

[REDACTED]

Chief, Exempt Organizations

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]