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Date 8-20-84

Signature [REDACTED]

20 JUN 1984

Dear Applicant:

We have considered your application for recognition or exemption from federal income tax under section 501(c)(9) of the Internal Revenue Code.

The information furnished shows that you are a trust formed to provide welfare benefits to eligible employees of [REDACTED] (Corporation). Currently, there are [REDACTED] employees entitled to receive benefits. The following employee census data was submitted:

I. Included employees as of [REDACTED]

NAME	ANNUAL COMPENSATION	CORPORATE TITLE	PERCENT OWNERSHIP
[REDACTED]	\$ [REDACTED]	President Treasurer Secretary Director	100%
[REDACTED]	[REDACTED]	None	0%
[REDACTED] (1)	[REDACTED] (2)	None (3)	0%(3)
[REDACTED] (1)	[REDACTED]	None	0%

(1) [REDACTED] and [REDACTED] are both employed by [REDACTED] which is 100% owned by [REDACTED], who is the wife of [REDACTED]. The employees of [REDACTED] are included in this presentation because of the husband-wife ownership attribution rules of Code section 1563.

(2) [REDACTED] was paid \$ [REDACTED] from [REDACTED] and \$ [REDACTED] from [REDACTED].

(3) Although [REDACTED] owns none of [REDACTED] and is not an officer or director of [REDACTED], she is the wife of [REDACTED] and the 100% owner of [REDACTED].



II. Excluded employees as of [REDACTED]

NAME	ANNUAL COMPENSATION	CORPORATE TITLE	PERCENT OWNERSHIP
[REDACTED]	\$ [REDACTED]	None	0%
[REDACTED]	[REDACTED]	None	0%

Both [REDACTED] and [REDACTED] were excluded from participation because they each worked less than 1,000 hours during the fiscal year ending [REDACTED].

The benefits provided to employees who are employed by the corporation on [REDACTED], or are projected to be employed for an average of 1,000 hours per year have been employed for at least 18 months are as follows:

- (1) Covered Employees shall receive a self-insured Medical Reimbursement Benefit with the following dollar limitation per fiscal year: \$ [REDACTED].
- (2) Covered Employees and Eligible Family Members shall receive a medical insurance benefit and a post-retirement medical insurance benefit, upon reaching Normal Retirement Age, comparable to those benefits included in the Blue Cross-Blue Shield High Option Plan, but only to the extent the Covered Employee or his Eligible Family Members are not then currently covered by a comparable plan.
- (3) Covered Employees shall receive a Disability Benefit and a post-retirement Disability Benefit, upon reaching a Normal Retirement Age, as follows:
 - (A) An insured benefit as provided under any insured plan of disability maintained by the Corporation;
 - (B) Plus 50% of normal salary for a period of sixty (60) months without regard to the insurance benefits collected.



- (C) However, any workman's compensation or social security benefit collected during such period shall be deducted from the cash benefit provided in paragraph (B).
- (D) "Salary" shall mean the employee's average weekly total draw (averaged over the fifty-two [52] weeks previous to the disability).
- (4) Covered Employees shall receive a pre-retirement and an insured or a self-insured post-retirement Group Term Life Insurance Benefit, either insured by a commercial insurance company or self-insured by the Corporation, in a face amount equal to forty-eight (48) times the Covered Employee's monthly compensation for the month preceding the Covered Employee's date of death, or the month preceding the Covered Employee's retirement, whichever is appropriate.
- (5) Covered Employees shall annually receive Vacation Pay Benefits in an amount equal to two (2) times their then current monthly salary.
- (6) Covered Employees shall receive a work related Educational Benefit as follows:
 - (A) Each employee shall be allowed up to five (5) normal working days per year to attend seminars, programs, courses or pursue other educational activities directly relevant to his employment.
 - (B) Each employee shall be entitled to tuition reimbursement not in excess of ten thousand dollars (\$10,000) during any one fiscal year of this Plan.
 - (C) In addition to the tuition reimbursement, each employee shall be reimbursed for the following additional expenses which may be incurred in connection with work related educational activities:



- (i) Travel costs for a maximum of four (4) trips per fiscal year of the Plan, up to an aggregate amount of fifteen thousand dollars (\$15,000) for any fiscal year.
 - (ii) The cost of accommodations up to one hundred fifty dollars (\$150) per day, for a maximum of ten (10) days per fiscal year; and
 - (iii) Meals, not in excess of one hundred and fifty dollars (\$150) per day.
- (7) Covered Employees shall receive a nonwork related Educational Benefit as follows:
- (A) Each employee shall be allowed two (2) normal working days per year to attend seminars, programs, courses or pursue other educational activities not directly relevant to his employment.
 - (B) Each employee shall be entitled to tuition reimbursement of up to two hundred dollars (\$200) during any one fiscal year of this Plan.
- (8) Covered Employees shall receive the following Day Care Benefit:
- (A) Days Available: Unlimited.
 - (B) Hours Available: Unlimited.
 - (C) Ages of Children: Up to age 16.
 - (D) Maximum Number of Children per Employee: Three children.
 - (E) Charge per day: Cost approved by the Corporation.
 - (F) Meals Supplied: Cost approved by the Corporation.

- [REDACTED]
- (9) If the Corporation requires a Covered Employee to relocate in the course of his employment, a Covered Employee shall receive a Job Relocation Allowance in an amount equal to his then annual salary multiplied by one-half (1/2).
 - (10) If in any fiscal year of the Corporation, the gross receipts of the Corporation fall by ten percent (10%) of the amount of its gross receipts for the immediately preceding fiscal year resulting in a situation where a Covered Employee would receive less salary in the current fiscal year than he received in the immediately preceding fiscal year, a Covered Employee shall be entitled to an Income Maintenance Payment of the difference between his current fiscal year salary and his salary for the immediately preceding fiscal year. This payment shall be made no later than ninety (90) days after the close of the current fiscal year.
 - (11) If, after three (3) Years of Service with the Corporation, a Covered Employee terminates service with the Corporation for reasons other than for cause or reaching Normal Retirement Age, then a Covered Employee shall be entitled to receive a Severance Payment in an amount equal to twice the Covered Employee's annual compensation during the fiscal year immediately preceding the year in which his service is terminated. Said payments are to be made and computed in accordance with the provisions of 29 C.F.R. §2510.3-2(b)(1)(iii) and -2(b)(2).

Your Trust was established by the Corporation. [REDACTED] and his wife are the Trustees. The corporation exercises general control over your operations and has the power to terminate the Trust anytime in its sole discretion.

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 associations 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)-2(a)(2)(i) of the Income Tax Regulations provides, in part, that eligibility for benefits may be restricted on the basis of objective conditions related to the type or amount of benefits offered, provided that the conditions do not have the effect of entitling officers, shareholders or highly compensated employees to benefits that are disproportionate to the benefits to which other members are entitled.

Section 501(c)(9)-3(d) of the regulations specifies that the term "other benefits" includes only those that are "similar to life, sick, or accident benefits." Section 1.501(c)(9)-3(f) provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of voluntary or mandatory retirement. A benefit will be considered as such if it provides for deferred compensation that becomes payable by reason of the passage of time rather than as a result of an unanticipated event.

Section 1.501(c)(9)-4(a) of the regulations provides that no part of the net earnings of a VEBA 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 based on all the facts and circumstances.

Based on the information available, we conclude that you are not a voluntary employees' beneficiary association as that term is used in section 501(c)(9) of the Code.

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. If the VEBA is organized and operated to promote the interest of an individual or limited number of individuals standing in relationship to the organization as an investor for private gain, the inurement proscription would bar tax exempt treatment.

In your case, [REDACTED] is the sole stockholder of the employer Corporation and, because a majority of the benefits are based on a percentage, he and his wife, [REDACTED], receive a dominant share of the benefits. Upon termination, the assets of the Trust, which include significant cash reserves for the self-insured benefits, could be distributed [REDACTED] and his wife in proportion to their dominant share of the aggregate benefits.

[REDACTED]

Under the circumstances, we believe [REDACTED] maintains a posture that is incompatible with the inurement proscription set forth in section 1.501(c)(9)-4(a) of the regulations. A limited membership in combination with allocation of a dominant share of benefits to an owner/member indicates that the Trust is organized and operated for the benefit of that person and not for an employee group. The Trust would be subject to termination at the discretion of the owner/member. By controlling the timing of termination, the owner/member would be able to direct the distribution of his allocable share of the Trust assets. Under these circumstances, the VEBA would function as an investment fund for the direct and personal benefit of the owner/member. An organization functioning in this manner is inconsistent with the exempt purpose of a VEBA to provide benefits and promote the common welfare of an association of employees.

In addition, it appears that your provision of post-retirement medical disability and group term life insurance would not constitute an "other benefit" within the intentment of section 1.501(c)(9)-3(d) and (f) of the regulations.

Accordingly, based on all the facts and circumstances, we conclude that your trust and plan does not qualify for recognition of exemption from federal income tax under section 501(c)(9) of the Code. You are, therefore, required to file federal income tax returns.

You have a 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 principal officers, must be submitted within 21 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 principal officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

[REDACTED]

If we do not hear from you within 21 days, this ruling will become final and copies of it will be forwarded to the District Director, Baltimore, Maryland, which is your key district for exempt organizations matters. Thereafter, any questions about your federal income tax returns or the filing of tax returns should be addressed to that office.

When submitting additional letter with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[REDACTED]
Chief, Exempt Organizations
Rulings Branch

cc: DD, Baltimore
Attn: EO Group

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]

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