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4976.00-00

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

200122047

Date:
MAR 7 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

LEGEND: X =
Y =
Z =

Dear Sir or Madam:

This is in reply to your letter of March 30, 2000, as modified by your letter of November 27, 2000, regarding the transfer of your assets to another voluntary employees' beneficiary association (VEBA) sponsored by your plan sponsor.

You were established by X to provide for the payment of health care benefits to the employees of X who were working in one of its operating divisions. You have been recognized as exempt from federal income tax as a VEBA described in section 501(c)(9) of the Code.

X also formed Z, a separate VEBA, to provide for the payment of benefits to certain other of X's employees. Z provides its members substantially the same benefits as you previously provided your own members. You have represented that Z is not operated in a manner which discriminates in favor of highly compensated individuals. Z has been recognized as exempt from federal income tax as a VEBA described in section 501(c)(9) of the Code.

X and its related companies recently sold to Y all of the assets and stock in the operating division which was composed of your members. The individuals working in this division have become employees of Y. You have represented that you have no remaining plan participants, have paid all of your obligations and expenses and have no current liabilities. In addition, there are currently no participants in your program continuing coverage through the exercise of COBRA rights. However, you still have a certain amount of funds remaining. You have represented that while operational, X had made discretionary payments to you to help meet your operating expenses. You stress that such payments by X, as the plan sponsor, were not required under the governing documents of your plan.

You have requested the following rulings:

1. That the transfer of the excess funds you currently hold to Z will not constitute prohibited inurement to X under section 501(c)(9) of the Code.

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Re:

2. That the transfer of the excess funds you currently hold to Z will not adversely affect your exempt status under section 501(c)(9) of the Code.

3. That the transfer of the excess funds you currently hold to Z will not subject you or X or any company related to X to the 100% excise tax under section 4976 of the Code.

Section 501(c)(9) of the Code 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.

Section 1.501(c)(9)-1 of the Income Tax Regulations provides that for an organization to be described in section 501(c)(9), it must be an employees' association; membership in the association must be voluntary; the organization must provide for the payment of life, sick, accident, or other benefits to its members; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(a) of the 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 1.509(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 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. 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 otherwise 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 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 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 a disqualified benefit to include any portion of a welfare benefit fund reverting to the benefit of the employer.

Re:

Rev. Rul. 68-223, I968-1 C.B. 154 provides that the transfer of funds from a non-exempt employees' welfare fund to an employees' trust forming part of a pension plan will not, of itself, disqualify the plan and trust under the provisions of section 401(a) of the Code nor affect the exempt status of the trust under section 501(a).

The information you have submitted establishes that X has sold its interests in the operating division in which your plan participants worked. Any outstanding benefits and obligations, including COBRA benefits, have been paid and you have no outstanding debts or obligations. However, you do have a certain amount of cash reserves which you wish to distribute to Z. Z is a VEBA that is providing health care benefits to current employees of X. You have represented that Z has been recognized as exempt under section 50I(c)(9) of the Code and does not provide benefits in a discriminatory manner.

Whether prohibited inurement for the purposes of section 50I(c)(9) has occurred is a question to be determined with regard to all the facts and circumstances. However, section 1.501(c)(9)-4(d) of the regulations recognizes that upon the termination of a VEBA assets can be used to continue to provide qualifying benefits pursuant to criteria that do not provide for the payment of disproportionate benefits. In this situation, although the assets are not being used for the benefit of your former participants, they are being used to provide benefits in a nondiscriminatory manner to other employees in the same company.

Therefore, we have concluded prohibited inurement will not occur. Both you and Z have been recognized as exempt under section 50I(c)(9) of the Code; the assets will be used to provide permissible section 501(c)(9) benefits in a nondiscriminatory manner; a common employment-related bond is present; and the transfer is not used to avoid any of the requirements of section 50I(c)(9) of the Code.

Similarly, we have concluded that the provisions of section 4976 are not applicable. The return of any portion of the funds held in a welfare benefit fund for the benefit of an employer is a disqualified benefit that subjects the employer to the section 4976(a)(2) excise tax.. Under these circumstances, the funds are not being returned to X and will be expended by Z for employee welfare benefits. Accordingly, X is not subject to the section 4976 excise tax.

Accordingly, based on the information submitted we rule:

1. That the transfer of the excess funds you currently hold to Z will not constitute prohibited inurement to X under section 50I(c)(9) of the Code.

2. That the transfer of the excess funds you currently hold to Z will not adversely affect your exempt status under section 50I(c)(9) of the Code.

3. That the transfer of the excess funds you currently hold to Z will not subject you or X or any related company to the I00% excise tax under section 4976 of the Code.

You should file a final Form 990, Information Return, once you have formally terminated for federal income tax purposes.

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

We are informing the [redacted] TE/GE Customer Service Office of this ruling. Because this letter could help resolve any question about your exempt status, a copy of it should kept in your` permanent records.

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Re: 200122047

If there are any question about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the [redacted] TE/GE Customer Service Office.

Sincerely Yours,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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