



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201221030**
Release Date: 5/25/2012
Date: March 1, 2012

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue List

501.09-00
501.09-02
501.09-04

Legend:

Union =
Association =
Corporation =
State =

Dear

This is in response to your letter dated June 14, 2010 requesting rulings as to the Federal tax consequences of the proposed transactions under § 501(c)(9) of the Internal Revenue Code (Code) and applicable regulations.

FACTS:

You are exempt under § 501(a) and described as a § 501(c)(9) Voluntary Employees' Beneficiary Association ("Plan"). You are managed by a board of trustees, 11 in number, all appointed by Union's directors.

You state that you were created by Union, a labor organization exempt from taxation under § 501(c)(5), whose members consists of employees of State's public schools. Your tax-exempt purpose is to provide health insurance, life insurance, disability insurance, and other benefits

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permitted under § 501(c)(9).

Your trust document ("Trust") provides that members to whom you provide benefits consist of "members of Union" and "employees of certain employers". Pursuant to the Trust, these "members of Union" consist of an individual who is a member of (i) Union or one of its affiliated local associations of employees or (ii) a local association of employees that is affiliated with a state association holding membership in Association. While the "employees of certain employers" pursuant to the Trust consist of employers who are:

- a. "Any school district which has executed a collective bargaining agreement with a local association [teacher's union affiliate affiliated with Union] or other state teacher's union affiliated with the Association which requires contributions to be made, on behalf of its Employees to this Trust Fund".
- b. "Any school district, which has executed a collective bargaining agreement with any union, which requires contributions to be made on behalf of any of its employees to this Trust Fund".
- c. "Any school district, which, pursuant to agreement, is required to make payroll deductions for the payment of contributions to the Trust".

As a result, you provide benefits to school-district employees that consist of employees covered under various collective bargaining agreements and employees not covered by a collective bargaining agreement. You represent that for "school-district employees who are not members of a collective bargaining unit (e.g., school principals and other administrators, support-staff members, custodians, bus drivers), the district unilaterally (or by contract with employees individually) determines what benefits the district will provide to the employees." Thus, an employee need not be covered under a collective bargaining agreement to participate in the Plan.

At various times, and with the approval of the Internal Revenue Service ("Service"), you amended the Trust and changed how you operate. Such changes, among others, include (a) you expanded your membership beyond State to include three other states all connected by geographical boundary (though, presently and since 1985, you represent that you no longer permit membership outside State) and (b) you created a wholly-owned subsidiary, Corporation, to write insurance policies on your behalf in order to avoid any conflict with any state insurance requirement.

Recently, you amended the Trust and expanded your membership to include employees of any governmental unit in State. Pursuant to the Trust, these governmental units include any State "unit of government including but not limited to the state, each state agency, and any county, city, village, town, school district, technical college district, other governmental unit, or instrumentality of two or more units of government." Thus, your prospective members will consist primarily of employees of non-school governmental units in State.

The employees of these non-school governmental units of State will become your members gradually "(as the various non-school governmental units agree in collective bargaining to

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provide [your] benefits to their employees)”

Other than your Trust document, you state that you will not to amend Union's bylaws and constitution because there is no reason to amend them. However, you represent that Union is still a labor organization whose members consists and will always consist of only employees of State public schools. Thus, Union will not become a labor organization for the employees of all State's governmental units.

Last, you state that presently Union appoints every trustee on your board. You plan to have Union continue to appoint these trustees, at least until a majority of your members consists of persons whom Union does not represent (employees of State governmental units other than State public school employees). You represent that if required under § 501(c)(9), you will amend the Trust to provide for non-members of Union to be represented on your board.

RULINGS REQUESTED:

Based on the above facts, you requested the following ruling:

That the expansion of your eligible members to include employees of any State unit of government (not just the employees of State public schools) will not adversely affect your tax-exempt status as an organization described under § 501(c)(9).

LAW:

Section 501(c)(9) provides for the exemption from federal income tax of voluntary employees' beneficiary associations 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.

Former § 501(c)(10), prior to the Tax Reform Act of 1969, exempted voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their designated beneficiaries, if-

- (A) admission to membership in such association is limited to individuals who are officers or employees of the United States Government, and
- (B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

As an example of a VEBA under former § 501(c)(10), Rev. Rul. 64-258 involved an organization whose membership consisted of active-duty members of the U.S. Armed Forces within certain pay grades.

The General Explanation of the Tax Reform Act of 1969, JCS-16-70 (Dec. 3, 1970), explained the repeal:

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Under prior law, a voluntary employees' beneficiary association (exempt under sec. 501(c)(9)) providing life, sickness, accident and other benefits to members must have derived 85 percent or more of its income from its members. With the imposition of the tax on unrelated business income on organizations in this category (and also the investment income tax referred to subsequently), Congress concluded that the 85 percent income test was no longer necessary. As a result, the tax-exempt status of voluntary employees' beneficiary associations will not depend on whether or not they meet the 85 percent test. This accords with the treatment of associations whose members are United States Government employees (sec. 501(c)(10) under prior law). For this reason, there is no substantive difference remaining between these two provisions and the Act combines these two categories.

Treas. Reg. § 1.501(c)(9)-1 provides that for an organization to be described in § 501(c)(9), it must be an employees' association; membership in the association must be voluntary; the organization must provide for the payment of life, sick, accident, or other benefits to its members; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(9)-2(a)(1) provides that the membership of an organization described in § 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer (or affiliated employers), to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union. For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications working for certain employers at specified locations and who are entitled to benefits by reason of one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. Whether a group of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this paragraph.

Treas. Reg. § 1.501(c)(9)-2(c)(3) provides that an organization described in § 501(c)(9) must be controlled (i) by its membership, (ii) by independent trustee(s) (such as a bank), or (iii) by trustees or other fiduciaries at least some of whom are designated by, or on behalf of, the membership. Whether control by or on behalf of the membership exists is a question to be determined with regard to all of the facts and circumstances, but generally such control will be deemed to be present when the membership (either directly or through its representative) elects, appoints or otherwise designates a person or persons to serve as chief operating officer(s), administrator(s), or trustee(s) of the organization.

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National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979) concluded that the “same line of business” means “either an entire industry” or “all components of an industry within a geographic area”.

In Hall, et al. v. Maine Mun. Employees Health Trust, 93 F. Supp. 2d 73 (2000), although the case pertains to a different issue, the court noted and accepted the Service conclusion that participants/employers of a VEBA were in the same line of business, hence shared an employment-related common bond, and as such, merited tax-exempt status as an organization described under § 501(c)(9). In Hall, et al., the members of the VEBA were municipal government and nonprofit organization employers in Maine performing municipal functions. The court agreed with the Service and noted in a footnote that, “Because all of the participants in the VEBA are in the same line of business, the VEBA qualifies under the Internal Revenue Code as a voluntary employees’ beneficiary association. See 26 U.S.C. § 501(c)(9)”

ANALYSIS:

You have requested a ruling on whether your expansion of your membership to include employees of any governmental unit in and of State will adversely affect your tax-exempt status as an organization described under § 501(c)(9).

Under Treas. Reg. § 1.501(c)(9)-2(a)(1), membership in an organization described under § 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Treas. Reg. § 1.501(c)(9)-2(a)(1) also provides that employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits.

You propose to expand your membership to include employees of any unit of government in and of State. Your present members consist of members of Union, which consists of teachers, teachers’ organizations and education-support professionals who are all employees of State’s public schools.

The employees whom you now seek to include, as members of your Plan, must be employees of any unit of government of State. You have expanded the defined term “Employer” to mean not only the public school districts, but also as “any State unit of government including but not limited to the state, each state agency, and any county, city, village, town, school district, technical college district, other governmental unit, or instrumentality of two or more units of government.” Thus, your present members and your prospective members will all be employees of governmental units in and of State.

We find a dearth of precedent specifically addressing lines of business for government employees for purposes of § 501(c)(9). We note, however, the potentially broad class of federal employee membership for former 501(c)(10) organizations, the merger of this exemption

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provision into § 501(c)(9), and Congress's reasoning in doing so. These considerations suggest that the class of state and local government employees in State is a permissible line of business of employees.

Therefore, as required under Treas. Reg. § 1.501(c)(9)-2(a)(1), the employers of your present and prospective members are engaged in the same line of business (governmental units employers) and are also located in the same geographical locale (all within State). See National Muffler Dealers Association, Inc. v. United States, 440 U.S. 472 (1979). As your present and prospective members' employers are engaged in the same line of business in the same geographical locale, your present and prospective members share an employment-related common bond for purposes of meeting the membership requirement of § 501(c)(9). See Hall, et al. v. Maine Mun. Employees Health Trust, 93 F. Supp. 2d 73 (2000).

Next, regarding how you will be controlled, under Treas. Reg. § 1.501(c)(9)-2(c)(3), whether control by or on behalf of the membership exists is a question to be determined with regard to all of the facts and circumstances, but generally such control will be deemed to be present when the membership (either directly or through its representative) elects, appoints or otherwise designates a person or persons to serve as chief operating officer(s), administrator(s), or trustee(s) of the organization, or by trustees at least some of whom are designated by or on behalf of the membership. Further, Treas. Reg. § 1.501(c)(9)-2(c)(3) provides that a plan will be considered to be controlled by its membership if it is controlled by one or more trustees designated pursuant to a collective bargaining agreement (whether or not the bargaining agent of the represented employees bargained for and obtained the right to participate in selecting the trustees).

Thus, to continue to meet the requirement of § 501(c)(9), your board must be representative of your members. We find that your current board structure meets this requirement as long as a majority of your members are represented by Union.

RULINGS:

Based on the information submitted, we rule as follows:

The expansion of your eligible members to include employees of any State unit of government (not just the employees of State public schools) will not adversely affect your tax-exempt status as an organization described under § 501(c)(9) of the Code.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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.

In accordance with the Power of Attorney currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Theodore R. Lieber
Manager, Exempt Organizations
Technical Group 3

Enclosure
Notice 437