



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201451044**
Release Date: 12/19/2014
Date: September 25, 2014

Contact Person:

Identification Number:

Telephone Number:

Taxpayer Identification Number:

Uniform Issue List

511.00-00
512.00-00
4976.00-00

Legend:

Trust =
Date 1 =
Date 2 =
Date 3 =
x =

Dear :

This responds to your letter, dated March 11, 2013, requesting rulings as to the federal tax consequences of a proposed transaction under sections 4976 and 511 of the Internal Revenue Code ("Code").

FACTS

You represent that you are a section 501(c)(3) organization. You further represent that you were recognized as tax-exempt under section 501(c)(3) as of the adoption date of your original articles of incorporation on Date 1, and that you have remained tax-exempt under section 501(c)(3) organization since your inception.

Beginning Date 2, you represent that you sponsored Trust, a voluntary employees' beneficiary association tax-exempt under section 501(c)(9). Trust has provided health care coverage to your active employees and eligible retirees and their dependents, and death benefits to the designated beneficiaries of eligible retirees.

Effective Date 3, you resolved to terminate Trust. Certain Trust beneficiaries received one-time lump sum payments in lieu of future retiree health care coverage and/or death benefits. After these payments were made, \$x remained in Trust. You further represent that, upon termination of Trust, you propose that the residual assets of Trust will be distributed to you. You represent that you intend to use the remaining assets in Trust upon being distributed to you to further your charitable purposes.

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You state that your employees have neither made pre-tax nor post-tax contributions to Trust. You also represent that you did not incur any unrelated business taxable income under sections 511 through 515 during years in which you made contributions to Trust. In addition, you state that you have never taken any deductions under section 419 with respect to the contributions you made to Trust.

RULINGS REQUESTED

You requested the following rulings:

1. Excise tax under section 4976 will not apply to the proposed transfer of Trust's assets to you.
2. The reversion of any of Trust's assets to you will not be taxed as unrelated business income to you.

LAW

Section 419(a) of the Code provides that contributions paid or accrued by an employer to a welfare benefit fund are not deductible under Chapter 1, but if they would otherwise be deductible, are (subject to the limitation of section 419(b)) deductible under section 419 for the taxable year in which paid.

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.

Treas. Reg. § 1.501(c)(9)-4(d) 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 501(c)(9), any assets remaining in the association, after 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 § 1.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer.

Section 511(a)(1) provides that a tax is hereby imposed for each taxable year on the unrelated business taxable income as defined in section 512 of every tax-exempt organization described under section 501(c).

Section 512(a)(1) provides that except as otherwise provided in this subsection, the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection 512(b). Section 513(a) provides the term "unrelated trade or business" means, in the case of any

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organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

Section 513(a)(2) provides that unrelated business taxable transaction does not include transaction, which is carried on, in the case of an organization described in section 501(c)(3) primarily for the convenience of its members, students, patients, officers, or employees.

Section 512(a)(1) provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513 regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in section 512(b).

Section 4976(a) imposes a 100 percent excise tax if an employer maintains a welfare benefit fund and there is a disqualified benefit provided during any taxable year.

Section 4976(b)(1)(C) defines "disqualified benefit" to include any portion of a welfare benefit fund reverting to the benefit of the employer.

Section 4976(b)(3) provides that section 4976(b)(1)(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.

Treas. Reg. § 1.513-1(a) provides that a gain or income derived from an activity is an unrelated business taxable income, if the activity (1) is a trade or business; (2) is regularly carried on; and (3) is not substantially related to the tax-exempt organization's exercise or performance of its tax-exempt functions or purpose.

Treas. Reg. § 1.513-1(b) provides that for purposes of section 513 the term "trade or business" has the same meaning it has in section 162 and generally includes any activity carried on for the production of income from the sale of goods or performance of services.

United States v. American Bar Endowment, 477 U.S. 105 (1986) held that the standard test for the existence of a "trade or business" under section 513 is whether the provision of goods or services is entered into with the dominant hope and intent of realizing a profit.

ANALYSIS AND CONCLUSION

RULING REQUEST 1:

You represent that you have been a section 501(c)(3) organization since your inception. As a tax-exempt entity under section 501(c)(3), the contributions you made to Trust generally would not have been allowable as a deduction under section 419. Under section 4976(b)(3), section

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4976(b)(1)(C) does not apply to amount attributable to contribution to a fund that were not allowable as a deduction under section 419. Consequently, the transfer of Trust assets to you upon Trust's termination will not result in any "disqualified benefit" within the meaning of section 4976(b)(1)(C), and will not, in and of itself, cause you to be liable for the excise tax imposed by section 4976.

RULING REQUEST 2:

You represent that upon termination of Trust, residual assets of Trust will be distributed to you. You state that this is a one-time transaction.

Under § 1.513-1(a), an income derived from an activity is an unrelated business taxable income, if the activity (1) is a trade or business; (2) is regularly carried on and; (3) is not substantially related to the tax-exempt organization's exercise or performance of its tax-exempt functions or purpose. Thus, the first test under § 1.513-1(a) is whether the transfer of the residual assets of the Trust to you is a trade or business. Section 513(c) defines a trade or business as any activity carried on for the production of income from the sale of goods or the performance of services. Under § 1.513-1(b), any activity carried on for the production of income from the sale of goods or the performance of services, is a trade or business.

You did not enter into a transaction with Trust to produce income. Rather, Trust upon dissolution and after paying expenses associated with operating Trust, is returning back to you contributions you made to Trust which Trust used to fund section 501(c)(9) benefits. You state that you have never taken any deductions under section 419 with respect to the contributions you made to Trust.

Because the reversion of Trust's assets back to you is not a trade or business, the Trust's assets that will revert back to you is not taxable under sections 511 through 514. Your intent and hope as a result of this transaction was not to make a profit. See United States v. American Bar Endowment, 477 U.S. 105 (1986).

RULING:

Based on the information submitted, representations made, and the authorities cited above, we conclude that:

1. The transfer of Trust assets to you upon Trust's termination will not result in any "disqualified benefit" within the meaning of section 4976(b)(1)(C), and will not, in and of itself, cause you to be liable for the excise tax imposed by section 4976.
2. The reversion of any Trust's assets to you will not be taxed as unrelated business income to you.

This ruling will be made available for public inspection under section 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

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inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosure
Notice 437