



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Yellow

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

PROTEST RECEIVED
Please to Manager, EO Determinations - Cincinnati
DATE: [REDACTED]

SURNAME: [REDACTED]

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

Date: AUG 10 2001

[REDACTED]

Employer Identification Number: [REDACTED]

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 formed on [REDACTED] for the purpose of providing benefits to the employees of employers that provide building services in the State of [REDACTED]

You will be providing life, medical, short term and long term disability benefits. All participants are provided with a group term life insurance benefit of \$10,000. All participants are permitted to purchase additional amounts of life insurance. The overall maximum benefit of life insurance that may be purchased is the lesser of five times annual earnings or \$500,000. The monthly benefit provided to participants under your long term disability plan is 50% of monthly earnings up to a maximum benefit of \$5,000 per month. Your short term disability benefits provide several options to your employer/employee members: 1. A flat benefit amount not to exceed \$500 per week; 2. 60% of weekly income to a maximum of \$500 per week; or 3. 66 2/3 % of weekly income to a maximum of \$500 per week.

The brochure you have submitted indicates that the life insurance you provide includes multiple salary plans and class based plans. Schedule A of your Trust provides that "eligibility and coverage rules shall be determined in accordance with each of the contracts for benefits under the Plan selected by and applicable to the contributing employer." In addition, Schedule A also states that "an employer may treat...different classes of employees differently." Examples of so-called "permissible classifications" include hourly, managerial and supervisory employees. In your letter of [REDACTED], you indicate that benefits are provided on a uniform basis and that

[REDACTED]

"further review of an employee census for discriminatory practices would not be necessary."

Participation in your program is limited to the members of the Pennsylvania Builders Association. Your membership is divided into three separate classes; the Builder Members; Associate Members; and Subcontractors and Specialty Trade Contractors. In Schedule B of your trust document you have indicated the Standard Industrial Classification Codes for your classes of members. The brochure you have submitted concerning your program indicates that you provide coverage for "groups with one or more employees." It also includes sole proprietors in the groups of individuals entitled to receive benefits. In your application you have indicated that information regarding the total number of persons covered by the plan who are highly compensated individuals is "not available" nor is the number of employees not covered by the plan.

Your membership consists of a builder member classification and an associate member classification. This latter classification includes such occupations as accounting; architects, attorneys, etc. that you believe are related to your builder member classification. The information shows that you also classify your membership into standard industries and preferred industries and charge different rates for your medical benefits for these classifications.

Section 501(c)(9) of the Code describes a voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and in which no part of its net earning inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the Income Tax Regulations provides that 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 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, affiliated employers, or membership in a given labor union. 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.

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 differential can be justified on the basis of objective and reasonable standards adopted by the association.

Based on the information submitted, we conclude that you are not a voluntary employees' beneficiary association as that term is used in section 501(c)(9) of the Code.

To qualify as a section 509(c)(9) 'employees' association' employee-members must share a special affinity with one another in a manner which constitutes an 'employment-related common bond.' In this regard, section 1.501(c)(9)-2(a)(1) of the regulations provides that:

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 and whose eligibility for membership is defined 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 agreements(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 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, taking into account the guidelines set forth in this paragraph.

Your adopting employers are within the same "geographic locale" as we have interpreted that term in section 1.501(c)(9)-2(a)(1) of the regulations. However, not all of your employers have the necessary common bond such as your listed associate members nor the degree of affiliation to meet these requirements of section 1.501(c)(9)-2(a)(1) of the regulations. The information submitted shows that a substantial number of your proposed members will be associated with other industries or professions such as the banking industry, real estate industry and the legal profession. In addition, the information submitted shows that you will be using Standard Industrial Classification (Economic Divisions) for meeting the same line of

business requirement for your employers. You have not established that all of these employers use similar production or marketing facilities, do not produce products or provide services having markedly similar characteristics and do not compete in the same markets. Accordingly, for the reasons stated above we conclude that not all employees of your employers satisfy the employment related common bond requirement of section 1.501(c)(9)-2(a)(1) of the regulations for being a Volunteer Employee Association.

In addition, based on the information submitted it appears that benefits may be provided on a discriminatory basis. Your application and brochure clearly indicate that certain classifications are permitted. However, your attorney has stated that you do not provide benefits on a discriminatory basis. In order to eliminate any confusion in this matter, we recommend that you amend your governing instrument to ensure that your benefits are not discriminatory within the meaning of section 505 of the Code; violate the inurement proscription of section 1.501(c)(9)-4(a) of the regulations nor violate the disproportionate benefits requirement of section 1.501(c)(9)-4(b) of the regulations.

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 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 a copy will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

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: [REDACTED] T:EO:RA:T:2
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[REDACTED]

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

Sincerely,

(signed) Terrell M. Berkovsky
Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED]

[REDACTED]