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

200111046

4976.00-00

Date: DEC 15 2000

Contact Person:

ID Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

Legend:

A =
B =

Dear Applicant:

This is in response to your letter dated August 18, 1999, requesting the following rulings:

1. The amendment of the A VEBAs for union and salaried employees (and the related Plans) and the use of the assets of the VEBAs to provide post-retirement medical and life benefits (through the payment of premiums or otherwise) for the non-A Participants will not adversely affect the tax-exempt status of A VEBAs for union and salaried employees under section 501(c)(9) of the Code.

2. The amendment of A VEBAs for union and salaried employees (and the related Plans) and the use of the assets of the VEBAs to provide post-retirement medical and life benefits (through the payment of premiums or otherwise) for the Non-A Participants will not be considered a disqualified benefit under section 4976(b)(1)(C) subject to the excise tax under section 4976 of the Code.

A, as an independent company, has adopted two separate welfare benefit plans; one for its salaried employees and the other for its union employees. The plans provide for the payment of post-retirement medical and life coverage for A's eligible employees and their dependents. The Trusts for both plans have been recognized as exempt under section 501(c)(9) of the Code. Even though the participants in the union plan are generally employees covered by a collective bargaining agreement, the plan was established for the convenience of A and was not established pursuant to or as a result of the collective bargaining process.

237

A has merged with B and is a separate operating subsidiary of B. Its former employees who continue their employment after the merger remain participants in their existing plans. B and its subsidiaries, other than A, currently provide post-retirement medical and life benefits to their employees. B intends to merge both plans and establish a single trust which will provide post-retirement benefits to all eligible employees entitled to benefits by reason of their employment by either A or B and any of B's subsidiaries. Benefits will continue to be provided based on criteria that do not provide for disproportionate benefits to officers, shareholders or highly compensated employees. In addition, the benefit plans will continue to be used exclusively to pay post-retirement medical and life benefits.

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

Section 1.501(c)(9)-2(a)(1) of the Income Tax Regulations provides that the membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer or (affiliated employers), to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union.

The meaning of the term "employee" is defined in section 1.501(c)(9)-2(b) of the Regulations. Whether an individual is an "employee" is determined by reference to the legal and bona fide relationship of employer and employee. The term "employee" includes the following:

(1) An individual who is considered an employee:

(i) For employment tax purposes under Subtitle C of the Internal Revenue Code and the regulations thereunder, or

(ii) For purposes of a collective bargaining agreement, whether or not the individual could qualify as an employee under applicable common law rules.

(2) An individual who became entitled to membership in the association by reason of being or having been an employee.

(3) The surviving spouse and dependents of an employee.

Section 1.501(c)(9)-3(b) of the Regulations provides that the term "life benefits" means a benefit payable by reason of the death of a member or dependent. A "life benefit" may be provided directly or through insurance. It generally must consist of current protection, but also may include a right to convert to individual coverage on termination of eligibility for coverage through the association, or a permanent benefit as defined in, and subject to the conditions in, the regulations under section 79. A "life benefit" also includes the benefit provided under any life insurance contract purchased directly from an employee-funded association by a member or provided by such an association to a member. The term "life benefit" does not include a pension, annuity or similar benefit, except that a benefit payable by reason of the death of an insured may be settled in the form of an annuity to the beneficiary in lieu of a lump-sum death benefit (whether or not the contract provides for settlement in a lump sum).

Section 1.501(c)(9)-3(c) of the Regulations provides that the term "sick and accident benefits" means amounts furnished to or on behalf of a member or a member's dependents. Such benefits may be provided through reimbursement to a member or a member's dependents for amounts expended because of illness or personal injury, or through the payment of premiums to a medical benefit or health insurance program. Similarly, a sick and accident benefit includes an amount paid to a member in lieu of income during a period in which the member is unable to work due to sickness or injury. Sick benefits also include benefits designed to safeguard or improve the health of members and their dependents. Sick and accident benefits may be provided directly by an association to or on behalf of members and their dependents, or may be provided indirectly by an association through the payment of premiums or fees to an insurance company, medical clinic or other program under which members and their dependents are entitled to medical services or to other sick and accident benefits. Sick and accident benefits may also be furnished in noncash form, such as, for example, benefits in the nature of clinical care services by visiting nurses, and transportation furnished for medical care.

Section 1.501(c)(9)–4(a) of the Regulations 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 permissible benefits. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

Section 4976(a) 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) of the Code defines "disqualified benefit" to include any portion of a welfare benefit fund reverting to the benefit of the employer.

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.

The parties intend to have all post-retirement medical and life benefits to be provided through the A VEBA's. Coverage for employees of B and B's subsidiaries (previously provided by B) will be transferred to the A VEBA's, which have been recognized as exempt under section 501(c)(9) of the Code. All the eligible participating employees are employees of a single holding company and its subsidiaries. The sole benefits provided are qualifying section 501(c)(9) post-retirement life and health insurance benefits. It has been represented that the benefits will be provided based on criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees. The continued payment of qualifying section 501(c)(9) benefits to qualifying employees is not inurement for the purposes of section 501(c)(9) of the Code. In addition, the transfer of assets from one welfare benefit plan to another to provide for the payment of benefits to an expanded class of beneficiaries, all of whom have a common employment bond, is not a disqualified benefit for the purposes of section 4976 of the Code.

Accordingly, we rule as follows:

1. The amendment of the A VEBAs for salaried and union employees (and the related Plans) and the use of the assets of the VEBAs to provide post-retirement medical and life benefits (through the payment of premiums or otherwise) for the Non-A Participants will not adversely affect the tax-exempt status of A VEBAs for salaried and union employees under section 501(c)(9) of the Code.

2. The amendment of A VEBAs for salaried and union employees (and the related Plans) and the use of the assets of the VEBAs to provide post-retirement medical and life benefits (through the payment of premiums or otherwise) for the Non-A Participants will not be considered a disqualified benefit under section 4976(b)(1)(C) subject of the excise tax under section 4976 of the Code.

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

We are informing the Ohio EP/EO key district office of this ruling. Because this letter could help resolve any questions about your exempt status, you should keep it in

240

your permanent records.

If you have any questions about reporting requirements or about excise, employment, or other federal taxes, please contact the Ohio EP/EO Customer Service office at 877-829-5500 (a toll free number) or send correspondence to the following address: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201. If you have any immediate questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Joseph Chasin

Joseph Chasin
Acting Manager, Exempt Organizations
Technical Group 2