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4976.01-00

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

Date: AUG 8 2001

Contact Person:
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ID Number:
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Telephone Number:
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T:EO:B4

Employer Identification Number: **********

Legend:

The Trust =
The Association =
The Foundation =
A =
B =
Plan C =

Dear Sir or Madam:

This is in response to the Trust's letter dated September 12, 2000, as amended May 24, 2001, which requests a ruling that the termination of the Trust and the transfer of excess assets from the Trust to the Foundation will not result in the imposition of the 100% excise tax under section 4976 of the Internal Revenue Code.

The Trust was established in 1989 to provide various health and welfare benefits to employees who are covered under a collective bargaining agreement between the Association and A, an affiliate of B. In 1990, the Trust received a determination letter from the Internal Revenue Service that it qualified as a tax-exempt Voluntary Employees' Beneficiary Association (VEBA) within the meaning of section 501(c)(9) of the Code.

Section 10.2 of the Trust Agreement, as amended, provides that in the event of termination, and payment of benefits, any remaining funds shall be paid

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over into the Foundation. In 1997 the Foundation received a determination letter from the Internal Revenue Service that it was an exempt organization as described in Section 501(c)(3) of the Code. The purposes of the Foundation include providing assistance in housing to people or organizations with special shelter needs, and educational assistance to individuals and organizations to further the objective of bettering the community.

Participating employers contributed funds to the Trust for each employee covered by the agreement which purchased group medical benefits for these employees.

Due to recent changes in the collective bargaining agreements, participating employers make contributions to Plan C, which provides health coverage to the employees who were formerly covered by the Trust. No individuals are currently eligible for benefits under the Trust and none will be eligible in the foreseeable future. No participating employer contributions were made to the Trust effective June 1999.

The Association proposes to terminate the Trust and contribute the surplus assets to the Foundation. These assets represent contributions by participating employers that exceed the amounts required to purchase health benefits for each eligible employee of participating employers.

Section 501(c)(9) of the Code provides that a voluntary employee benefit plan (VEBA) that provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries shall be exempt from taxation.

Section 1.501(c)(9)-1 of the Income Tax Regulations provides that to be described in section 501(c)(9) of the Code, an organization must be an employees' organization.

Section 1.501(c)(9)-4(a) of the regulations provides that no part of the net earnings of any employees' association may inure to the benefit of any private shareholder or individual other than through the payment of benefits.

Section 1.501(c)(9)-4(d) of the regulations states that the distribution of assets remaining in a terminated VEBA after satisfaction of all liabilities to plan beneficiaries will not constitute prohibited inurement where they are used to purchase life insurance or health benefits for the members or directly distributed to them so long as amounts are based on objective and reasonable standards and do not result in disproportionate payments to officers, shareholders, or highly compensated employees of an employer contributing to or otherwise funding the employees association.

Section 4976(a) of the Code provides that if an employer maintains a welfare benefit fund and there is a disqualified benefit provided during any taxable year, a tax is imposed on such employer equal to 100% of such disqualified benefit.

Section 4976(b)(1)(C) of the Code states that that for the purposes of Section 4976(a), any portion of a welfare benefit fund that reverts to the benefit of the employer is a disqualified benefit.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are operated exclusively for educational or charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(2) of the regulations states in part, that an organization is not operated for one or more exempt purposes if its net earnings may inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides in part that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized, or operated for the benefit of private interests such as designated individuals, the creator or his or her family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

The transfer of excess assets from the Trust to the Foundation will ensure that none of its funds revert to the employers or any other private individual. Because no employers or any other private individuals will receive a distribution of funds from the Trust, the transfer of assets to the Foundation will not be a disqualified benefit as defined by section 4976(b)(1)(C) of the Code.

Accordingly, we rule that, based upon the information submitted, the termination of the Trust and the transfer of excess assets from the Trust to the Foundation will not result in the imposition of the 100% excise tax under section 4976 (a) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any changes that may have bearing on your tax status should be reported to the Service.

We are sending a copy of this ruling to the Ohio TE/GE office. Because this letter could help resolve any questions about your exempt status, you should keep it with your permanent records.

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

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Manager, Exempt Organizations
Technical Group 4