

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
CC:EEE:EB:HW
PLR-124841-21

Date:
June 6, 2022

Legend

Taxpayer =

Year 1 =

Dear _____,

This responds to your letter, dated November 17, 2021, and subsequent correspondence dated April 20, 2022, requesting a ruling that the proposed amendment to Taxpayer’s by-laws to expand its membership to include all former employees is permissible under section 501(c)(9) of the Internal Revenue Code (“Code”).

FACTS

Taxpayer was formed in Year 1 by _____ employees. Taxpayer represents that it has periodically received determinations from the Internal Revenue Service that it is a voluntary employees’ beneficiary association (“VEBA”) under section 501(c)(9) of the Code. Taxpayer represents that it only receives contributions from its members and that there are no employer contributions to Taxpayer.

Section 3.01a of Taxpayer’s by-laws provides that membership is open to the following individuals: “individuals who are currently employed by the _____ as defined in Section 3.01b; former _____ employees who are retired annuitants; _____ employees _____; and spouses and surviving spouses. Eligibility for membership is limited to United States citizens.”

Section 3.01b of Taxpayer’s by-laws defines “_____ Employee” as “all appointed and elected officers and employees _____”

.”

Taxpayer proposes to amend its by-laws to expand the scope of eligible members to include all former employees.

RULING REQUESTED

Taxpayer requests a ruling that the Taxpayer's proposal to expand its eligible membership to include all former employees of the —regardless of whether such former employees were members of Taxpayer while in active service or are retired annuitants—is permissible under section 501(c)(9) of the Code and Treas. Reg. § 1.501(c)(9)-2(a).

LAW

Section 501(c)(9) of the Code provides for the exemption from federal income tax of an organization that provides for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or designated beneficiaries, if no part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual.

Treas. Reg. § 1.501(c)(9)-2(a)(1) provides, in relevant part, 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.

Treas. Reg. § 1.501(c)(9)-2(b) provides that whether an individual is an “employee” is determined by reference to the legal and bona fide relationship of employer and employee. The term employee includes an individual who became entitled to membership in the association by reason of being or having been an employee. Thus, an individual who would otherwise qualify under this paragraph will continue to qualify as an employee even though such individual is on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability, or layoff.

ANALYSIS AND CONCLUSION

Based on the foregoing, we conclude that Taxpayer's proposal to expand its eligible membership to include all former employees of the —regardless of whether such former employees were members of Taxpayer while in active service or are retired annuitants—is permissible under section 501(c)(9) of the Code and Treas. Reg. § 1.501(c)(9)-2(a).

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences to Taxpayer or to members of Taxpayer under any other provision of the Code or Treasury Regulations.

This ruling is directed only to the party requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for this ruling, it is subject to verification on examination.

The ruling contained in this letter is based upon information and representations submitted by your authorized representatives and accompanied by a penalties of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2022-1, 2022-1 IRB 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. This office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2022-1, § 11.05.

Sincerely,

Dara Alderman, Senior Counsel
Health & Welfare Branch, Office of Associate
Chief Counsel
Employee Benefits, Exempt Organizations, and
Employment Taxes

cc: