



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200548024**
Release Date: 12/2/05
235769
Uniform Issue List Nos.:
501.09-00
4976.00-00
512.00-00

Date: September 8, 2005

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Trust A =

Trust B =

Trust C =

D =

H =

Dear :

This is in response to D's request for a ruling under sections 501(c)(9), 512, and 4976 of the Internal Revenue Code.

Facts

Trust A, Trust B, and Trust C have all been recognized as exempt from Federal income tax under section 501(c)(9) of the Internal Revenue Code. They are all welfare benefit funds under section 419(e) of the Code. They all provide funding for life, sick, accident, or other permissible benefits under section 501(c)(9) of the Code. H (the Sponsor) or its subsidiary acquired the entities which sponsored Trust A and Trust B. (together the "Orphan VEBAs").

Pursuant to these acquisitions, the Sponsor also assumed sponsorship of each of the Orphan VEBAs. When the Sponsor assumed sponsorship of the Orphan VEBAs, active and

retired employees who were eligible under the plans associated with the Orphan VEBAs became eligible for benefits under Trust C. No benefits have been paid from the Orphan VEBAs since the members of those VEBAs became eligible under Trust C. Also, no additional contributions have been made to the Orphan VEBAs since the Sponsor assumed sponsorship of those VEBAs. In order to minimize costs of administering three trusts related to one plan, the Sponsor proposes to merge Trust A and Trust B into Trust C (the "Proposed Merger").

Because the Orphan VEBAs no longer pay benefits to active or retired employees, the Sponsor intends to direct the Trustee to merge the assets of the Orphan VEBAs into Trust C (the "Transferee VEBA ") so that the funds held in the Orphan VEBAs can be used to benefit the members of the Transferee VEBA, including those who previously participated in the plans associated with the Orphan VEBAs. However, the Trustee may not use any assets previously contributed to the Orphan VEBAs to fund post-retirement benefits for the purpose of paying current benefits to active employees under the Transferee VEBA.

Under the terms Trust A, Trust B and Trust C, the sponsor of each trust is prohibited from receiving a reversion of any assets from its respective trust. Thus, following the completion of the Proposed Merger, H, as successor Sponsor, will not receive any such assets.

Rulings Requested

D requests the following rulings:

1. Neither the transfer of the assets of the Orphan VEBAs to the Transferee VEBA, nor the use of the assets of the Orphan VEBAs by the Transferee VEBA to pay future life, sick, accident, or other permissible benefits to eligible active and retired employees of the Sponsor, will constitute a "disqualified benefit" under section 4976(b)(1)(C) of the Code.
2. The proposed transactions will not cause either the Orphan VEBAs or the Transferee VEBA to cease to be recognized as exempt from federal income tax under section 501(c)(9) of the Code.
3. The proposed transactions will not cause either the Orphan VEBAs or the Transferee VEBA to incur unrelated business taxable income as defined in section 512 of the Code.

Law

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 to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(d) of the Income Tax Regulations provides that it will not constitute prohibited inurement if on termination of an organization described in section 501(c)(9) of the

Code, any assets remaining in the association, after satisfaction of all liabilities to existing beneficiaries of the association, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other permissible benefits pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders or other highly compensated employees of the employer. It further states that if the trust document or charter provides for the reversion of assets to the employer on dissolution, or if reversion is permitted through operation of law, the trust is not an organization described in section 501(c)(9).

Section 512 of the Code defines unrelated business taxable income as gross income derived by an organization from any unrelated trade or business regularly carried on by it, less certain deductions.

Section 513 of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function.

Section 4976 of the Code provides that any portion of a welfare benefit fund reverting to the benefit of the employer will be subject to a 100 percent excise tax.

Section 4976(b)(1)(C) of the Code provides that a “disqualified benefit” includes any portion of a welfare benefit fund reverting to the benefit of the employer.

Under sections 4976(c) and 419(e)(1) of the Code, the term “welfare benefit fund” includes an organization described in section 501(c)(9).

Analysis

Request 1.

Under the Proposed Merger, the Trustee may not use any assets previously contributed to the Orphan VEBAs to fund post-retirement benefits for the purpose of paying current benefits to active employees under the Transferee VEBA. Under the terms of Trust A, Trust B, and Trust C, the sponsor of each trust is prohibited from receiving a reversion of any assets from its respective trust. Thus, following the completion of the Proposed Merger, H, as successor Sponsor, will not receive any such assets.

Section 4976(b)(1)(C) of the Code provides that a “disqualified benefit” includes any portion of a welfare benefit fund reverting to the benefit of the employer.

Under sections 4976(c) and 419(e)(1) of the Code, the term “welfare benefit fund” includes an organization described in section 501(c)(9).

Thus, the transfer of assets from Trust A and Trust B to Trust C will not result in a reversion of any of their assets to H or its subsidiaries. Consequently, the proposed merger will not constitute a disqualified benefit under H section 4976(b)(1)(C) of the Code.

Request 2.

The transfer of assets from Trust A and Trust B to Trust C will not affect the tax-exempt status of Trust A, Trust B, or Trust C because no prohibited inurement will occur. The transferred assets will be used to provide permissible life, sick, accident or other benefits pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees. Specifically, the proposed surviving plan will provide the following benefits: funding for life, sick, accident, or other permissible benefits.

These benefits will be provided in a non-discriminatory manner pursuant to Trust C. These assets will be used for the exclusive purpose of providing the above permissible benefits to eligible persons under Plan C.

Since the transfer of assets will only be used to provide permissible life, sick, accident or other benefits pursuant to section 501(c)(9) of the Code, the proposed transactions will not cause either the Orphan VEBAs or the Transferee VEBA to cease to be recognized as exempt from federal income tax under section 501(c)(9).

Request 3.

The purpose of the Transferee VEBA is to provide certain welfare benefits to its members. The transfer of assets from the Orphan VEBAs to the Transferee VEBA is for the purpose of providing welfare benefits to the members of the Transferee VEBA.

Section 512 of the Code defines unrelated business taxable income as gross income derived by an organization from any unrelated trade or business regularly carried on by it, less certain deductions.

Since this transfer is being made for a permissible exempt purpose of the Transferee VEBA, no unrelated business taxable income will result from this transfer under section 512 of the Code.

Rulings

1. Neither the transfer of the assets of the Orphan VEBAs to the Transferee VEBA, nor the use of the assets of the Orphan VEBAs by the Transferee VEBA to pay future life, sick, accident, or other permissible benefits to eligible active and retired employees of the Sponsor, will constitute a "disqualified benefit" under section 4976(b)(1)(C) of the Code.

2. The proposed transactions will not cause either the Orphan VEBAs or the Transferee VEBA to cease to be recognized as exempt from federal income tax under section 501(c)(9) of the Code, to the extent that such Orphan VEBAs and the Transferee VEBA were, prior to the proposed transaction, exempt from federal income tax under section 501(c)(9) of the Code.

3. The proposed transactions will not cause either the Orphan VEBAs or the Transferee VEBA to incur unrelated business taxable income as defined in section 512 of the Code.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based.

This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 1

Enclosure

Notice 437