TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

200206056

Date: November 13, 2001

Contact Person:

Identification Number:

UIL: 497601-00

Telephone Number:

T:EO:B2

LEGEND:

M =

N =

Employer Identification Number:

Dear Sir or Madam:

This is in reply to your letter of October 6, 2000, as modified by your letter of November 5, 2001, concerning your proposed merger with and the transfer of your assets to M, a newly established welfare benefit plan.

You were established by N pursuant to a collective bargaining agreement to provide lump sum termination and dismissal benefits to employees of N and their beneficiaries. You are recognized as exempt from federal income tax as an organization described in section 501(c)(17) of the Internal Revenue Code.

M, the newly established welfare benefit plan, was also established pursuant to a negotiated agreement between the union and N. N has been recognized as exempt as a voluntary employees beneficiary association (VEBA) as that term is described in section 501(c)(9) of the Code.

N has experienced business difficulties and has negotiated with the union, which represents its employees, a voluntary early retirement severance package. M's role will be to reimburse health care premiums for certain of N's employees who elect to take early retirements as provided for in the Consolidated Omnibus Budget Reconciliation Act (COBRA). This will be the sole benefit provided by M and it is expected the payments will be made for six months or until such time that COBRA coverage would cease. Thereafter it is expected that M may be expanded to provide for the payment of various other qualifying section 501(c)(9) benefits.

Pursuant to the plan you will pay all your outstanding administrative and similar costs and then merge with M and transfer your remaining assets to M. You have represented that as of the date of the merger you will have no outstanding obligations or liabilities. You have also represented that the individuals receiving these payments shall generally be the same

employees currently covered by you or their dependents or designated beneficiaries. No part of your net earnings shall inure to the benefit of any private shareholder or individual. Nor will any of the funds be in a position to be used by N for any private purpose.

You have requested the following rulings:

1. You will continue to qualify for exemption as a supplemental unemployment benefit trust under section 501(c)(17) during the merger and transfer of the surplus assets to the VEBA.

2. The merger, as well as the transfer of the surplus assets from the fund to the VEBA will not result in any portion of a welfare benefit fund reverting to the benefit of N within the meaning of section 4976(b)(1)(C) of the Code and therefore, will not subject N to the excise tax imposed by section 4976(a) of the Code.

3. The merger and transfer of your surplus assets to M will not adversely affect the tax exempt status of M in the future.

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)-l 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 1.501(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 l.50l(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

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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 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 501(c)(17)(A) of the Code provides for the exemption from federal income tax of a trust or trusts forming part of a plan to provide for the payment of supplemental unemployment compensation benefits, if, under the plan, it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits.

Section 501(c)(17)(D) of the Code defines 'supplemental unemployment compensation benefits' as "(i) benefits paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions and (ii) sick and accident benefits subordinate to the benefits described in clause (i)."

Section 1.501(c)(17)-1(a)(4) of the regulations provides that the payment of any necessary or appropriate expenses in connection with the administration of a plan providing supplemental unemployment compensation benefits shall be considered a payment to provide such benefits and shall not affect the qualification of the trust.

Section 1.501 (c)(17)-1(b)(1) of the regulations defines supplemental unemployment compensation benefits to be "benefits paid to an employee because of his involuntary separation from the employment of the employer, whether or not such separation is temporary, but only when such separation is one resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions."

Section 4976(a) 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.

The information submitted establishes that after you have paid all necessary administrative expenses, you will merge with and all your remaining funds will be transferred to a qualifying section 501(c)(9) VEBA. This VEBA will pay COBRA health care benefits to those employees of N who have elected to take voluntary early retirement. In the future you expect the new VEBA to provide other benefits which you represent will be qualifying section 50l(c)(9) benefits.

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Accordingly, based on the information submitted we rule that:

1. You will continue to qualify for exemption as a supplemental unemployment benefit trust under section 501(c)(17) during the merger and transfer of the surplus assets to the VEBA.

2. The merger, as well as the transfer of the surplus assets from the fund to the VEBA will not result in any portion of a welfare benefit fund reverting to the benefit of N within the meaning of section 4976(b)(1)(C) of the Code and therefore, will not subject N to the excise tax imposed by section 4976(a) of the Code.

3. The merger and transfer of your surplus assets to M will not adversely affect the tax exempt status of M in the future.

This ruling is based on the understanding that there will be no material changes in the facts upon which it is based. Any such change should be reported to the Ohio TE/GE Customer Service office. Because this letter could help resolve any questions concerning your federal income tax status, it should be kept in your permanent records.

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.

If you have any questions 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 Ohio TE/GE Customer Service office at 877-829-5500 (a toll free number).

Sincerely yours,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2