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

Significant Index Nos.: 505.01-00
4976.01-00
512.09-03

Date: NOV 16 1999

OP:E:EO:T:3

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

X =
Y =
M =

Dear Sir or Madam:

This is in reference to a ruling request dated May 25, 1999, concerning the federal tax consequences of a transfer of assets from X (the Retiree Health Trust) to Y (the Weekly VEBA Trust).

The information provided indicates that the Retiree Health Trust is maintained under a Master Trust Agreement for Welfare Benefits between M (the "Company") and T (the Trust Company) The Retiree Health Trust has been determined to be exempt from federal income tax under section 501(a) of the Internal Revenue Code as a voluntary employee beneficiary association (VEBA) described in section 501(c)(9) of the Code. There are two plans for which the Retiree Health Trust currently serves as the funding vehicle: the "Weekly Program" and the "Management Program." The Weekly Program provides health benefits to retired collective bargaining unit employees known as "Weekly Employees."The benefits have been funded out of contributions made by Weekly Program participants and the Company to an account within the trust for the pension plan. The Weekly Program's account within the pension trust is separately maintained pursuant to section 401(h) of the code.

The Management Program provides the same health benefits as the Weekly Program, but to retired "Management (nonunion, salaried) Employees" of the Company, other than key employees. As in the case of the Weekly Program, the Management Program is included as part of the Company's defined benefit pension plan for management employees, and the benefits provided by the Management Program are also funded from a separate account pursuant to Code section 401(h) within the trust for the Company's defined benefit pension plans.

Since the Retiree Health Trust's inception in 1993, the proportionate interests of the Weekly Program and the Management program have been accounted for separately pursuant to Section 1.4 of the 1993 Trust Agreement. The Weekly Program has audited financial statements of its proportionate interest in the Retiree Health Trust and files an Annual Report on Form 5500. The assets of the Retiree Health Trust are commingled for investment purposes. The Retiree Health Trust's investment income,

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net appreciation (depreciation) in fair value of investments, administrative expenses and unrelated business income taxes are allocated monthly between the Weekly Program and the Management Program using a ratio of assets as of the beginning of the month. The Company's and participant contributions, benefits paid to participants and expenses directly attributed to the Weekly Program are discretely determined and added to or subtracted from the weekly Program's interest in the Retiree Health Trust. Assets in the Retiree Health Trust allocable to the Weekly Program have not been used to pay benefits under the Management Program, and assets allocable to the Management Program have not been use to pay benefits under the Weekly Program.

The Company proposes to transfer assets comprising the interest of the Weekly Program in the Retiree Health Trust to the newly established Weekly VEBA Trust. Like the Retiree Health Trust, the Weekly VEBA Trust, is maintained under a trust agreement between the Taxpayer and the Trust Company. For purposes of this ruling we will assume that the Weekly VEBA Trust will also be determined to be exempt under section 501(c)(9).

Section 1.3 of the 1999 Trust Agreement provides that the Weekly VEBA Trust is established as the medium to fund the Weekly Program and any other tax-qualified employee welfare benefit plan under a collective bargaining agreement maintained by M (the "Company") or another employer within the Company's control group that adopts the Weekly VEBA Trust as the funding vehicle for such plan. Under Section 1.4 of the 1999 Trust Agreement the interest of the Weekly Program in the Weekly VEBA Trust shall have separate accounting, and the assets of Weekly program shall not be used to provide benefits under any other plan in the Weekly VEBA Trust. Currently, the only plan in the Weekly VEBA Trust is the Weekly Program.

It has been determined that the Weekly Program is maintained under a collective bargaining agreement within the meaning of Code section 419(A)(f)(5) and that the Weekly Trust is a separate welfare benefit fund under a collective bargaining agreement within the meaning of Code section 419A(f)(5).

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in section 501(c)(9).

Section 501(c)(9) of the Code describes a voluntary employees beneficiary association providing for the payment of life, sick, accident or other benefits to its members or their dependents or designated beneficiaries, and in which no part of net earnings inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(a) 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 benefits permitted by that section.

Section 511 of the Code imposes a tax upon the unrelated business taxable income of an organization exempt from federal income tax under section 501(c)(9).

Section 512(a)(3)(A) of the Code provides, in relevant part, that in the case of an organization described in section 501(c)(9), the term "unrelated business taxable income" means gross income, excluding any exempt function income, less the deductions which are directly connected with the production of gross income (excluding exempt function income), both computed with the modifications set forth herein.

Section 512(a)(3)(B) of the Code provides that in the case of an organization described in section 501(c)(9), the term "exempt function income" includes all income (other than an amount equal to gross income derived from any unrelated trade or business carried on by the organization) which is set aside to provide for the payment of life, sick, accident or other benefits. If during the taxable year, an amount which is attributable to income so set aside is used for a purpose other than that described above, such amount shall be included under section 512(a)(3)(A) in unrelated business taxable income for the taxable year.

Section 512(a)(3)(E) provides that in the case of an organization described in section 501(c)(9), a set-aside can be taken into account in determining exempt function income only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419(A).

Section 419 of the Code provides rules with respect to the tax treatment of funded welfare benefit plans. A plan which is determined by the Service to be a voluntary employees beneficiary association under section 501(c)(9) is a welfare benefit fund within the meaning of section 419.

Section 419(A)(a) of the Code provides that for purposes of Code Section 512 the term "qualified asset account" means any account consisting of assets set aside to provide for the payment of disability benefits, medical benefits, supplemental unemployment benefits or severance pay benefits, or life insurance benefits.

Section 505(a)(1) of the Code provides that an organization described in paragraph (9) of subsection (c) of section 501 which is part of a plan shall not be exempt from tax under section 501(a) unless such plan meets the nondiscrimination requirements of Code section 505(b).

Section 505(a)(2) of the Code provides that paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to an agreement between employee representatives and one or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that such plan was the subject of good faith bargaining between such employee representative and such employer or employers.

Section 419A(f)(5)(A) of the Code provides that no account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund under a collective bargaining agreement.

Section 1.419A-2T of the Income Tax Regulations, Q&A 1 provides that contributions to a welfare benefit fund maintained pursuant to one or more collectively bargained agreements and the reserves of such a fund generally are subject to the rules of sections 419, 419(A), and 512. However, neither contributions to nor reserves of such a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b), or 512(a)(3)(E) until the earlier of: (i) the date on which the last of the collective bargaining agreements relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare benefit funds terminates (determined without regard to any extension thereof agreed to after the date of issuance of such final regulations), or (ii) the date 3 years after the issuance of such final regulations.

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) defines disqualified benefit to include any portion of a welfare benefit fund

reverting to the benefit of the employer.

Since the Weekly Program is maintained pursuant to a collective bargaining agreement, the Weekly Trust is not subject to the nondiscrimination requirements of section 505(b) of the Code or the account limits provided in section 419(A). See, section 1.419(A)-2T of the regulations.

The committee reports on the Deficit Reduction Act of 1984, which added section 4976 to the Code, provide no guidance on the meaning of "reverting to the benefit of the employer." However, the Bluebook, which, although not authority, states:

> [I]f an amount is paid by a fund to another fund for the purpose of providing welfare benefits to employees of the employer, then the payment is not to be considered a reversion.

General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, prepared by the staff of the Joint Committee on Taxation, December 31, 1984.

Accordingly, we rule as follows:

1. The Weekly VEBA Trust is not subject to the nondiscrimination requirements of Code section 505(b).

2. The Company will not be subject to the 100% excise tax imposed on reversions by Code section 4976 as result of the transfer of assets comprising the proportionate interest of the Weekly Program in the Retiree health Trust to the Weekly VEBA Trust and such transfer will not be a taxable event.

3. Upon the transfer of assets comprising the proportionate share of the Weekly Program in the Retiree Health Trust to the Weekly VEBA Trust, any realization of appreciation in capital occurring in the taxable year in which the transfer occurs, whether before or after the transfer, and set aside to fund post-retirement medical benefits will be considered exempt function income and will not be treated as unrelated business taxable income under Code section 512(a)(3).

4. The gross income of the Weekly VEBA Trust set aside to provide post-retirement medical benefits under the Weekly program is exempt function income and is not treated as unrelated business taxable income under Code section 512(a)(3).

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

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr
Chief, Exempt Organizations
Technical Branch 3

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