Internal Revenue Service

Department of the Treasury

Washington, DC 20224

4976.00-00

199916054

Contact Person:

Telephone Number:

In Reference to: OP:E:EO:T:2

Date: JAN 26 1999

Employer Identification Number:
Key District:

Legend:

A =
B =
C =

D =
M =
N =

Dear Applicant:

This is in response to your letter dated August 6, 1997 and as amended by your letter dated January 4, 1999, requesting the following rulings:

1. Whether the proposed transaction will adversely affect your exempt status under section 501(c)(9) of the Internal Revenue Code.

2. Whether the proposed transaction will impose any tax on the employers under section 4976 of the Code.

Your primary purpose is to provide life, health and accident insurance to the employees of A. A is presently recognized as exempt from federal income tax under section 501(c)(6) of the Code. You are presently recognized as exempt from federal income tax under section 501(c)(9) of the Code. You have for a number of years provided your benefits by a contract with B. This contract with B has been terminated. Your employees now receive their benefits under a new trust which has a contract with C. As a result of the termination of the Contract with B you received $M from B. You are now proposing to terminate and distribute your assets after the payment of administration expenses to pay your employees/participants who were participants on N.

You stated that you plan to use the following procedure to terminate:

1. Each Participant's allocated proportion of your funds then remaining (subject to adjustment in the event that other Participants' Employers fail to provide requested information as described in section 4 below) will be a fraction, the denominator of which is the amount of all your premiums paid for the months of April through August 1995 and the numerator of which is the amount of your premiums paid by or on behalf of that Participant for the months of April through August 1995.

2. Your Trustees will determine each Participant's share of your funds then remaining by multiplying the amount of your funds then remaining, less a reasonable reserve for additional anticipated administration expenses, by the fraction determined to be the Participant's allocated proportion, whether such allocated proportion was paid by the Employer or directly by the Participant.

3. Your Trustees will require that each Employer allocate the amounts in each Participant Account to the Participant to the extent the Participant paid the premium and to the Employer of that Participant to the extent the Employer paid the premium. Your Trustees will rely on the Employer's contractual obligation to properly allocate the amounts in each Participant Account between Employer Amounts and Participant Amounts because you presently have no information as to what was contributed by the Employer and the Participant to each account. You Trustees will require each employer to furnish information in order that you will be able to make the above allocation. You also will require each employer to agree that each Participant will be reimbursed their allocated premiums.

4. Your Trustees will be notifying all the Employers of this distribution plan. If an Employer does not respond; is not located or agree to the distribution conditions for the Employer Accounts or if any Participant can not be located or does not respond for the Participant Accounts, the Funds that would be allocated to these participants will revert back to be allocated to the other participants. Both the Employer Accounts and the Participant Accounts must provide you with proof that insurance premiums are being presently paid for section 501(c)(9) benefits. If they do not, these accounts allocation will revert to the other Employer/Participant Accounts.

You will remain in existence until your funds are distributed as described above, and the payment of your administrative expenses. Any unused funds then will be distributed to D that is recognized as exempt from federal income tax under section 501(c)(3) of the Code. Your plan is only designed to reimburse employers that had section 501(c)(9) accounts with you for their future insurance premiums paid for section 501(c)(9) benefits from the date of this ruling letter.

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, and 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)-4(a) of the Income Tax 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 1.501(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 the 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, shareholder, 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 contribution to or other 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(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.

Section 1.501(c)(9)-4(d) of the regulations provides that a section 501(c)(9) organization may terminate by distributing its assets to members. This distribution must be on a 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 contribution to or other funding the employees' association. The information shows that the funds that will be distributed to members on a proportional basis are from a termination of a contract with B. Based on this circumstance the funds pay on a proportional basis to members will not result in unequal payments to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees. Based on the standard that you are planning in terminating it would be on an objective and a reasonable standard. Accordingly, your proposed distribution would not be prohibited inurement. In addition, a section 501(c)(9) organization may provide charitable benefits. The information shows any amount left for distribution to a section 501(c)(3) organization after your distribution to members will be insubstantial. Thus, this distribution would be within the meaning of section 501(c)(9) of the Code as an other benefit and would be insubstantial in nature. Thus, we rule that your proposed transaction will not affect your exempt status under section 501(c)(9) of the Code.

Since you are distributing your funds to the employers only for their future insurance premium payments of section 501(c)(9) benefits from the date of this ruling letter, this is not a reversion of your funds to the employers nor a disqualified benefit. Thus, we rule that there is no tax imposed on any of your employers under section 4976 of the Code by your proposed transaction.

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

We are informing your key District Director of this ruling. Because this letter could help resolve any question about your exempt status, you should keep it in your permanent records.

If you have 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 your key District Director.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2