



Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

date: January 14, 2003

to: Paul T. Shultz, Director  
Employee Plans, Rulings and Agreements

from: Michael Blumenfeld, Senior Counsel   
Exempt Organizations Branch 1  
Division Counsel/Associate Chief Counsel  
Tax Exempt and Government Entities

subject: 

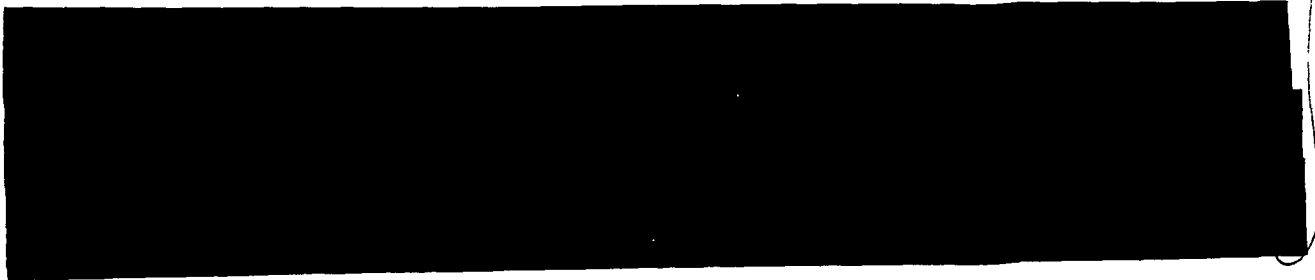
This is in response to your memorandum dated October 15, 2002, concerning the above-captioned case. You have asked our assistance in determining whether the exception under IRC §514(c)(9) is available to  since an affiliate of the partnership purchased the property from a party related to the pension trust partner prior to the pension trust becoming a partner in the partnership.

Section 514(c)(9)(B)(iv) provides that the exception from UBIT will not apply if the property is acquired by a qualified trust from a person related to the plan under which the trust is formed or if such property is leased to such a related person. For these purposes, related person include (1) an employer any of whose employees are covered by the plan (section 4975(3)(2)(C)), (2) a person with a 50% or more ownership interest in such an employer or in which the employer has a 50% or more interest (section 4975(e)(2)(E) and (G)), (3) a member of the family of any individual described in (1) or (2) (section 4975(e)(2)(F)), or (4) an officer, director, 10% or more shareholder, or a highly compensated employee of a person described in (1) or (2) (section 4975(e)(2)(H)). "This restriction is necessary because sales of property at bargain rates to the trust (and certain types of leases) would permit an employer to make indirect contributions to the trust in excess of the amounts otherwise permitted by the Code and obtain the effect of allowance of a deduction (by reduction in purchase price) for excessive contributions. This also could result in discriminatory contributions in favor of employees who are officers, shareholders or highly compensated as well as avoidance of limitations on contributions and benefits." S. Rep. No. 96-1036 (1980), reprinted in 1980-2 CB 723 at 727.

In the taxpayer's view, the correct application of section 514(c)(9)(B)(iv), related seller disqualification test, is whether the partnership acquired property from a party related to the pension trust. There is no requirement that the unrelated party, from whom the partnership acquired the property, also have acquired the property from a party unrelated to the pension trust. The existence of an unrelated party in the chain of title in between the

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pension trust and the related party is sufficient to satisfy the policy concerns behind section 514(c)(9)(B)(iv). The taxpayer states that the transaction is not an indirect acquisition from a related party. To support its contention, the taxpayer points to the span of time, over a year, that lapsed between the date of the sale and the date the pension trust became a partner, as after the time an indirect contribution could have been made. Your proposed ruling letter agrees with this analysis.



If you have any questions or wish to discuss this further please call Monice Rosenbaum at 622-6070.

cc: T:EO:RA  
Thomas J. Miller