



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201411041**

Release Date: 3/14/2014

Date: December 18, 2013

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UIL: 501.17-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(17).

We made this determination for the following reason(s):

You are not organized as required under § 501(c)(17) and you have not met the requirements necessary to qualify for tax-exempt status as an organization described under § 501(c)(17). Therefore, you do not qualify for tax-exempt status as an organization described under § 501(c)(17).

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 31, 2013

Xxxxxxx
Xxxxxxx
Xxxxxxx
Xxxxxxx

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Corporation =
Trustee =
State =
Date 1 =
Date 2 =
Date 3 =
X =

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code § 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under § 501(c)(17). The basis for our conclusion is set forth below.

FACTS:

You are a trust, entered into on Date 1 by and between Corporation and Trustee, to fund the Supplemental Unemployment Benefit Plan ("Plan"). You state that you have "been organized under [State's] common law as well as under the [State's] Trust Act as a valid trust and is evidenced by a written document."

In describing your activities, you state Corporation was established primarily "as a vehicle to voluntarily assemble employers who wish to utilize the benefits of a 501(c)(17) trust but lack the resources necessary to secure approval on an individual basis. [Corporation] also serves as the sponsoring entity for this application for exemption."

You state "[Corporation] will adopt the Plan and will execute the agreement to adopt the trust under [State] law of trusts." You further state that "[a]s the [Corporation] is a membership organization, employers wishing to enjoy the benefits of the Plan and [you] will join the [Corporation]."

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After an employer becomes a member-employer of Corporation, and once an employee of the member-employer satisfies the conditions of eligibility; the member-employer can elect to participate in the Plan by entering into the adoption agreement. The adoption agreement identifies the member-employer's employee(s) covered in the Plan and the amount the member-employer will contribute on behalf of its participating employee(s). The adoption agreement also confirms that the participating member-employer has received and is bound by the terms of the trust agreement.

You state that there is no individual Collective Bargaining Agreement covering employees of participating employers; however, some participating employers will be signatories to Collective Bargaining Agreements in the future.

You will be the only trust through which supplemental unemployment benefits will be provided to employees of multiple employers. You state that, "[e]ach employee will have an individual supplemental unemployment benefit account (and, as a collection of its eligible employees, the employer will also have an identifiable account) from which benefits are paid. Thus, while there is one trust for several employers, the accounting and benefit/claim determination is identical to a single employer trust."

In your letter dated Date 2, you indicated that you have x employees participating in the Plan as of Date 2. Based on this representation, the Service requested additional information regarding the employers of the x employees. In a letter dated Date 3, you stated that "[t]here are no current [Corporation's] member-employers."

You stated that "[t]he only relationship that will necessarily exist among/between [Corporation's] member-employers is that each will have voluntarily become a member-employer of the [Corporation]. Other than this relationship, while some relationship may exist, they will exist of coincidence rather than necessity." Regarding any relationship between the employees of the various member-employers who will be participants of the Plan, you stated that "[t]he employees will be employed by [Corporation] member-employers and will be working on prevailing wage or Davis-Bacon regulated projects."

In your Form 1024, Part II, No. 8, you stated that upon your dissolution, "(the) only assets the Trust will have are the employee contributions. To the extent these are not paid out in the form of supplemental unemployment benefits, these excess contributions will be transferred to a successor Trust or will become the property of the Corporation." In your letter dated Date 2, you modified your dissolution clause to state "[u]pon dissolution, no assets will be distributed before the satisfaction of all liabilities to employees covered by the Plan. Once all such liabilities have been fully satisfied, any remaining assets shall be paid to the respective member employers as their employees' interests are represented."

You state that your activities and that of the Plan will not commence until your exemption application under § 501(c)(17) is approved. You state that Corporation "will actively seek and solicit employers to become members of the Corporation, adopt the [Plan] and enroll their eligible employees in the Plan...."

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LAW

Section 501(c)(17)(A) provides for the exemption from taxation a trust or trusts forming part of a plan that uses its corpus or income exclusively to provide for the payment of supplemental unemployment compensation benefits.

Section 501(c)(17)(A)(ii) provides that for a trust to qualify for tax-exempt status as an organization described under § 501(c)(17), the plan must be found by the Service not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of § 414(q)).

Section 501(c)(17)(A)(iii) provides that a plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

Section 501(c)(17)(D) provides that the term "supplemental unemployment compensation benefits" means only (i) benefits which are paid to an employee because of his 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 (ii) sick and accident benefits subordinate to the benefits described in clause (i).

Section 503(a)(1)(A) provides that an organization described in § 501(c)(17), shall not be exempt from taxation under § 501(a) if it has engaged in a prohibited transaction after December 31, 1959.

Section 503(b) provides that prohibited transactions include, among others, any transaction in which an organization subject to the provisions of this section engages in, which results in a substantial diversion of the organization's income or corpus to the creator of such organization (if a trust); a person who has made a substantial contribution to such organization, among others.

Treas. Reg. § 1.501(c)(17)-1(a)(2) provides that for a trust to qualify for tax-exempt status as an organization described under § 501(c)(17), the trust must be a valid, existing trust under local law and is evidenced by an executed written document.

Treas. Reg. § 1.501(c)(17)-1(a)(3) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a written plan established and maintained by an employer, his employees, or both the employer and his employees, solely for the purpose of providing supplemental unemployment compensation benefits (as defined in § 501(c)(17)(D) and paragraph (b)(1) of Treas. Reg. § 1.501(c)(17)-1).

Treas. Reg. § 1.501(c)(17)-1(a)(4) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), a the trust must be part of a plan which provides that except for the payment of any necessary or appropriate expenses in connection with the administration of a plan, the corpus and income of the trust cannot (in the taxable year, and at

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any time thereafter, before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits.

Treas. Reg. § 1.501(c)(17)-1(a)(5) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a plan whose eligibility conditions and benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees.

Treas. Reg. § 1.501(c)(17)-1(a)(6) provides that for a trust to qualify for tax-exempt status as an organization described in § 501(c)(17), the trust must be part of a plan which requires that benefits are to be determined according to objective standards. Thus, a 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.

Treas. Reg. § 1.501(c)(17)-1(b)(1) provides that the term supplemental unemployment compensation benefits means only (i) Benefits paid to an employee because of his involuntary separation from the employment of the employer, whether or not such separation is temporary, but only when such separation is one resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions; and (ii) Sick and accident benefits subordinate to the benefits described in subdivision (i) of this subparagraph.

Treas. Reg. § 1.501(c)(17)-2(g) provides that a trust forming part of a plan of several employers, or the employees of several employers, will be a supplemental unemployment benefit trust described in § 501(c)(17) if all the requirements of that section are otherwise satisfied.

Treas. Reg. § 1.503(b)-1(a) provides that tax-exempt status will be denied to such organizations which engage in certain transactions (prohibited transactions as set forth in § 503(b)) which inure to the private advantage of (1) the creator of such organization (if it is a trust); (2) any substantial contributor to such organization, among others.

Treas. Reg. § 1.505(c)-1T A-1 provides that an organization will not be recognized as exempt under § 501(c)(17) as a trust forming part of a plan providing for the payment of supplemental unemployment compensation benefits unless notification is given to the Service.

Treas. Reg. § 1.505(c)-1T A-3 provides that organization will not be treated as described under § 501(c)(17) unless the organization notifies the Service that it is applying for recognition of exemption. The notice for exemption under § 501(c)(17) 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 under Q&A-4 and Q&A-5. The Service will not accept a Form 1024 for any organization or trust that is seeking tax-exempt status as an organization described under § 501(c)(17) before such entity has been organized.

Treas. Reg. § 1.505(c)-1T A-4 provides that notice for exemption under § 501(c)(17) will not be considered complete unless, in addition to a properly completed and executed Form 1024, the

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organization or trust submits a full description of the benefits available to participants under § 501(c)(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.

Treas. Reg. § 1.505(c)-1T A-5 provides that if an organization or trust claiming exemption under § 501(c)(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.

ANALYSIS

Qualification for tax-exempt status as an organization described under § 501(c)(17) requires that the trust must be part of a written plan established and maintained by an employer, his employees, or both the employer and his employees, solely for the purpose of providing supplemental unemployment compensation benefit(s). See Treas. Reg. § 1.501(c)(17)-1(a)(3). Further, the trust must be a valid, existing trust under local law and is evidenced by an executed written document. See Treas. Reg. § 1.501(c)(17)-1(a)(2). The Service will not accept a Form 1024 for any organization or trust that is seeking tax-exempt status as an organization described under § 501(c)(17) before such entity has been organized. See, Treas. Reg. § 1.505(c)-1T A-3.

Based on the information that you submitted, you do not qualify for tax-exempt status as an organization described under § 501(c)(17). You are not organized as required under § 501(c)(17) and you have not met the requirements necessary to qualify for tax-exempt status as an organization described under § 501(c)(17).

Section 501(c)(17) requires an employer or its employees or both that wishes to have a trust exempted from taxation as an organization described under § 501(c)(17) to submit evidence of a valid trust which must be part of a written plan which the employer or its employees or both has established and will maintain solely for the purpose of providing supplemental unemployment benefits. See Treas. Reg. § 1.501(c)(17)-1(a)(3).

You are being organized as a single trust that seeks to provide Benefits to employees of multiple employers. This is contrary to the provisions of § 501(17). and the applicable regulations.

You state Corporation created one trust, you, and that Corporation will solicit employers to become members of Corporation. After an employer becomes a member of Corporation and

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the member-employer satisfies the conditions of eligibility, the member-employer can elect to participate in the Plan by entering into an adoption agreement. This adoption agreement identifies the employer's employee(s) covered under the Plan and the amount the member-employer will contribute on behalf of the participating employee(s). The adoption agreement also contains the participating member-employer acknowledgment that the member-employer has received and is bound by the terms of the trust agreement.

It is clear that you are seeking exemption as a trust that will provide benefits to employees of multiple unrelated and unspecified employers. The provisions of § 501(17) require each employer or its employees or both to establish and maintain a trust which must be part of a written plan.

Under Treas. Reg. § 1.501(c)(17)-2(g), a trust forming part of a plan of several employers, or the employees of several employers, will be a supplemental unemployment benefit trust described in § 501(c)(17) if all the requirements of that section are otherwise satisfied. Thus, it is permitted for a plan to provide supplemental unemployment benefits to employees of multiple employers if, as provided under Treas. Reg. § 1.501(c)(17)-2(g), all the requirements of § 501(c)(17) are met. This means that each employer, its employees or both must still submit a trust which is part of a written plan which the employer or its employees or both has established and maintained solely for the purpose of providing benefits. See Treas. Reg. § 1.501(c)(17)-1(a)(3). Thus, if the Plan will provide benefits to several employers, each employer or its employees or both must submit a Form 1024 application inclusive of a valid trust and a written plan document.

Because you are a single trust that plans to provide benefits to employees of multiple employers and not a trust that will provide Benefits to employees of just one employer, you do not qualify for tax-exempt status as a trust described under § 501(c)(17).

Under Treas. Reg. § 1.501(c)(17)-1(a)(3), an organization seeking tax-exempt status as an organization described under § 501(c)(17) is required to submit a complete application inclusive of a complete Form 1024, a valid trust and a written plan. In addition, pursuant to Treas. Reg. § 1.505(c)-1T A-3, notice for exemption under § 501(c)(17) 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 under Treas. Reg. § 1.505(c)-1T Q&A-4 and Treas. Reg. § 1.505(c)-1T Q&A-5.

In your Form 1024, you failed to complete Schedule J, part 3. The Service notified you that your Form 1024 was incomplete. On Date 2, you responded and stated that the Plan has x employees participants. Thereafter Date 2, the Service requested an update on the number/information regarding member-employers of Corporation since you stated in your Date 2 letter that you have x employees participating in the Plan. You responded in a letter dated Date 3 that Corporation presently has no member-employers. Based on this information, we can only conclude that you have no employees participating in the Plan since employees' participants are dependent on Corporation having member-employers. Further, in your Form 1024, you made it clear that you will solicit member-employers only after you receive tax-exempt status from the Service.

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Because you failed to submit a complete application as required under Treas. Reg. § 1.505(c)-1T A-3, you do not qualify for tax-exempt status as an organization described under § 501(c)(17).

The Service is required under § 501(c)(17)(A)(ii) to find that a trust seeking tax-exempt status as an organization described under § 501(c)(17) is not discriminatory in favor of highly compensated employees. See also Treas. Reg. § 1.501(c)(17)-1(a)(5).

To ensure that the discrimination barred under § 501(c)(17)(A)(ii) and Treas. Reg. § 1.501(c)(17)-1(a)(5) does not exist in any organization that seeks tax-exempt status as an organization described under § 501(c)(17), an organization applying for tax-exempt status under § 501(c)(17) is required to complete Schedule J, Part 3 of the Form 1024 (data regarding the employer and its employees).

Without this data, the Service is unable to determine that the trust is non-discriminatory. Because you failed to complete Schedule J, part 3 of the Form 1024, the Service is unable to conclude that Plan is non-discriminatory.

An application to seek tax-exempt status as an organization described under § 501(c)(17) must be submitted on behalf of a trust that is part of a written plan established and maintained by an employer, his employees, or both the employer and his employees See, Treas. Regs. § 1.501(c)(17)-1(a)(3). As discussed above, you have no member-employers and you have no employees that participate in the Plan.

You have clearly stated that you will solicit member-employers only after you receive tax-exempt status as an organization described under § 501(c)(17). You also stated that the employees of these member-employers will become the Plan's participants but only after you receive exemption.

CONCLUSION

Because you are not an organization described under § 501(c)(17), you do not qualify for tax-exempt status under § 501(a).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

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You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

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You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Karen Schiller
Acting Director, Exempt Organizations