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

UIL: 501.09-00
Date:

OCT 15 2002

Contact Person:

Identification Number:

Telephone Number:

T:EO:B3

Employer Identification Number:

Legend:

W =

X =

Y =

Z =

a =

b =

c =

d =

e =

f =

Dear :

This is in response to a ruling request dated October 18, 2000, in which W, parent of X, is seeking certain rulings as more fully set forth below.

Y is a voluntary employees' beneficiary association (VEBA) established on c by X to provide sick, accident, and similar permissible benefits as described in section 501(c)(9) of the Internal Revenue Code, to X's Marketing Representatives and their dependents who are covered by a Collective Bargaining Agreement effective on a between X and Z. Y provides

current benefits to the Marketing Representatives and their dependents on a pay-as-you-go basis. In addition, a post-retirement reserve, as set forth in section 419A(c)(2) of the Code, was established as part of the VEBA to provide other post-employment benefits (OPEB) to the Marketing Representatives and their dependents (hereinafter the OPEB Reserve).

X's Marketing Representatives subsequently voted to terminate the collective bargaining agreement and, effective on d, the union ceased representing Taxpayer's Marketing Representatives. In connection with the termination of the Collective Bargaining Agreement, a transition period was established during which active Marketing Representatives became associated with Taxpayer's general insurance agencies and continued to market Taxpayer's insurance products. The transition period ended on e. In connection with the termination of the Collective Bargaining Agreement, it was agreed that all Marketing representatives who retired on or after b and before e , and their dependents (hereinafter referred collectively as Retired Individuals), would be covered under X's fully insured medical plan for general insurance agencies (Plan).

As of e, then active Marketing Representatives and their dependents will also be covered under the Plan. Marketing Representatives who had retired on or before f , and their dependents would continue to receive their prescribed benefits under the VEBA. Their claims will be satisfied from the OPEB Reserve amounts which are part of the VEBA.

As to the Retired Individuals, X proposes to utilize the amounts in the OPEB Reserve which is associated with such Retired individuals to pay insurance premiums under the Plan in order to provide such Retired Individuals with post-retirement benefits which are otherwise permitted under section 501(c)(9) of the Code. None of these OPEB reserve amounts will be used for any purpose other than providing the Retired Individuals with permissible post-retirement benefits.

In this regard, Section 4.2 of the VEBA trust document, titled "Fund for Exclusive Benefit of VEBA Members" provides in pertinent part as follows: "Notwithstanding anything to the contrary contained in this Agreement, or in any amendment thereto, it shall be impossible for any part of the net earnings of the trust Fund to inure to the benefit of any private shareholder or individual other than through the payment of benefits under the Plan. At no time shall any part of the Trust Fund, other than such part as is required to pay expenses of the administration of the Plan or the Trust, be used for, or diverted to, purposes other than the exclusive benefit of the VEBA members or for any purposes other than to provide benefits which may be afforded to VEBA members under section 501(c)(9) of the Code, except to the extent permitted by applicable law, regulation or ruling..." In addition, Section 3.3 of the VEBA trust document titled "Distribution upon Termination, provides as follows: "Upon termination of the Trust, the Trust Fund shall be distributed in accordance with the terms of the Plan as certified by the Plan Administrator, or absent provisions therein, as the Trustees may be instructed by the Committee, for the benefit of VEBA Members under the plan, as that Committee deems fair and equitable; provided, however, that neither the Plan Administrator nor the Committee shall direct that distributions be made in contravention of the provisions of Section 4.2 of this Agreement or Section 501(c)(9) of the Code or any regulations issued thereunder.

Section 501(c)(9) of the Code provides for 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 associations inure (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, in part, 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 of the facts and circumstances, taking into account the guidelines set forth in this section.

Section 1.501(c)(9)-4(d) of the regulations provides, in part, 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) of the Code, any assets remaining in the association, after 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 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders or highly compensated employees of the employer.

Section 419A(c)(1) of the Code provides that except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund -

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a) and

(B) administrative costs with respect to such claims.

Section 419A(c)(2) of the Code provides that the account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

Section 4976(a) of the Code imposes an excise tax on an employer equal to 100% of any disqualified benefit provided by an employer-maintained welfare benefit fund.

Section 4976(b)(1)(C) of the Code provides that the term "disqualified benefit" includes any portion of a welfare benefit fund reverting to the benefit of the employer.

The purpose of the OPEB Reserve is to provide post-retirement benefits, as described in

section 419A(c)(2), to the members of the VEBA. Since union members, who are participants in the VEBA, voted to terminate their collective bargaining agreement, the Retired Individuals who would have otherwise received post-retirement benefits under the VEBA, will now receive their post-retirement benefits through X's fully insured medical Plan. The use of a portion of the OPEB Reserve to pay insurance premiums to provide post-retirement benefits to Retired Individuals is a permissible VEBA payment. Thus, the OPEB Reserve is being used for the purpose and for the individuals for which it was established and will therefore have no adverse impact on the VEBA's exempt status.

You have further represented, and your trust document provides that, no portion of the OPEB Reserve will be used for other than the payment of insurance premiums to provide OPEB benefits otherwise permissible under section 419A(c)(2) of the Code. Such payments cannot be deemed a disqualified benefit since there is no reversion to the employer within the meaning of section 4976.

Based on the information submitted, and the representations made therein, we rule as follows:

(1) The use of the amount of the OPEB Reserve held in the VEBA which pertains to Marketing Representatives who have retired on or after b and before e and their dependents to pay premiums under Taxpayer's fully insured medical plan in order to provide post-retirement benefits for such Marketing Representatives and their dependents is a permissible VEBA payment and shall not cause the VEBA to cease to be recognized exempt from tax under section 501(c)(9) of the Code.

(2) As we have previously discussed with you, in the interest of sound tax administration, we are declining to rule on the issue of whether the use of the amounts in the OPEB Reserve held in the VEBA to pay insurance premiums under the Plan in order to provide the retired Marketing Representatives with post-retirement medical benefits will result in the realization and recognition of gross income to the Taxpayer under section 61 of the Code. Please note, however, that if the proposed use of the VEBA assets does result in the realization and recognition of gross income to the Taxpayer under section 61, the Taxpayer would be entitled to an offsetting deduction under section 419 for the qualified direct costs of providing welfare benefits to the retirees.

(3) The use of that amount of the OPEB Reserve held in the VEBA which pertains to Marketing Representatives who have retired on or after b and before e, and their dependents to pay premiums under Taxpayer's fully insured medical Plan in order to provide post-retirement benefits for such marketing Representatives and their dependents will not constitute a reversion to the Taxpayer under section 4976 of the Code.

No opinion is expressed in this ruling concerning whether the VEBA has ceased to be maintained pursuant to a collective bargaining agreement and, if so, the federal tax consequences (if any) to X.

These rulings are directed only to the organization that requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent.

If you have any questions about these rulings, 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.
Manager, Exempt Organizations
Technical Group 3