NO PROTEST RECEIVED
Released to District
3-12-86

Date [redacted]

Surname

[redacted]

[redacted]

0 3 FEB 1986

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

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(9) of the Internal Revenue Code.

The only benefit which you provide is a vacation facility.

The census data submitted by you indicates the following with respect to membership:

Name	Compensation	Director	Corporate Ownership
[redacted]	$[redacted]	yes	100%
[redacted]	[redacted]	no	0

The only ineligible employee is [redacted] who works only 50 hours per year. They are no other employees.

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)-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.

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

[redacted]

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, [redacted] is the sole owner of the employer corporation and is entitled to a dominant share of the benefits under the plan. The only other member of the plan is [redacted] who is related by marriage to [redacted]. In addition, by reason of his ownership and control over the employer corporation, [redacted] has ultimate control over the continued existence of the trust.

Under the circumstances, we believe that [redacted] and [redacted] maintain 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 and his family indicates that the plan is organized and operated for the benefit of its owner/member and not for any employee group. The trust would be subject to termination at the discretion of the owner/member. By controlling the timing of trust termination, the owner/member would be able to direct the distribution of his allocable share of the trust assets. Under these circumstances, the plan would function substantially as an investment fund for the direct personal and private benefit of its 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 a single employee.

Accordingly, based on all the facts and circumstances, we conclude 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 a 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.

[redacted]

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status or 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: OP:E:EO:R:4, Room 6133. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[redacted]

[redacted]
Chief, Exempt Organizations
Rulings Branch

cc: DD, Dallas
Attn: EO Group

cc: [redacted]
Attn: Research Facility

cc: ARC (Examination)
Southwest Region

cc: [redacted]

[redacted]