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419.12-02

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

199952094

Date: OCT 0 8 1999

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T:2

LEGEND: X =

Y =
Z =

Employer Identification Number:

Dear Sir or Madam:

This is in reply to the letter submitted on your behalf by your legal representatives regarding the proposed transfer of certain "excess assets" currently held in a collectively bargained benefit trust.

You established X to provide for the payment of collectively bargained welfare benefits to your union employees. X has been recognized as a tax exempt VEBA Trust described in section 501(c)(9) of the Internal Revenue Code. The benefits provided through X include postretirement healthcare and life insurance for your retired employees. Currently, X has experienced an excess accumulation of assets because of demographic changes, greater than anticipated earnings and a decrease in the benefit obligations funded through X. In addition, you have acquired Y and certain other companies (hereinafter collectively referred to as Y) and are responsible for the provision of postretirement benefits to the retirees of Y and the payment of other benefits to the active employees of Y. You represent that these companies should be considered controlled corporations (as defined in Code Sections 414(b), (c), (m), (n) and (o)) of the Code). The benefits you will be providing to employees and retirees of Y were established pursuant to a collective bargaining agreement negotiated by unions not associated with the benefits currently offered through X to your pre-existing employees. You have stated that the requested rulings apply only to those companies that are part of your controlled group of corporations (as defined by section 414(b), (c), (m), (n) and (o)) as of the date of this ruling, which includes but is not limited to Y. The post-acquisition group of companies shall be collectively referred to in this letter as Z.

For purposes of this ruling you have defined excess assets as assets not needed to fund expected postretirement benefit obligations.

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Re:

You have proposed to amend X to permit the active and retired employees of Y receive benefits through X. X will also reallocate excess funds within the trust to provide for the payment of current benefits to all active employees of Z who are eligible to receive benefits through X. You have represented that all of the benefits provided through X will be qualifying section 501(c)(9) benefits and will have been established pursuant to a collective bargaining agreement.

As set forth in your letter of June 25, 1999, you have requested the following rulings:

1. use of any of the assets of X (whether or not excess assets as defined in your ruling request, i.e., assets not needed to fund expected postretirement benefit obligations) to pay any collectively bargained benefit obligations of you or Z that are permitted by section 501(c)(9) of the Code and X will not constitute a prohibited reversion within the meaning of section 4976 and will not adversely affect X's tax-exempt status under section 501(c)(9); and

2. use of any of the assets of X (including excess assets) for the payment of any collectively bargained benefit obligations of you or Z that are permitted by section 501(c)(9) and X's Trust Agreement will not violate the "accumulated reserve" requirement of section 419A(c)(2) since this requirement does not apply to collectively bargained benefits.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c).

Section 501(c)(9) of the Code describes a voluntary employees' beneficiary association ("VEBA") providing for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and in which no part of its net earning inures (other than through such payments) to the benefit of any private shareholder or individual.

Section I.501(c)(9)-4(a) of the Income Tax Regulations provides that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of permissible benefits. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

Section 1.501(c)(9)-4(d) of the regulations 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 the 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 section I.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer. Similarly, a distribution to members upon the dissolution of the association will not constitute prohibited inurement if the amount distributed to members are determined pursuant to the terms of a collective bargaining agreement or on the basis of objective and reasonable standards which do not result in either unequal payment to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees of any employer contributing to or other funding the employees' association. Except as otherwise provided in the first sentence of this paragraph, if the association's corporate charter, articles of association, trust instrument or other written instrument by which the association was created, as amended from time to time, provides that on dissolution its assets will be distributed to its member's contributing employers, or if in the absence

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of such provision the law of the state in which the association was created provides for such distribution to the contributing employers, the association is not described in section 501(c)(9).

Section 511(a) of the Code imposes a tax upon the unrelated business taxable income of organization from federal income tax under section 501(c).

Section 512(a)(3)(A) of the Code provides, in relevant part, that in the case of an organization described in section 501(c)(9) of the Code, the term "unrelated business taxable income" means gross income, excluding any exempt function income, less the deductions which are directly connected with the production of the gross income (excluding exempt function income), both computed with the modifications set forth herein.

Section 512(a)(3)(B) of the Code provides that in the case of an organization described in section 501(c)(9) the term "exempt function income" includes all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by the organization) which is set aside to provide for the payment of life, sick, accident or other benefits. If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described above, such amount shall be included under section 512(a)(3)(A) in unrelated business taxable income for the taxable year.

Section 512(a)(3)(E) of the Code provides that in the case of an organization described in section 501(c)(9),a set-aside can be taken into account in determining exempt function income only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A of the Code. This amount is referred to as a qualified asset account.

Section 419 of the Code provides rules with respect to the tax treatment of funded welfare benefit plans. A plan which is determined by the Service to be a voluntary employee beneficiary association under section 501(c)(9) is a welfare benefit fund within the meaning of section 419.

Section 419A(a) of the Code provides that for the purposes of section 512 the term qualified asset account means any account consisting of assets set aside to provide for the payment of disability, medical, SUB or severance pay benefits, or life insurance benefits.

Section 419A(f)(5)(A) of the Code provides that no account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund established pursuant to a collective bargaining agreement.

Section 1.419A-2T, Q&A-(1) provides that neither contributions to nor reserves of a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b) or 512(a)(3)(E) until the date upon which the last of the collective bargaining agreements relating to the fund terminates or 3 years after the issuance of final regulations.

Re:

Section 414 of the Code provides various definitions and special rules which are applicable to welfare benefit plans including VEBA's. Subsection (b) refers to employees of controlled group of corporations. Subsection (c) refers to employees of partnership, proprietorships, etc., which are under common control. Subsection (m) refers to employees of a affiliated service group, Subsection (n) refers to leased employees and subsection (o) grants the authority to the Treasury Department to prescribe such regulations as may be necessary to prevent the avoidance of certain employee benefit requirements.

Section 4976 of the Code imposes an excise tax on an employer equal to 100 percent of any disqualified benefit provided by an employer-maintained welfare benefit fund.

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

The information you have submitted establishes that you established X to provide for the payment of collectively bargained qualifying section 501(c)(9) benefits. You have acquired Y and certain other companies. You have represented that these companies, collectively referred to as Z, are considered members of a controlled group of corporations. You intend to continue to provide benefits, through X, to both the active and retired employees of Y and Z as directed by their currently existing collectively bargained agreements. All future benefits provided through X will be established through collective bargaining. Because all of the benefits you shall be providing through X were established pursuant to collective bargaining agreements, the account limits of section 419 are not applicable to X. See section I.419A-2T, Q&A-1 of the regulations. Furthermore, because the excess assets are merely being reallocated to pay for collectively bargained qualifying section 501(c)(9) benefits to a related group of employees, these assets have not inured to the benefit of any of the members of the VEBA. Similarly, the assets held in trust to provide for the payment of qualifying collectively bargained section 501(c)(9) benefits have not reverted to you because these assets will continue to be used by X for the payment of collectively bargained for qualifying benefits.

Therefore, based on your representations, we have concluded that:

1. the use of any of the assets of X (whether or not excess assets as defined in your ruling request, i.e., assets not needed to fund expected postretirement benefit obligations) to pay any collectively bargained benefit obligations of you or Z that are permitted by section 501(c)(9) of the Code and permitted by X's governing agreement will not constitute a prohibited reversion within the meaning of section 4976 and will not adversely affect X's tax-exempt status under section 501(c)(9); and

2. the use of any of the assets of X (including excess assets) for the payment of any collectively bargained benefit obligations of you or Z that are permitted by section 501(c)(9) and X will not violate the provisions of section 419A(c)(2) because the account limit is not applicable to X under section 419A(f)(5)(A).

This ruling is based upon our assumption that no retiree contributions from individuals covered by the collective bargaining agreement(s) will be applied to provide benefits for other groups of retirees or for active employees.

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Re:

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

Because this letter could help resolve any questions about X's tax liability, a copy of it should be kept in X's permanent records. We are sending a copy of this letter to your key District Director.

If you have any questions about this ruling please contact the person whose name and telephone number are shown on the heading of this letter. For other matters, including questions concerning reporting requirements, please contact your key District Director.

Sincerely,

(Signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2