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4976.00-00

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

200122051

Date: MAR 7 2001

Contact Person:

Identification Number:

Telephone Number:

T:EO:B2

Employer Identification Number:

LEGEND: H =

Y =
Z =

Dear Sir or Madam:

This is in reply to your letter of March 30, 2000, as modified by your letter of November 27, 2000, regarding the transfer of H's assets to another voluntary employees' beneficiary association (VEBA) sponsored by you.

H was established by you to provide for the payment of health care benefits to your employees who were working in one of your operating divisions. H has been recognized as exempt from federal income tax as a VEBA described in section 501(c)(9) of the Code.

You also formed Z, a separate VEBA, to provide for the payment of benefits to certain other of your employees. Z provides its members substantially the same benefits as H previously provided its members. You have represented that Z is not operated in a manner which discriminates in favor of highly compensated individuals. Z has been recognized as exempt from federal income tax as a VEBA described in section 501(c)(9) of the Code.

You and your related companies recently sold to Y all of the assets and stock in the operating division which was composed of H's members. The individuals working in this division have become employees of Y. You have represented that H has no remaining plan participants, has paid all of its obligations and expenses and has no current liabilities. In addition, there are currently no participants in H's program continuing coverage through the exercise of COBRA rights. However, H still has a certain amount of funds remaining. You have represented that while H was operational, you had made discretionary payments to H to help meet its operating expenses. You stress that such payments were not required under H's governing documents.

You have requested the following rulings:

1. That the transfer of the excess funds H currently holds to Z will not constitute prohibited inurement of H's asssets to you under section 501(c)(9) of the Code.

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Re:

2. That the transfer of the excess funds H currently holds to Z will not adversely affect H's exempt status under section 501(c)(9) of the Code.

3. That the transfer of the excess funds H currently holds to Z will not subject you or H or any company related to you to the 100% excise tax under section 4976 of the Code.

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 association must be voluntary; the organization must provide for the payment of 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 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 1.509(c)(9)-4(d) of the regulations provides that it will not constitute prohibited inurement if, on termination of a plan established by an employer and funded through an association described in section 501(c)(9), any assets remaining in the association, after the satisfaction of all liabilities to existing beneficiaries of the plan, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other benefits within the meaning of section 1.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees of the employer. Similarly, a distribution to members upon the dissolution of the association will not constitute prohibited inurement if the amount distributed to members are determined pursuant to the terms of a collective bargaining agreement or on the basis of objective and reasonable standards which do not result in either unequal payment to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees of any employer contributing to or otherwise funding the employees' association. Except as otherwise provided in the first sentence of this paragraph, if the association's corporate charter, articles of association, trust instrument or other written instrument by which the association was created, as amended from time to time, provides that on dissolution its assets will be distributed to its member's contributing employers, or if in the absence of such provision the law of the state in which the association was created provides for such distribution to the contributing employers, the association is not described in section 501(c)(9).

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

Rev. Rul. 68-223, 1968-1 C.B. 154 provides that the transfer of funds from a non-exempt employees' welfare fund to an employees' trust forming part of a pension plan will not, of itself, disqualify the plan and trust under the provisions of section 401(a) of the Code nor affect the exempt status of the trust under section 501(a).

The information you have submitted establishes that you have sold your interests in the operating division in which H's plan participants worked. Any outstanding benefits and obligations, including COBRA benefits, have been paid and H has no outstanding debts or obligations. However, H does have a certain amount of cash reserves which you wish to distribute to Z. Z is a VEBA that is providing health care benefits to your current employees. You have represented that Z has been recognized as exempt under section 501(c)(9) of the Code and does not provide benefits in a discriminatory manner.

Whether prohibited inurement for the purposes of section 501(c)(9) has occurred is a question to be determined with regard to all the facts and circumstances. However, section 1.501(c)(9)-4(d) of the regulations recognizes that upon the termination of a VEBA assets can be used to continue to provide qualifying benefits pursuant to criteria that do not provide for the payment of disproportionate benefits. In this situation, although the assets are not being used for the benefit of H's former participants, they are being used to provide benefits in a nondiscriminatory manner to other employees in the same company.

Therefore, we have concluded prohibited inurement will not occur. Both H and Z have been recognized as exempt under section 501(c)(9) of the Code; the assets will be used to provide permissible section 501(c)(9) benefits in a nondiscriminatory manner; a common employment-related bond is present; and the transfer is not used to avoid any of the requirements of section 501(c)(9) of the Code.

Similarly, we have concluded that the provisions of section 4976 are not applicable. The return of any portion of the funds held in a welfare benefit fund for the benefit of an employer is a disqualified benefit that subjects the employer to the section 4976(a)(2) excise tax.. Under these circumstances, the funds are not being returned to you and will be expended by Z for employee welfare benefits. Accordingly, you are not subject to the section 4976 excise tax.

Accordingly, based on the information submitted we rule:

1. That the transfer of the excess funds H currently holds to Z will not constitute prohibited inurement of H"s assets to you under section 501(c)(9) of the Code.

2. That the transfer of the excess funds H currently holds to Z will not adversely affect its exempt status under section 501(c)(9) of the Code.

3. That the transfer of the excess funds H currently holds to Z will not subject you or H or any company related to you to the 100% 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 [redacted] TE/GE Customer Service Office of this ruling. Because this letter could help resolve any question about your tax liability, a copy of it should kept in your permanent records.

Re: 200122051

If there are any question about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the [redacted] TE/GE Customer Service Office.

Sincerely Yours,

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

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