



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Dear _____ :

This is in response to a letter from 's ("VEBA") authorized representative, who has requested certain rulings relating to the tax consequences of a proposed transaction.

The information submitted shows that (the "Employer") established as a voluntary employees beneficiary association trust effective . , based on a determination letter dated , is exempt from federal income tax under section 501(c)(9) of the Internal Revenue Code. It provided sickness, accident and other benefits for eligible employees of the Employer and its affiliates.

Due to a series of business reversals, the Employer and its affiliates ceased operations beginning in or subsequently were placed under federal agency control with assets and operations disposed by such agencies. As a result of the termination of the business operations of the Employer and its affiliates, the VEBA ceased to receive new contributions on . At that time, the percentage of employer and employee contributions which had been

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made to the VEBA was approximately % to %, respectively. Subsequently, the VEBA satisfied all liabilities; however, it did not exhaust its assets. As of , the VEBA held \$ in assets. Because the funds were not segregated on the VEBA's records by contributions, it is difficult to ascertain the proportion of employer and employee funds remaining in the VEBA.

Article I, Section 2 of the VEBA document states:

On , N, an affiliate of the Employer which participated in the VEBA, contracted with Q to manage certain real estate limited partnerships and/or properties which it either owned or for which it was a General Partner due to its insolvency. Q subsequently became the general partner of the entity that acted as the individual general partner and acquired the corporate general partner of various real estate partnerships that held certain of the properties and/or interests formerly owned by N.

individuals, including of the Employer's former employees, formed Q, at the time of the Employer's insolvency. At that time, Q offered employment to a large number of former employees of the Employer and its affiliates, including employees of the Employer's affiliates N and P. Q currently employs several of the Employer's former employees. Q's remaining employees perform services which are similar to the services that are performed by the Employer's former employees.

On , Q established R (the "Trust") as a voluntary employees beneficiary association trust. The Trust, based on a determination letter dated , is exempt from federal income tax under section 501(c)(9) of the Code.

The VEBA currently does not have any records documenting the location of the Employer's former employees who contributed to the VEBA. In connection with their attempts, to liquidate the VEBA, the trustees of the VEBA previously have determined that the cost associated with locating a substantial portion of the former beneficiaries of the VEBA would consume a substantial portion of the VEBA's assets.

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

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association must be voluntary; the organization must provide for the payment for 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, in part, that whether prohibited inurement has occurred is a question to be determined with regard to all of the facts and circumstances, taking into account the guidelines set forth in this section. Section 1.501(c)(9)-4(d) of the regulations provides that it will not constitute prohibited inurement if on termination of a plan funded through a VEBA any assets remaining after satisfying all liabilities to existing plan beneficiaries are applied to provide life, sick, accident or other appropriate welfare benefits pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders or highly compensated employees.

Section 4976 of the Code imposes an excise tax on an employer equal to 100% 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 fund reverting to the benefit of the employer.

Based on a provision adopted by the Trustees of the VEBA, the Trustees have the authority to determine the disposition of surplus assets upon termination of the plan, provided that the surplus is used to provide benefits allowable under a trust governed by section 501(c)(9) of the Code. The VEBA has paid all outstanding obligations and has no outstanding debts. The Trust provides health care benefits to current employees of Q in a nondiscriminatory manner and is recognized as exempt under section 501(c)(9). The Trustee of the Trust has represented to the trustee of the VEBA that any transferred assets will be utilized to provide benefits to former employees of the employer and similarly situated employees of Q in a nondiscriminatory manner. Assets transferred into the Trust will be used to continue to provide permissible 501(c)(9) benefits for employees of participating Q members.

The proposed transfer will not constitute impermissible inurement under section 501(c)(9) of the Code, because the surplus assets will be used to provide permissible benefits on a nondiscriminatory basis to former employees of the employer and similarly-situated employees of Q, which has a common employment-related bond because it is affiliated with the employer through its continued management of one of the real estate partnerships (the balance of partnerships having been liquidated since January 1, 1990, the two most recent liquidations occurring in May 2002). The transfer of the VEBA's funds to the Trust does not constitute a “disqualified benefit” because no portion of the funds reverts back to the benefit of the employer. Therefore, section 4976(b)(1)(C) excise tax does not apply.

Accordingly, we conclude as follows:

1. That the transfer of excess funds from the VEBA to the Trust (successor VEBA) will not cause either the VEBA or the Trust to cease to be recognized as exempt from Federal income tax under section 501(c)(9) of the Code.

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2. That the transfer of excess funds from the VEBA to the Trust will not constitute prohibited inurement under section 501(c)(9) of the Code.
3. That the transfer of assets from the VEBA to the Trust will not subject Q, any company related to Q or the VEBA to the 100% excise tax under section 4976 of the Code.

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.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to Foundation's authorized representative. A copy of this letter should be kept in Foundation's permanent records.

If there are any questions about this ruling, please contact the person whose name and telephone are shown in the heading of this letter.

Sincerely,

Robert C. Harper, Jr

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3