



Department of the Treasury  
Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Date: June 6, 2018

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

Number: **201835011**  
Release: 8/31/2018

**UIL: 501.09-00, 501.09-04**

Dear \_\_\_\_\_ :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(9) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034, *Proposed Adverse Determination under IRC Section 501(a) Other Than 501(c)(3)*

Redacted Letter 4040, *Final Adverse Determination under IRC Section 501(a) Other Than 501(c)(3) - No Protest*

cc:



**Department of the Treasury**  
**Internal Revenue Service**  
P.O. Box 2508  
Cincinnati, OH 45201

**Date:**  
February 21, 2018  
**Employer ID number:**

**Contact person/ID number:**

**Contact telephone number:**

**Contact fax number:**

**Legend:**

B = Formation date  
C = State  
D = Trade association

**UIL:**  
501.09-00  
501.09-04

Dear \_\_\_\_\_ :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(9) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

**Issues**

Do you qualify for exemption under section 501(c)(9) of the Code? No, for the reasons stated below.

**Facts**

You were formed as a trust and funded on B. Your stated purpose is to provide a trust under which eligible member companies may make certain welfare benefits available for their participants, through group insurance or otherwise. In your trust agreement you define a member company as any eligible company that has executed an adoption agreement. An eligible company is an employer of common law employees in the state of C and welfare benefits are specified by the trustees and include but are not limited to medical, dental, surgical, or hospital care or benefits in the event of sickness, accident, disability, death or unemployment. Participants are described as member company employees, dependents and/or retirees that are selected by the member company. Your trust also states all employees or all employees of a class or classes determined by conditions pertaining to their employment must be eligible to participate in the welfare benefits selected by the member company. Classifications are not required to be uniform among the member companies.

You state in an informational marketing brochure that you are a one-stop shop that bundles all the tools necessary for small groups to enjoy great benefits. The products and services are for employers with up to employees. You also state that your product offerings are a small group medical plan and large group dental, vision, and life insurance benefits that are available for all industries in the state of C.

In your application, you state you are considered a "group insurance arrangement" that is defined by the Employee Retirement Income Security Act of 1974, as amended (ERISA). ERISA defines a group insurance arrangement "as an arrangement providing benefits to the employees of two or more unaffiliated employers, fully insures one of more welfare plans of each participating employer, and uses a trust as the holder of the

insurance contracts and conduit for payment of premiums to the insurance companies.” When asked to describe your employment related bond of the members in the voluntary employees' beneficiary association (VEBA), you stated that all employers whose employees are members of the VEBA participate in D, a trade association of small employers operated to promote business and to support small businesses with regional operations.

Schedule F of Form 1024 asks for the total number of persons who are highly compensated individuals, the number of employees covered by the plan, the number not covered by the plan and the total number employed. You stated that as of December 20 , there are employees that participate in the welfare benefits but the specific information requested is not available because you do not receive information about employee income or classification from the employers. You also state that officers, shareholders and HCEs receive the same kind and amount of benefits through the trust and that they do not receive disproportionate benefits through the trust.

Upon dissolution, all remaining assets in the trust after payment of all expenses, will be distributed to the member-employees of the trust or used to provide benefits from the trust.

### **Law**

Section 501(c)(9) of the Code exempts from federal income tax voluntary employees' beneficiary associations (VEBAs) providing for the payment of life, sick, accident or other benefits to their members (or their dependents or designated beneficiaries) if no part of the net earnings inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 505(b) of the Code contains certain requirements for organizations described in Sections 501(c)(9) or 501(c)(20) unless they are subject to the exception of Section 505(a)(2) for collective bargaining agreements.

Under Section 505(b)(1) of the Code, a plan will meet the requirements only if:

- (a) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and is found not to be discriminatory in favor of employees who are highly compensated individuals, and
- (b) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals. A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

Treasury Regulation Section 1.501(c)(9)-1 provides that, to be described in Section 501(c)(9) of the Code, an organization must meet all of the following requirements:

- (a) The organization must be an association of employees;
- (b) Membership in the association must be voluntary;
- (c) The organization provides for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits; and
- (d) No part of the net earnings of the organization inures, other than by payment of the benefits referred to in (c), to the benefit of any private shareholder or individual.

Treas. Reg. Section 1.501(c)(9)-2(a)(1) provides that the membership of an organization described in Section 501(c)(9) of the Code 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),
- Coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s),
- Membership in a labor union, or
- 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. Employees of a labor union also will be considered to share an employment-related common bond with members of the union, and employees of an association will be considered to share an employment-related common bond with members of the association.

Treas. Reg. Section 1.501(c)(9)-5(a) provides that every organization described under Section 501(c)(9) of the Code must maintain records indicating the amount contributed by each member and contributing employer, and the amount and type of benefits paid by the organization to or on behalf of each member.

Treas. Reg. Section 1.505(c)-1T A-4 provides that a notice will not be considered complete unless, in addition to a properly completed and executed Form 1024, the organization or trust submits a full description of the benefits available to participants under Section 501(c)(9) or (17). Moreover, both the terms and conditions of eligibility for membership and the terms and conditions of eligibility for benefits must be set forth. The 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 (e.g., the articles of incorporation or association, or a trust indenture).

Revenue Procedure 2017-5, 2017-1 I.R.B. 2321, Sec. 6 (and its predecessors) provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the requirements of the section under which exemption is claimed. Section 3 states that a determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application.

#### **Application of law**

You are not described in Section 501(c)(9) of the Code and Treas. Reg. Sections 1.501(c)(9)-1 and 1.501(c)(9)-2(a)(1) because you are not an association of employees whose eligibility for membership is defined by common or affiliated employers. You will provide benefits to any employers for all industries in your state that has executed an adoption agreement and has 50 employees or less. Therefore, membership is not defined by a common employer. You are also not covered under a collective bargaining unit agreement, not a member of a labor union or not a member of one of more locals of a national or international labor union. Your employers are not required to be in the same line of business even though they are in the same geographic locale.

You are also not described in Treas. Reg. Section 1.501(c)(9)-5(a) because you do not maintain records indicating the amounts contributed by each member and contributing employer and the amount and type of benefits paid by the organization to or on behalf of each member.

You have also failed to meet the requirements under Sections 505(b) of the Code because you do not maintain records to demonstrate that you do not discriminate in favor of highly compensated individuals.

You did not provide terms and conditions of eligibility for membership and the terms and conditions of eligibility and therefore do not meet the requirements listed under Treas. Reg. Section 1.505(c)-1T A-4. Because you did not provide this information, you did not submit a complete application per Revenue Procedure 2017-5.

### **Conclusion**

You do not qualify for exemption under Section 501(c)(9) of the Code as a voluntary employees' beneficiary association (VEBA) because you have not demonstrated an employment related common bond as required and you have not satisfied the non-discriminatory requirements imposed under section 505(b).

### **If you don't agree**

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

**For an officer, director, trustee, or other official who is authorized to sign for the organization:**

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

**For authorized representatives:**

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a

basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

### **Where to send your protest**

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

### **If you agree**

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs). If you have questions, you can contact the person listed at the top of this letter.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure:  
Publication 892

CC: