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APR 13 1985

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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 to provide life benefits equal to 5 times salary and severance benefits based on years of service. The severance benefit is payable at termination of employment.

All employees of [Redacted], are eligible for membership. Three employees are currently eligible for membership as follows:

<u>Name</u>	<u>Annual Compensation</u>	<u>Title</u>	<u>% of Ownership Interest</u>	<u>Service</u>
[Redacted]	\$ [Redacted]	Director	100	3
[Redacted]	[Redacted]	None	0	3
[Redacted]	[Redacted]	None	0	2

Pursuant to your plan and trust agreement, your employer has appointed your trustee and may remove your trustee at any time. Your employer reserves the right at any time to terminate the plan and trust.

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations (VEBA) 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)-3(f) of the regulations provides, in part, 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 purposes of section 501(c)(9) and these regulations, a benefit will be considered similar to that provided under a pension 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.

Section 1.501(c)(9)-4(a) of the Income Tax Regulations provides 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 permissible benefits. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

[REDACTED]

Your VEBA is comprised of a small number of members and it provides a dominant share of its aggregate benefits to [REDACTED], your director, and 100% owner of the sponsoring corporation. Based on the facts and circumstances, [REDACTED] would be considered a member of the prohibited group. Therefore, the VEBA provides a dominant share of the benefits to the shareholder, and prohibited inurement occurs under section 1.501(c)(9)-4(a) of the regulations which defeats exemption under 501(c)(9) of the Code.

Your VEBA is also controlled by [REDACTED]. Under these circumstances, he maintains a posture incompatible with the inurement proscription. With this control, he can manage the corporation's property and investments and determine when the VEBA should be terminated. An organization functioning in this manner is inconsistent with the exempt purposes of a VEBA in providing benefits to promote the common welfare of an association of employees as opposed to the welfare of one employee.

Accordingly, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. You are, therefore, 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 in duplicate 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 copies of it will be forwarded to the District Director, Newark, New Jersey. Thereafter, any questions about your federal income tax status or the filing of tax returns should be addressed to that office.

[REDACTED]

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by using the following address:

[REDACTED]  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224

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

Sincerely yours,

(Signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch