Exempt Organizations Technical Guide

TG 17: Supplemental Unemployment Benefit Trusts – IRC Section 501(c)(17)

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I. Overview

(1) Section 501(c)(17) of the Internal Revenue Code (IRC) exempts from federal income tax a trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits, if the requirements of Section 501(c)(17)(A)(i), (ii), and (iii) are met. This Technical Guide will refer to such trusts as supplemental unemployment benefit (SUB) trusts, and such plans as SUB plans.

(2) Subparagraphs (B), (C), (D), and (E) of Section 501(c)(17) provide additional information and define terms necessary to administer Section 501(c)(17), as well as the regulations promulgated thereunder.

A. Background / History

(1) Section 501(c)(17) was enacted in 1960 and made applicable to taxable years beginning after December 31, 1959. Regulations to implement Section 501(c)(17) were adopted on September 11, 1968.

(2) SUB plans arose out of attempts by labor unions to negotiate guaranteed annual wage plans. Their primary concern was the difference between workers' average weekly earnings received when employed, and the unemployment benefits received by workers when unemployed. Consequently, SUB plans developed instead of guaranteed annual wage plans. See Senate Report No. 86-1518, 1960-2 C.B. 753 at 754.

(3) The first major SUB plans were negotiated with employers in the automobile industry in 1955. Most SUB plans developed since then have followed their general pattern. Under these plans, a worker is eligible for SUB payments if laid off by the company, through either a reduction in force or a temporary layoff. Payments under SUB plans also generally depend on the concurrent receipt (at least during part of the period) of state unemployment benefits. See Senate Report No. 86-1518, 1960-2 C.B. 753 at 754.

(4) An employee has no vested interest in amounts the employer pays into the fund, and if the employee leaves the company voluntarily or is discharged for misconduct, he or she is not eligible for a benefit. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(5) SUB plans are administered via separate trusts and are funded by payments from the employer to the trusts of a certain amount per hour per employee. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(6) Prior to 1960, SUB trusts generally qualified under Section 501(c)(9). However, some were affected by a 15% limitation then in effect for Section 501(c)(9) organizations. Prior to the Tax Reform Act of 1969, Section 501(c)(9) required that 85% or more of the income of a voluntary employees' beneficiary association (VEBA) consist of amounts collected from members or contributed by the employer of members. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(7) Some SUB trusts could not qualify for exemption under Section 501(c)(9) at the time because their investment income was more than 15% of the SUB trust's total income. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(8) Congress enacted Section 501(c)(17) in 1960 to provide exemption for SUB trusts with investment income exceeding the limits then imposed by Section 501(c)(9). It did so because SUB trusts are nonprofit in character, provide worthwhile benefits, and are not in competition with profit-making enterprises. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(9) To avoid possible unfair competition with private enterprise, SUB plans that provide sickness and accident benefits may only provide such benefits as a subordinate part of the plan. See Senate Report No. 86-1518, 1960-2 C.B. 753.

(10) Section 501(c)(17) does not cover retirement and death benefits since other Code provisions address trusts providing such benefits. See Senate Report No. 86-1518, 1960-2 C.B. 753.

   a. In GCM 34270, the IRS opined that, although a SUB plan could be comprised of funds from multiple SUB trusts, all of those trusts had to satisfy the requirements of Section 501(c)(17). Since at least one of the trusts in question was paying benefits that were impermissible under Section 501(c)(17), the presence of those funds disqualified the entire SUB plan. See GCM 34270.

(11) The Deficit Reduction Act of 1984 (DEFRA) imposed new requirements and restrictions on employee welfare benefit funds, including Section 501(c)(17) trusts. See Pub. L. 98-369, July 18, 1984, 98 Stat. 494.

(12) DEFRA's rules include

   a. Mandatory filing requirements.

   b. Limitations on employer deductions for contributions to the organizations.

   c. Section 512(a)(3), which imposes special rules for unrelated business income tax (UBIT) on Section 501(c)(17) organizations.

   d. Excise tax on disqualified benefits. See Section 4976.

B. Relevant Terms

(1) **Supplemental Unemployment Benefit (SUB) Trust:** A SUB trust is an organization that pays supplemental unemployment compensation benefits (and, potentially, subordinate sick and accident benefits) to employees that are involuntarily separated from the employment of the employer. A SUB trust must satisfy the requirements of Section 501(c)(17) and Treas. Reg. 1.501(c)(17)-1(a) to qualify as an exempt organization. These requirements are discussed at length throughout this Technical Guide.

(2) **Supplemental Unemployment Compensation Benefits:** Supplemental Unemployment Compensation Benefits are benefits which are paid to an employee because of his or her involuntary separation from the employment of

the employer resulting from a reduction in force, the discontinuance of a plant or operation, or other similar conditions. Such separation may be temporary or permanent. See Section 501(c)(17)(D)(i) and Treas. Reg. 1.501(c)(17)-1(b)(1).

(3) **Subordinate Sick and Accident Benefits:** Generally, sick and accident benefit payments are amounts paid to an employee in the event of illness or personal injury (whether or not such event results in the employee's separation from the service of the employer). They also include amounts provided under the SUB plan funded by the SUB trust to reimburse the employee for amounts expended because of the illness or injury of the employee's spouse or dependent (as defined by Section 152). Under Section 501(c)(17)(D)(ii), such benefits must be subordinate to the separation payments provided under the SUB plan of which the SUB trust forms a part. All facts and circumstances are considered in determining whether payments are subordinate.. See Treas. Reg. 1.501(c)(17)-1(b)(5).

(4) **Employee:** An employee is an individual whose status is that of an employee under either the common-law rules applicable in determining the employer-employee relationship or an individual who qualifies as an employee under the State or Federal unemployment compensation law covering his or her employment. See Treas. Reg. 1.501(c)(17)-1(b)(2).

(5) **Involuntary Separation from the Employment of the Employer**: Whether a "separation from the employment of the employer" has occurred is determined based on all facts and circumstances. For purposes of Section 501(c)(17), "separation" includes both temporary and permanent severances of the employment relationship. Whether such a separation is "involuntary" is a question of fact. Normally, an employee will not be deemed to have voluntarily separated from the employment of the employer merely because the employee's collective bargaining agreement provides for the termination of his or her services upon the occurrence of a condition which then occurs. Conditions causing involuntary separation include but are not limited to: cyclical, seasonal, or technological reasons. Separation for disciplinary reasons or because of age is not considered involuntary. See Treas. Reg. 1.501(c)(17)-1(b)(3) and (4).

C. Law / Authority

(1) Section 501(c)(17) provides exemption from income tax to a SUB trust or trusts forming part of a SUB if the SUB trust meets the requirements of Subparagraph (A). Subparagraph (B) discusses considerations for determining whether the trust is nondiscriminatory within the meaning of Section 501(c)(17)(A)(ii) and (iii). Subparagraphs (C), (D), and (E) address time requirements, additional definitions, and coordination with Section 501(c)(9), respectively.

(2) Treas. Reg. 1.501(c)(17)-1 lists the requirements for exemption under Section 501(c)(17) and defines applicable terms.

(3) Treas. Reg. 1.501(c)(17)-2 explains general rules covering SUB plans and the benefits they pay.

(4) Treas. Reg. 1.501(c)(17)-3 addresses the taxability of benefits distributed by SUB plans. It also coordinates with Section 501(c)(9) and sets forth the return requirements to which Section 501(c)(17) organizations are subject.

II. Requirements

(1) As an exempt organization, a SUB trust is subject to a number of requirements relating to its application for exemption, organizational structure, and provision of benefits in a nondiscriminatory manner.

A. Application for Exemption

(1) A SUB trust seeking recognition of exemption under Section 501(c)(17) must electronically submit a completed Form 1024, Application for Recognition of Exemption Under Section 501(a) or Section 521, with the correct user fee. See Rev. Proc. 2024-5, 2024-1 I.R.B. 262

(2) On the Form 1024, SUB trusts specifically complete Schedule J, Organizations Described in Section 501(c)(17) – Trusts Providing for the Payment of Supplemental Unemployment Compensation Benefits. See Instructions to Form 1024. The Form 1024 requires, among other things:

a. A full description of the supplemental unemployment benefits available to participants, showing the amount, duration, eligibility requirements, and the circumstances that will entitle a recipient to payment of the benefits.

b. A copy of the SUB plan documents describing the benefits and the terms and conditions for eligibility for each benefit (uploaded at end of Form).

c. An detailed explanation of whether the SUB plan provides benefits for individual proprietors, partners, or self-employed persons under the plan.

A.1. Notice

(1) A SUB trust will not be considered exempt unless Form 1024 is filed within time limits prescribed by regulations. See Section 505(c).

(2) Failure to file all the information necessary to complete the notice will not be sufficient to deny recognition of exemption from the date of organization to the date of submission. See Treas. Reg. 1.505(c)-1T, A-8.

(3) If the notice filed within the required time is substantially complete, and any additional information requested by the IRS to complete the notice is provided within the time allowed, the original notice will be considered timely. See Treas. Reg. 1.505(c)-1T, A-8.

(4) Treas. Reg. 1.501(c)-1T provides questions and answers relating to the notification requirement for recognition of exemption for, among other sections,

Section 501(c)(17) (temporary). Among other guidance, some of the questions and answers state the following:

a. An organization or trust that is organized after July 18, 1984, will not be treated as described in paragraphs (9) or (17) of Section 501(c), unless the organization notifies the IRS that it is applying for recognition of exemption. In addition, unless the required notice is given in the manner and within the time prescribed by these regulations, an organization will not be treated as exempt for any period before the giving of the required notice. The notice is filed by submitting a properly completed and executed Form 1024, “Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120” together with the additional information required. The notice is filed with the district director for the key district in which the organization's principal place of business or principal office is located. See Treas. Reg. 1.505(c)-1T

b. The notice may be filed by either the plan administrator (as defined in Section 414(g)) or the trustee. The IRS will not accept a Form 1024 for any organization or trust before such entity has been organized. See Treas. Reg. 1.505(c)-1T.

c. A notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, the organization or trust submits a full description of the benefits available to participants under Section 501(c)(9) or (17). Moreover, both the terms and conditions of eligibility for membership and the terms and conditions of eligibility for benefits must be set forth. This information may be contained in a separate document, such as a plan document, or it may be contained in the creating document of the entity (such as the articles of incorporation or association, or a trust indenture). See Treas. Reg. 1.505(c)-1T.

d. For benefits provided through a policy or policies of insurance, all such policies must be included with the notice. Where individual policies of insurance are provided to the participants, single exemplar copies, typical of policies generally issued to participants, are acceptable, provided they adequately describe all forms of insurance available to participants. In providing a full description of the benefits available, the benefits provided must be sufficiently described so that each benefit is definitely determinable. A benefit is definitely determinable if the amount of the benefit, its duration, and the persons eligible to receive it are ascertainable from the plan document or other instrument. Thus, a benefit is not definitely determinable if the rules governing either its amount, its duration, or its recipients are not ascertainable from the plan document or other instrument but are instead subject to the discretion of a person or committee. Likewise, a benefit is not definitely determinable if the amount for any individual is based upon a percentage share of any item that is within the discretion of the employer. However, a disability benefit will not fail to be considered definitely determinable merely because the

determination of whether an individual is disabled is made under established guidelines by an authorized person or committee. See Treas. Reg. 1.505(c)-1T.

e. If an organization or trust claiming exemption under section 501(c) (9) or (17) is organized and maintained pursuant to a collective bargaining agreement between employee representatives and one or more employer, only one Form 1024 is required to be filed for the organization or trust, regardless of the number of employers originally participating in the agreement. Moreover, once a Form 1024 is filed pursuant to a collective bargaining agreement, an additional Form 1024 is not required to be filed by an employer who thereafter participates in that agreement. When benefits are provided pursuant to a collective bargaining agreement, the notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, a copy of the collective bargaining agreement is also submitted together with the additional information delineated in Q&A-4. See Treas. Reg. 1.505(c)-1T.

f. An organization or trust applying for exemption must file the required notice by the later of February 4, 1987, or 15 months from the end of the month in which the organization or trust was organized. An extension of time for filing the required notice may be granted by the district director if the request is submitted before the end of the applicable period and it is demonstrated that additional time is needed. See Treas. Reg. 1.505(c)-1T.

g. If the required notice is filed within the time provided by these regulations, the organization's exemption will be recognized retroactively to the date the organization was organized, provided its purpose, organization and operation (including compliance with the applicable nondiscrimination requirements) during the period prior to the date of the determination letter are in accordance with the applicable law. However, if the required notice is filed after the time provided by these regulations, exemption will be recognized only for the period after the application is filed with the IRS The date of filing is the date of the United States postmark on the cover in which an exemption application is mailed or, if no postmark appears on the cover, the date the application is stamped as received by the IRS. If an extension for filing the required notice has been granted to the organization, a notice filed on or before the last day specified in the extension will be considered timely and not the otherwise applicable date under Q&A-6. See Treas. Reg. 1.505(c)-1T.

h. Although a properly completed and executed Form 1024 together with the required additional information (as discussed in Q&A-4 and Q&A-5) must be submitted to satisfy the notice required by section 505(c), the failure to file, within the time specified, all of the information necessary to complete such notice will not alone be sufficient to deny recognition of exemption from the date of organization to the date the completed information is submitted to the IRS. If the notice which is filed with the IRS within the

required time is substantially complete, and the organization supplies the necessary additional information requested by the IRS within the additional time allowed, the original notice will be considered timely. However, if the notice is not substantially complete or the additional information is not provided within the additional time allowed, exemption will be recognized only from the date of filing of the additional information. See Treas. Reg. 1.505(c)-1T.

A.2. Appeals

(1) Denials may be appealed. After December 2015, a SUB trust may institute a declaratory judgment proceeding in court in response to a denial under the rules of Section 7428. See Rev. Proc. 2024-5, 2024-1 I.R.B. 262, Sections 9-10, and Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status, both updated annually.

B. Exemption Requirements

(1) To receive and retain its recognition of exempt status, a SUB trust must satisfy requirements with respect to its written trust instrument, SUB plan structure, distribution of benefits, and provisions for nondiscriminatory treatment of beneficiaries.

a. Generally, SUB trusts can qualify and apply for exemption as a VEBA described in Section 501(c)(9) or as a SUB trust under Section 501(c)(17). SUB trusts may also qualify as a union described in IRC section 501(c)(5), provided the trust is collectively bargained and is partially funded by the employee or union or both. SUB trusts are generally funded by employers and there is substantial doubt and very little published precedent as to whether employer funds can be used to finance employee benefits of a union. Section 501(c)(5) applications of this type should be worked in conjunction with Counsel.

B.1. Basic SUB Trust Requirements

(1) To receive recognition as a Section 501(c)(17) organization, a SUB trust must be a valid, existing trust under local law and be evidenced by a signed written document (trust instrument). See Treas. Reg. 1.501(c)(17)-1(a)(2).

a. The trust instrument need only form part of the overall SUB plan, and does not need to set out all the terms of the plan. This is because the SUB trust instrument is only used to implement the SUB plan. It is sufficient as long as it binds the trustees to act in a manner consistent with plan provisions. See Rev. Rul. 58-442, 1958-2 C.B. 194.

b. A Section 501(c)(17) organization must be organized as a SUB trust. It cannot be organized as a corporation or unincorporated association.

(2) A SUB trust must be established and maintained by an employer, the employees of the employer, or jointly by the employer and its employees. The

sole permissible purpose of the SUB trust is to provide supplemental unemployment compensation benefits. See Treas. Reg. 1.501(c)(17)-1(a)(3).

(3) A SUB trust must be part of a SUB plan which provides that the corpus and income of the trust cannot (at any time before the satisfaction of all liabilities to employees covered by the SUB plan) be used for or diverted to, any purpose other than the provision of supplemental unemployment compensation benefits. See Treas. Reg. 1.501(c)(17)-1(a)(4).

   a. If the SUB plan provides for the payment of any benefits other than supplemental unemployment compensation benefits as defined in Treas. Reg. 1.501(c)(17)-1(b), the SUB trust cannot receive recognition as a Section 501(c)(17) organization. See Treas. Reg. 1.501(c)(17)-1(a)(4).

   b. The payment of any necessary or appropriate expenses in connection with the administration of a plan providing supplemental unemployment compensation benefits shall be considered a payment to provide such benefits and shall not affect a SUB trust's qualification as a Section 501(c)(17) organization. See Treas. Reg. 1.501(c)(17)-1(a)(4).

(4) A SUB trust must be part of a SUB plan in which eligibility conditions and benefits do not discriminate in favor of employees who are officers, shareholders, supervisors, or highly compensated employees within the meaning of Section 414(q). See Treas. Reg. 1.501(c)(17)-1(a)(5)

   a. A SUB plan is not discriminatory within the meaning of Section 501(c)(17)(A)(iii) merely because the benefits received under the SUB plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the SUB plan. See Treas. Reg. 1.501(c)(17)-1(a)(5).

   b. The benefits provided for higher paid employees may be greater than the benefits provided for lower paid employees if the benefits are determined by reference to their compensation. See Treas. Reg. 1.501(c)(17)-1(a)(5).

   c. However, the plan will be considered discriminatory if the benefits paid to higher paid employees bear a larger ratio to their compensation than the benefits paid to the lower paid employees bear to their compensation. See Treas. Reg. 1.501(c)(17)-1(a)(5).

(5) A SUB trust must be part of a SUB plan which requires that benefits are to be determined according to objective standards. A SUB plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely in the discretion of the trustees. See Treas. Reg. 1.501(c)(17)-1(a)(6).

B.2. Additional SUB Trust Rules

(1) Several SUB trusts may be designated as constituting part of one SUB plan which is intended to satisfy the requirements of Section 501(c)(17). In this case, all of such SUB trusts taken as a whole must meet the requirements of Section

501(c)(17). The fact that a combination of SUB trusts fails to satisfy the requirements of Section 501(c)(17) as one SUB plan does not prevent such individual SUB trusts that satisfy the requirements from qualifying for exemption. See Treas. Reg. 1.501(c)(17)-2(f).

(2) A SUB trust forming part of a SUB plan of several employers, or the employees of several employers, will be a SUB trust described in Section 501(c)(17) if all the requirements are otherwise satisfied. See Treas. Reg. 1.501(c)(17)-2(g).

(3) Generally, contributions to SUB trusts may be used by trustees to purchase any investments permitted to by the trust agreement in accordance with local law. However, the tax-exempt status of the SUB trust will be forfeited if investments constitute "prohibited transactions" under Section 503 and Treas. Reg. 1.503(a)-1. See Treas. Reg. 1.501(c)(17)-2(h).

(4) A SUB trust that earns unrelated business taxable income (UBTI) from investments is subject to UBIT imposed by Section 511. See Treas. Reg. 1.501(c)(17)-2(h).

(5) PLR 200206056 held that, after paying all benefits and costs, the excess assets of a SUB trust may be transferred to and merged with a VEBA without threatening the exempt status of the entities under Sections 501(c)(17) and 501(c)(9), respectively. See PLR 200206056. While private letter rulings may not be cited as precedents, they offer helpful illustrations and factual examples.

(6) On April 24, 2020, the IRS issued proposed regulations addressing how exempt organizations subject to the special UBIT rules of Section 512(a)(3) – including SUB trusts – determine the following:

   a. If the organization has more than one unrelated trade or business

   b. If so, how the organization calculates its UBTI. See 85 Fed. Reg. 23172 (April 24, 2020).

B.3. SUB Plan Requirements

(1) The requirements for a SUB trust to receive recognition as a Section 501(c)(17) organization are primarily set forth in Treas. Reg. 1.501(c)(17)-1(a). The rules for the SUB plan a SUB trust administers are set forth in Treas. Reg. 1.501(c)(17)-2.

   a. Treas. Reg. 1.501(c)(17)-2(c) contains nondiscrimination provisions, and is discussed in Section II.B.5. of this Technical Guide.

(2) A SUB plan must be permanent rather than temporary. It may reserve the right to change or terminate, and discontinue contributions. See Treas. Reg. 1.501(c)(17)-2(d).

   a. However, the abandonment of the SUB plan for any reason other than business necessity within a few years after it has taken effect will be taken as evidence that the SUB plan from its inception was not a bona fide

program for the purpose of providing supplemental unemployment compensation benefits to employees. See Treas. Reg. 1.501(c)(17)-2(d).

b. Whether or not a particular SUB plan is permanent is determined in light of all the surrounding facts and circumstances. See Treas. Reg. 1.501(c)(17)-2(d).

c. The mere fact that a collective bargaining agreement provides that a SUB plan may be modified at the termination of such agreement, or that particular provisions of the SUB plan are subject to renegotiation, does not necessarily imply that the SUB plan is not a permanent arrangement. See Treas. Reg. 1.501(c)(17)-2(d).

d. The fact that the SUB plan provides that assets remaining in the SUB trust after the satisfaction of all liabilities (including contingent liabilities) under the SUB plan may be returned to the employer does not imply that the SUB plan is not a permanent arrangement. Similarly, it does not preclude the underlying SUB trust from qualifying under Section 501(c)(17). See Treas. Reg. 1.501(c)(17)-2(d).

e. Rev. Rul. 81-68, 1981-1 C.B. 349, held that a provision in a new collective bargaining agreement calling for the termination of a SUB plan and the distribution of residuary assets to employees covered by the SUB plan would not affect the exempt status of a SUB trust created to administer the SUB plan. Such a provision is valid so long as the SUB plan has been in effect long enough to satisfy Treas. Reg. 1.501(c)(17)-2(d), and satisfaction of all liabilities to employees is guaranteed.

(3) A SUB plan must satisfy the requirements of Section 501(c)(17) throughout the entire taxable year of the trust in order for the SUB trust to be exempt for such year. However, Section 501(c)(17)(C) provides that a SUB plan will satisfy the nondiscrimination requirements of Section 501(c)(17)(A) if it does so on at least one day in each quarter of the taxable year of the SUB trust. See Treas. Reg. 1.501(c)(17)-2(e).

(4) A SUB plan of several employers or the employees of several employers is also permitted. See Treas. Reg. 1.501(c)(17)-2(g).

(5) If a SUB plan providing sick and accident benefits is financed solely by employer contributions to the SUB trust, and such benefits are funded by payment of premiums on group or individual accident or health insurance policies, then the SUB plan must specify that portion of the contributions to be used to fund such benefits. The same rule applies if such benefits are funded by payment of premiums to a separate fund which pays such benefits. See Treas. Reg. 1.501(c)(17)-2(i).

(6) If a SUB plan which is financed in whole or in part by employee contributions provides sick and accident benefits, it must specify the portion of employee contributions allocated to the cost of funding such benefits. The SUB plan must

allocate the cost of funding such benefits between employer contributions and employee contributions. See Treas. Reg. 1.501(c)(17)-2(i).

(7) Rev. Rul. 71-156, 1971-1 C.B. 153, held that an amendment to a SUB trust providing for distribution to employees of funds representing contributions in excess of maximum funding of the SUB trust adversely affected the SUB trust's exempt status under Section 501(c)(17). It reasoned that such a distribution to employees did not constitute supplemental unemployment benefits within the meaning of Section 501(c)(17).

   a. However, GCM 36761 declined to extend the reasoning of Rev. Rul. 71-156 to a contingency fund established in a memorandum of agreement following the funding of a SUB trust. The memorandum did not in any way amend the SUB trust. Under the facts and circumstances, Counsel opined that the contingency fund did not comprise part of the overall SUB plan. Benefits paid from the contingency fund thus were not provided under the SUB plan. Accordingly, the existence of the contingency fund did not have an adverse effect on the exempt status of the SUB plan. See GCM 36761.

   b. In contrast, Rev. Rul. 71-156 involved an explicit amendment to the SUB plan funded by the SUB trust in question. It also required the use of the contingency funds to be used to fund the SUB plan pursuant to circumstances outlined in the amendment.

(8) Rev. Rul. 70-536, 1970-2 C.B. 120, held that investing some of a SUB trust's funds in low yield investments furthering projects providing community and social benefits would not adversely affect the SUB trust's exemption under Section 501(c)(17). It added that this would hold true so long as sufficient safeguards ensured the SUB trust's funds were not invested for the benefit of related parties or in a manner contrary to the interests of employees. See Rev. Rul. 70-536 and Treas. Reg. 1.501(c)(17)-2(h).

(9) Rev. Rul. 73-307, 1973-2 C.B. 185, held that an amendment to a SUB trust permitting an employee to authorize the trustee to deduct and pay union dues from the employee's benefit payments would not adversely affect the SUB trust's exemption under Section 501(c)(17). It reasoned that no part of the corpus or income was used for, or diverted to, any purpose other than the provision of supplemental unemployment benefits. Instead, part of the employee's monthly benefits were used, at the employee's requestion, to satisfy the employee's obligation to pay union dues. See Rev. Rul. 73-307.

B.4. Permissible Benefits

(1) A SUB plan may only pay supplemental unemployment compensation benefits. This includes:

   a. Benefits paid to an employee because of his or her involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

b. Sick and accident benefits subordinate to the supplemental unemployment benefits described above. See Section 501(c)(17)(D) and Treas. Reg. 1.501(c)(17)-1(b)(1).

(2) Treas. Reg. 1.501(c)(17)-2(a) provides rules for the payment of supplemental unemployment compensation benefits. Such benefits may be paid:

a. As cash, services, or property in a lump sum or installments

b. To an employee who has, subsequent to his or her involuntary separation from the employment of the employer, obtained other part-time, temporary, or permanent employment.

(3) Examples of supplemental unemployment compensation benefits permitted under Treas. Reg. 1.501(c)(17)-2(a) include:

a. Furnishing of medical care at established clinics;

b. Furnishing of food, job training and schooling, and job counseling.

(4) If benefits are furnished in services or property, the fair market value of the benefits must satisfy the nondiscrimination requirements of Section 501(c)(17)(A)(iii) and Treas. Reg. 1.501(c)(17)-2(c). See Treas. Reg. 1.501(c)(17)-2(a).

(5) Benefits may be provided only to an employee and only under circumstances described in Treas. Reg. 1.501(c)(17)-1(b)(1). Thus, a Section 501(c)(17) organization may not provide for the payment of a death, vacation, or retirement benefit. See Treas. Reg. 1.501(c)(17)-2(a).

(6) Rev. Rul. 70-188, 1970-1 C.B. 133, held that relocation allowances paid to employees who were involuntarily separated from their employment in one city, but offered employment in another city where they were needed, constituted supplemental unemployment compensation benefits within the meaning of Section 501(c)(17).

(7) Rev. Rul 70-189, 1970-1 C.B. 134, held that short work week benefits paid by a SUB plan to employees not wholly separated from employment constitute supplemental unemployment benefits under Section 501(c)(17). It reasoned the employees' employment situation had been changed in a manner equivalent to a partial involuntary separation.

(8) Rev. Rul. 77-43, 1977-1 C.B. 151, held that a SUB plan paying compensation benefits to all employees rather than only employees who suffered a reduction in working hours did not qualify for exemption under Section 501(c)(17). The plan in question paid benefits to employees in an industry in which technological developments were expected to reduce the number of working hours in the industry as a whole.

(9) NYSA-ILA Container Royalty Fund v. Commissioner 684.F.Supp. 783 (S.D.N.Y. 1987), affirmed, 847 F.2d 50 (2d Cir. 1988) held that certain royalty benefits for

which qualification did not depend on separation from employment or reduction in hours were not supplemental unemployment benefits.

(10) Treas. Reg. 1.501(c)(17)-2(b) provides rules for the payment of subordinate sick and accident benefits by SUB trusts. Such benefits may be provided only for employees who are eligible for receipt of separation benefits under the SUB plan of which the SUB trust is a part.

(11) The sick and accident benefits need not be provided for all the employees who are eligible for receipt of separation benefits, so long as the SUB plan does not discriminate in favor of persons with respect to whom discrimination is prohibited under Section 501(c)(17)(A)(ii) and (iii). See Treas. Reg. 1.501(c)(17)-2(b).

   a. The portion of the SUB plan providing for payment of sick and accident benefits must satisfy these nondiscrimination requirements of Section 501(c)(17)(A)(ii) and (iii) without regard to the portion of the SUB plan providing for the payment of benefits due to involuntary separation. See Treas. Reg. 1.501(c)(17)-2(b).

B.5. Nondiscrimination Provisions

(1) As discussed in Section II.B.1. of this Technical Guide, a Section 501(c)(17) organization cannot discriminate, either in the classification of participants or payment of benefits, in favor of certain employees. See Section 501(c)(17)(A)(ii)-(ii) and Treas. Reg. 1.501(c)(17)-1(a)(5). These include:

   a. Officers

   b. Shareholders

   c. Supervisors

   d. Highly Compensated Employees (HCEs) under Section 414(q).

(2) For taxable years beginning before January 1, 1997, HCE included any employee who, during the taxable year (or preceding year):

   a. Was at any time a 5% owner

   b. Received compensation from the employer in excess of $75,000 (indexed for inflation)

   c. Received compensation from the employer in excess of $50,000 (indexed for inflation) and was in the top 20% of the employees in compensation

   d. Was an officer of the employer and received compensation in excess of 150% of the amount in effect under Section 415(c)(1)(A) for the taxable year (or preceding year).

(3) For taxable years beginning after December 31, 1996, HCE includes any employee who, during the taxable year (or preceding year):

   a. Was a 5% owner at any time during the year or preceding year or

b. For the preceding year (i) had compensation from the employer in excess of $80,000 (indexed for inflation); and (ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year. See Section 414(q)(1). The top-paid group consists of the top 20% of employees ranked on the basis of compensation. See Section 414(q)(3).

(4) Payment of benefits that bear a uniform relationship to compensation of employees covered by the SUB plan is not discriminatory. However, benefits paid at a higher ratio to the compensation of higher paid employees than to the compensation of lower paid employees is discriminatory. See Treas. Reg. 1.501(c)(17)-1(a)(5).

(5) Generally, in determining whether a SUB plan meets the nondiscrimination requirements of Section 501(c)(17)(A), any benefits provided under any other plan shall not be taken into consideration. See Section 501(c)(17)(B) and Treas. Reg. 1.501(c)(17)-2(c). However, the three situations discussed below are exceptions to this rule.

(6) A SUB plan shall not be considered discriminatory merely because the benefits under the SUB plan which are first determined in a nondiscriminatory manner under Section 501(c)(17)(A) are then reduced in whole or in part by any sick, accident, or unemployment compensation benefits received under State or Federal law. See Section 501(c)(17)(B)(i).

a. For example, a SUB plan may provide for the payment of an unemployment benefit and the amount of such benefit is determined as a percentage of the employee's compensation which is then reduced by any unemployment benefit which the employee receives under a State plan. See Treas. Reg. 1.501(c)(17)-2(c)(2).

b. A SUB plan could also provide for the reduction of such a plan benefit by a percentage of the State benefit, or may provide for the payment to an employee of an amount which, when added to any State unemployment benefit, equals a percentage of the employee's compensation. See Treas. Reg. 1.501(c)(17)-2(c)(2).

(7) A SUB plan shall not be considered discriminatory merely because it provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which the employees would receive under such laws if they were eligible. See Section 501(c)(17)(B)(ii).

a. For example, an employer may establish a SUB plan only for employees who have exhausted their benefits under the State law, and, if the SUB plan provides for such employees the same benefits which they would receive under the State plan, the State plan and the SUB plan of the employer will be considered as one SUB plan in determining whether the

employer's SUB plan meets the nondiscrimination requirements of Section 501(c)(17). See Treas. Reg. 1.501(c)(17)-2(c)(3).

b. Such a SUB plan does not need to provide all of the benefits provided under the State plan. Instead, a SUB plan could provide for the payment of a reduced amount of benefits, or for the payment of only certain of the types of benefits, provided by the State plan. See Treas. Reg. 1.501(c)(17)-2(c)(3).

c. If a SUB plan provides benefits for employees who are not eligible to receive the benefits provided under a State plan and such benefits are greater or of a different type than those under the State plan, the exception in Section 501(c)(17)(B)(ii) does not apply. In such a case, the SUB plan of the employer must satisfy the requirements of Section 501(c)(17)(A) without regard to the benefits and coverage provided by the State plan. See Treas. Reg. 1.501(c)(17)-2(c)(3).

(8) A SUB plan shall not be considered discriminatory merely because the plan provides only for employees who are not eligible under another SUB plan exempt under Section 501(c)(17)(A) provided wholly by the employer of the same benefits (or a portion of such benefits if determined in nondiscriminatory manner) which such employees would receive under such other SUB plan if they were eligible. This applies only if the employees eligible under both SUB plans would make a classification which would be nondiscriminatory under Section 501(c)(17)(A). See Section 501(c)(17)(B)(iii).

a. The plan of the employer which is being correlated with the SUB plan seeking to satisfy Section 501(c)(17) may be a plan which forms part of a VEBA described in Section 501(c)(9) as long as the VEBA also satisfies the requirements of Section 501(c)(17)(A). See Treas. Reg. 1.501(c)(17)-2(c)(4).

b. For example, if an employer has established a SUB plan for hourly-wage employees that meets the requirements of Section 501(c)(17)(A) even though it is part of a VEBA, the salaried employees of such employer may establish a SUB plan for themselves. If such SUB plan provides for the same benefits as the SUB plan covering hourly-wage employees, both plans may be considered as one SUB plan in determining whether the SUB plan covering salaried employees satisfies the nondiscrimination requirement. This would remain the case if the benefits provided for the salaried employees were funded solely or partly by employer contributions. See Treas. Reg. 1.501(c)(17)-2(c)(4).

III. Other Considerations

(1) This section discusses other considerations applicable to Section 501(c)(17) organizations.

A. Unrelated Business Income Rules

(1) Organizations exempt under Section 501(c)(17) are subject to special unrelated business income (UBI) rules.

A.1. Section 512(a)(3) UBI Rules for SUB Trusts

(1) Section 501(c)(17) organizations are subject to the special UBI rules contained in Section 512(a)(3).

   a. These rules also cover organizations exempt under Sections 501(c)(7) and (9) (social clubs and VEBAs, respectively).

   b. Section 501(c)(17) and Section 501(c)(9) organizations are referred to as "Covered Entities" in Treas. Reg. 1.512(a)-5.

(2) For Section 501(c)(17) organizations, UBTI means all gross income (other than exempt function income) less allowable deductions. In other words, any income earned by a SUB trust that is not exempt function income is subject to UBIT. See Section 512(a)(3).

(3) Under Section 512(a)(3)(B), the exempt function income of a Covered Entity (Section 501(c)(9) and/or Section 501(c)(17)) for a taxable year means the sum of:

   a. Gross income from dues, fees, charges, or similar amounts that are paid by members of the Covered Entity and employer contributions to the Covered Entity (collectively "member contributions");

   b. Other income of the Covered Entity (including earnings on member contributions) that is set aside for a purpose specified in Section 170(c)(4) and reasonable costs of administration directly connected with such purpose; and

   c. Other income of the Covered Entity (including earnings on member contributions) that, subject to the limitation of Section 512(a)(3)(E), is set aside for the payment of life, sick, accident, or other benefits and reasonable costs of administration directly connected with such purpose. See Treas. Reg. 1.512(a)-5(b)(1).

(4) Section 512(a)(3)(E) provides an amount won't be considered set aside for purposes of Section 512(a)(3)(B)(ii) to the extent it exceeds the account limit of Section 419A(c) for life, medical, supplemental unemployment, severance, or disability benefits, except that under Section 512(a)(3)(E)(ii)(I), the limitation doesn't apply to existing reserves for post-retirement medical benefits or post-retirement life insurance benefits.

a. The effect of this provision is to tax Section 501(c)(9) and (17) organizations on their investment income to the extent their asset accounts under Section 419A are overfunded. See Treas. Reg. 1.512(a)-5(c)(1).

A.2. Calculation of UBTI for SUB Trusts

(1) Generally, UBTI for Section 501(c)(17) organizations is calculated in the following manner pursuant to Section 512(a)(3)(A):

a. All gross income, (excluding exempt function income);

b. Less deductions allowed by Chapter 1 of the Code which are directly connected with the production of gross income;

c. Modifications for Section 512(a)(3) are limited to the net operating losses as described in Section 512(a)(6), charitable contributions under Section 512(b)(10) and Section 512(b)(11), and the standard $1000 deductions under Section 512(b)(12).

A.3. Allowable Deductions

(1) A deduction allowable under Chapter 1 of the Code will only be taken into account in computing UBTI under Section 512(a)(3) if it is directly connected with the production of gross income (excluding exempt function income). See Treas. Reg. 1.512(a)-1(c).

(2) Personnel expenses used both for an exempt purpose and for the production of gross income (excluding exempt function income) must be allocated between the two uses on a reasonable basis. See Treas. Reg. 1.512(a)–1(c).

A.4. Treatment of Title Holding Companies

(1) Section 512(a)(3)(C) provides that when an exempt holding company (described in Section 501(c)(2)) pays its income to an exempt organization which is described in Section 501(c)(7), (9), or (17), the holding company is to be treated as organized and operated for the same purposes as the exempt payee organization (for example, a SUB trust).

(2) Thus, if the income of a holding company is payable to a SUB Trust, the holding company will be subject to tax as if it were a SUB trust. See Section 512(a)(3)(C).

a. However, the holding company will not be treated as having exempt function income unless it files a consolidated return with the payee organization (for example, a SUB trust). See Section 512(a)(3)(C).

A.5. Gain on Sale of Assets

(1) The sale of property is taxable under Section 512(a)(3)(A) unless the sale satisfies the nonrecognition requirements of Section 512(a)(3)(D). If the requirements of Section 512(a)(3)(D) are satisfied, then an organization may exclude all or a portion of the gain from the sale of property.

(2) The requirements for an organization to exclude gain pursuant to Section 512(a)(3)(D) are:

a. A sale of property.

b. The property is used directly in the performance of an organization's exempt function.

c. New property is purchased by the organization.

d. The new property is used directly in the performance of an organization's exempt function.

e. The new property is purchased within a four-year period, beginning one year before the date of the sale of the old property and ending three years after the sale.

f. The new property purchased need not be similar in nature or in use to the property sold. The recognized gain is includible in the organization's gross income in the year in which the gain is realized.

g. Gain (if any) from the sale is recognized only to the extent that the sales price of the old property exceeds the cost of the new property.

B. Prohibited Transactions

(1) SUB trusts are subject to Section 503. A SUB trust cannot be exempt if it has engaged in a prohibited transaction. See Section 503(a)(1).

(2) The term "prohibited transaction" includes the following transactions between an exempt organization subject to Section 503 and certain specified individuals or entities:

a. Lending any part of its income or corpus to an individual or entity listed in Section 503(b), without the receipt of adequate security and a reasonable rate of interest;

b. Paying any compensation to an individual or entity listed in Section 503(b), in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered;

c. Making any part of its services available on a preferential basis to an individual or entity listed in Section 503(b);

d. Making any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth from an individual or entity listed in Section 503(b);

e. Selling any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth to an individual or entity listed in Section 503(b); or

f. Engaging in any other transaction with an individual or entity listed in Section 503(b) resulting in a substantial diversion of its income or corpus. See Section 503(b).

(3) The specified individuals or entities who cannot undertake a prohibited transaction with an organization subject to Section 503(a)(1) are:

a. The creator of the organization (if a trust)

b. A person who has made a substantial contribution to the organization

c. A member of the family (within the meaning of Section 267(c)(4)) of an individual who is the creator of the trust or who has made a substantial contribution to the organization

d. A corporation controlled by such creator or substantial contributor through the direct or indirect ownership of 50% or more of the total combined voting power of all classes of stock entitled to vote, or 50-percent of more of the total shares of all classes of stock of the corporation. See Section 503(b).

C. Section 4976 Excise Tax

(1) Generally, any employer that maintains a welfare benefit fund, including a SUB plan, that provides a disqualified benefit during any taxable year is subject to a tax equal to 100% of such disqualified benefit. See Section 4976(a).

(2) A disqualified benefit is defined under Section 4976(b)(1), and includes:

a. Any post-retirement medical benefit or life insurance benefit provided with respect to a key employee if a separate account must be established for such employee under Section 419A(d) and the payment is not from such separate account. See Section 4976(b)(1)(A)

b. Any post-retirement medical benefit or life insurance benefit provided with respect to an individual in whose favor discrimination is prohibited unless the plan meets the requirements of Section 505(b) with respect to such benefit. See Section 4976(b)(1)(B).

c. Any portion of a welfare benefit fund reverting to the benefit of the employer. See Section 4976(b)(1)(C)

(3) The following exceptions apply:

a. Section 4976(b)(1)(B), discussed above, shall not apply to any plan maintained pursuant to an agreement between employee representatives and one or more employers. This holds true if the IRS determines such agreement is a collective bargaining agreement and that the benefits were the subject of good faith bargaining between such employee representatives and such employer or employers. See Section 4976(b)(2).

b. Section 4976(b)(1)(C), discussed above, shall not apply to any amount attributable to a contribution to the fund which is not allowable as a

deduction under Section 419 for the taxable year or any prior taxable year (and such contribution shall not be included in any carryover under Section 419(d)). See Section 4976(b)(3).

c. Section 4976(b)(1)(A) and (B), discussed above, shall not apply to post-retirement benefits charged against an existing reserve for post-retirement medical or life insurance benefits under Section 512(a)(3)(E) or charged against the income on such reserve. See Section 4976(b)(4).

D. Coordination with Section 501(c)(9)

(1) A SUB trust that forms part of a SUB plan may, if it qualifies, apply for exemption as either a VEBA described in Section 501(c)(9) or a SUB trust described in Section 501(c)(17). See Section 501(c)(17)(E) and Treas. Reg. 1.501(c)(17)-3(b).

E. Limitations Under Sections 419 and 419A

(1) Pursuant to Section 419A(a)(3), employer contributions made to a SUB trust after December 31, 1985, are subject to limits set forth in Sections 419 and 419A. No deduction is allowed in a taxable year to the extent the limits imposed by Sections 419 and 419A are exceeded, although excess contributions may be carried forward to subsequent years. See Sections 419 and 419A.

F. Required Recordkeeping and Returns

(1) Any SUB trust exempt under Section 501(c)(17) must maintain records indicating the amount of separation benefits and sick and accident benefits which have been provided to each employee. See Treas. Reg. 1.501(c)(17)-2(j).

(2) If a SUB plan is financed in whole or in part by employee contributions to the SUB trust, then the SUB trust must maintain records indicating the amount of each employee's total contributions allocable to separation benefits. See Treas. Reg. 1.501(c)(17)-2(j).

(3) Every SUB trust exempt under Section 501(c)(17) which makes one or more payments totaling $600 or more in one year to an individual must file an annual information return (Form 1099). See Treas. Reg. 1.501(c)(17)-2(j). Payments of supplemental unemployment compensation benefits made after December 31, 1970, are treated as if they were wages for purposes of Section 3401(a), and are required to be reported on Forms W-3 and W-2. See Treas. Reg. 1.6041-2(b)(1).

a. However, if the payments from such trust are subject to income tax withholding under Section 3402(o) and the regulations thereunder, then the trust must instead file Form W-2. The trust must also provide Forms W-2 to the recipients of the payments from the trust. See Treas. Reg. 1.501(c)(17)-2(j).

(4) A trust exempt under Section 501(c)(17) must file Form 990 annually. For tax years in which it earns more than $1000 in UBTI, it must also file Form 990-T. See Treas. Reg. 1.501(c)(17)-3(c).

G. Taxability of Benefits

(1) If the separation benefits described in Section 501(c)(17)(D)(i) are funded entirely by employer contributions, then the full amount of any separation benefit payment received by an employee is includible in his or her gross income. See Treas. Reg. 1.501(c)(17)-3(a).

(2) If the separation benefits described in Section 501(c)(17)(D)(i) are funded either by employer and employee contributions, or solely by employee contributions, the amount of any separation benefit payment which is includible in the employee's gross income is the amount by which the distribution and any prior distributions of such separation payments exceeds the employee's total contributions to fund such separation benefits. See Treas. Reg. 1.501(c)(17)-3(a).

(3) Any benefit payment received from the SUB trust under the part of the SUB plan, if any, providing for the payment of sick and accident benefits must be included in gross income. This is true unless the payment is specifically excluded pursuant to Sections 104 or 105 and the regulations thereunder. See Treas. Reg. 1.501(c)(17)-3(b).

(4) Generally, SUB benefits (also referred to as SUB pay), are taxable as income in the year in which they are received. Under Section 3402(o), SUB benefits are treated as wages for purposes of federal income tax withholding.

   a. Essentially, this requires employers to withhold federal income taxes regardless of whether the SUB benefits are wages for Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) tax purposes, or compensation for Railroad Retirement Tax Amount purposes.

   b. All remuneration for employment is treated as wages, unless an exception applies. See Section 3121(a).

(5) Rev. Rul 90-72, 1990-2 C.B. 211, provides a narrow administrative exception to this general rule. Rev. Rul 90-72 held that SUB benefits (including short work week benefits) must be linked to the receipt of state unemployment compensation (and satisfy certain other requirements) for the SUB benefits to be excludible from the definition of wages for FICA and FUTA purposes. The same applies for SUB benefits to be excludible from compensation for RRTA purposes. See Rev. Rul. 90-72.

(6) Lump sum payments are not linked to state unemployment compensation since the amount of the benefit received is the same regardless of the length of the individual's unemployment, and are not excludible from wages as SUB pay. See Rev. Rul. 90-72.

(7) In United States v. Quality Stores, Inc., 572 U.S. 141 (2014), the Supreme Court held that severance payments, including SUB benefits, are wages under FICA. The Court, however, specifically noted that its opinion did not address the question of whether the IRS' administrative exception announced in Rev. Rul. 90-72 is consistent with the definition of wages under FICA. See 572 U.S. 156.

(8) Thus, Rev. Rul 90-72 remains in effect. SUB benefits linked to the receipt of state unemployment compensation (and that satisfy other requirements) are not treated by the IRS as wages for FICA purposes.

IV. Examination Techniques

(1) This section discusses issue indicators and examination tips helpful to Revenue Agents.

A. Issue Indicators

(1) The SUB plan must only offer supplemental unemployment benefits to employees, and may offer sick and accident benefits so long as they are subordinate to the unemployment compensation benefits.

   a. Look for information suggesting other benefits are being offered, or that sick and accident benefits are not subordinate to unemployment compensation benefits.

(2) The SUB plan may pay benefits only if an employee's involuntary separation from the employer results from certain specified occurrences. Develop any information indicating that an employee-beneficiary's separation resulted from a reason other than the following:

   a. A reduction in work force

   b. Discontinuance of a plant or operation

   c. Other similar conditions.

(3) Look for information suggesting the SUB plan discriminates in favor of certain employees via either the classification of employees eligible for benefits or payment of the benefits themselves.

(4) Be mindful of any indicators that a SUB trust has participated in a prohibited transaction within the meaning of Section 503(b).

(5) SUB trusts are subject to the UBI rules under Section 512(a)(3). If the trust exceeds the Section 419A(c)(3) account limit at the end of the taxable year, the excess is taxed under Section 512(a)(3)(E).

   a. The SUB trust's account limit is 75% of the average annual qualified direct costs for supplemental unemployment benefits for any of the immediately preceding seven years. Develop any information suggesting this limit has been exceeded.

B. Examination Tips

(1) Review the trust instrument and plan document to verify the:

   a. Plan offers supplemental unemployment benefits and subordinate sick and accident benefits

   b. Trust instrument binds the trustees to act consistent with the plan provisions

   c. Trust's corpus and income were used to satisfy all liabilities to covered employees before any other purpose.

(2) Review minutes, publications, and a sample of claims filed to:

   a. Verify that sick and accident benefits are subordinate to supplemental unemployment benefits

   b. Verify that the plan pays for supplemental unemployment benefits only due to an involuntary separation

   c. Determine whether the SUB plan offers any prohibited death or retirement benefits.

(3) Review disbursement journals and supporting documents (such as invoices and cancelled checks) for any disbursement other than allowable benefits and administrative expenses, such as:

   a. Payment of a death, retirement, or vacation benefit

   b. Benefits paid to an employee for a separation that is not "involuntary"

   c. Distributions to employees of funds for contributions in excess of the maximum funding allowed.

(4) Read the SUB plan document to learn how benefits are determined.

(5) Review disbursement journals and supporting documents for:

   a. Indications of discrimination in the payment of benefits

   b. Any disparity in the ratio of income to benefits paid

   c. Any disparity in paying benefits to HCEs.

(6) Analyze books and records to identify transactions prohibited under Section 503(b).

(7) Analyze the following issues if a transaction between the Section 501(c)(17) organization and a party listed in Section 503(b) occurred:

   a. Acquisitions of assets above or dispositions of assets below fair market value

   b. Unusual disbursements

   c. Salary not commensurate with employee's duties

d. Income from low-yield investments

e. Accounts, notes, and mortgages payable without proper collateral or a reasonable interest rate, or both.

(8) Review cash receipts to identify any unusual income sources. Analyze income from any source other than members, employers, or investments to determine if it is subject to UBIT.

(9) Determine if the employer contributions exceed the deduction limitations in Section 419(c) and Section 419A. UBIT and excise tax may apply as allowed by the Deficit Reduction Act of 1984, P.L. 98-369.