TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200136028

Date:
JUN 12 2001

Contact Person:

ID Number:

Telephone Number:

UIL: 4976.01-00

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EIN:

LEGEND: X =

Dear Sir or Madam:

This is in reply to your letter of November 30, 2000, concerning your proposed termination and the transfer of your remaining assets to X.

You have been recognized as exempt under section 501(c)(9) of the Internal Revenue Code. X was established by you and has been recognized as exempt from Federal income tax as an organization described in section 501(c)(3) of the Code. It is a public charity for the purposes of section 509(a).

You are a voluntary employees' beneficiary association (VEBA) comprising the employer members of a regional business association and the employees of your employer members. You hold a certain amount of assets in trust which are no longer used to provide benefits to your plan participants. You propose to amend your trust document to permit you to terminate the trust, pay all outstanding claims, and distribute the remaining assets to X to be used in its charitable program.

You have requested a ruling that the termination of your trust fund, payment of all claims outstanding, and further distribution of the trust's remaining assets to an exempt educational trust fund described in section 501(c)(3) of the Code will not result in (I) prohibited inurement under section 501(c)(9); or (2) an excise tax under section 4976 of the Code.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c).

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 I.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.

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Re:

Section 1.50l(c)(9)-4(d) of the regulations provides that it will not constitute prohibited inurement if, on termination of a plan established by an employer and funded through an association described in section 50l(c)(9), any assets remaining in the association, after the satisfaction of all liabilities to existing beneficiaries of the plan, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other benefits within the meaning of section l.50l(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer.

Section 4976(a)(2) of the Code imposes an excise tax on an employer equal to l00 percent of any disqualified benefit provided by an employer-maintained welfare benefit fund.

Section 4976(b)(l)(C) of the Code defines "disqualified benefit" to include any portion of a welfare benefit fund reverting to the benefit of the employer.

Section 4976(b)(3) of the Code provides that section 4976(b)(l)(C) does not apply to any amount attributable to a contribution to the fund that is not allowable as a deduction under section 419 for the taxable year or any prior taxable year.

The information submitted establishes that you intend to terminate and after the payment of any outstanding claims transfer the remaining monies to a related 50l(c)(3) educational organization to carry out its educational purposes. The funds are not reverting to the association or any employer which is a member of the association.

The section 4976(a)(2) the excise tax does not apply to any amount attributable to a contribution to the fund that is not allowable as a deduction under section 419 for the taxable year or any prior taxable year. In considering how this provision applies to a tax-exempt employer (or in this case a tax-exempt association of employers), we note that the section 4976 excise tax was enacted to establish a meaningful sanction that would prohibit an employer from deducting contributions to a qualifying trust, accumulating the assets in the trust on a tax free basis, and subsequently distributing the assets to itself or otherwise misapplying them. It was felt that the previously existing sanctions, lose of exemption or deductions for future contributions, were an insufficient deterrent. But no tax deduction is possible to an exempt organization for a contribution to a VEBA (other than in connection with an unrelated trade or business), and earnings on amounts held by the tax-exempt employer are not taxable. Therefore, we conclude that amount contributed to a fund, unless directly connected with an unrelated trade or business are "not allowable as a deduction under section 419" within the meaning of section 4976(b)(3). Accordingly, section 4976(b)(l)(C) does not apply to any assets that may be transferred to the educational fund.

Accordingly, based on the information you have submitted we have concluded that:
the termination of your trust fund, payment of all claims outstanding, and further distribution of the trust's remaining assets to an exempt educational trust fund will not result in (l) prohibited inurement under section 501(c)(9); or (2) an excise tax under section 4976.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

Re: 200136028

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely Yours,

/S/

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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