Release copies to District
Date 8-13-99
Surname

20042704E

FEB 12 1999

Badge No.:

OP:E:EO:T:2

UIL: 501.00-00

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(9). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You are a trust formed on for providing a death benefit for employers of located in

You are providing your death benefit primarily by whole life policies. You state that your life benefit formula is based on a percentage of compensation. Each employer may choose his own percentage of compensation multiple. You state that you have only one employer. You state that an employee may purchase your policies upon termination of employment. You did not describe how the cash surrender value will be distributed when an employee reaches normal retirement age. You did not state the normal retirement age for your plan. You stated that the policies are in your name. However, the life policy that you submitted was for a person in Your assets as of were $. You presently have one employer in your plan with two employees. The highly compensated employee has life benefit of $. The other employee has a benefit of $. The respective costs for each employee are $ and $.

Section 501(c)(9) of the Code provides for exemption for voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of the 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.

[redacted]

Section 1.501(c)(9)-3(a) of the Income Tax Regulations provides that an organization is not described in section 501(c)(9) of the Code if it systematically and knowingly provides benefits (of more than a de minimis amount) that are not permitted by section 1.501(c)(9) of the regulations.

Section 1.501(c)(9)-3(f) of the Regulations describe benefits that are nonqualifying other benefits. Deferred compensation is not a qualifying other benefit because deferred compensation is payable by the passage of time, rather than the result of an unanticipated event.

Section 1.501(c)(9)-4(b) of the Regulations provides that any payment to any member of disproportionate benefits, where such payment is not pursuant to objective and nondiscriminatory standards, will not be considered a benefit within the meaning of section 1.501(c)(9)-3 of the regulations even though the benefit otherwise is one of the type permitted by that section. For example, the payment to highly compensated personnel constitute prohibited inurement unless the difference can be justified on the basis of objective and reasonable standards adopted by the association.

A section 501(c)(9) VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond. Prohibited inurement arises when a VEBA benefits one or more individuals other than through the performance of functions characteristic of an organization described in section 501(c)(9). Thus, the inurement proscription would bar tax-exempt treatment of an organization predominantly organized and operated to promote the interest of an individual standing in relationship to the organization as an investor for private gain.

You did not state who will be receiving whole life benefits and who will be receiving term insurance. The life policy that you submitted was not in your name. You stated that you own all the policies. However, your assets are almost zero. You state that you are a mult-employer trust operating in the States of [redacted] However, you presently have only one employer. Thus, you have not established that you are only operating as an insurance company. You also have not established that dominant share of your benefits will not be inuring to your owners/participants.

You have also not established that your cash values of your whole life policies of terminating employees will not be used to satisfy the employer's funding obligation for subsequent years.

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[redacted]

This is in violation of the inurement provision of section 1.501(c)(9)-4(b) of the regulations, because the employer obligations are being satisfied with your assets.

In addition, you have not established that the cash values of your whole life policies will in all circumstances not be allowed to flow back to employees and thus not be a deferred compensation arrangement in violation of section 1.501(c)(9)-3(f) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(9) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office.

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: OP:E:EO:T:2, Rm. 6539
1111 Constitution Ave, N.W.
Washington, D.C. 20224

[redacted]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: [redacted]