TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

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

T:EO:RA3

UIL Number: 501.09-00, 4976.00-00

Date: JAN 6 2004

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Trust A =
Trust B =
Plan D =
Plan E =
G =

Dear Applicant:

This is in reply to a request for a ruling dated November 25, 2002 concerning the tax consequences of a transfer of assets from one voluntary employees' beneficiary association to another voluntary employees' beneficiary association.

Trust A has been recognized as exempt from Federal income tax under section 501(c)(9) of the Internal Revenue Code. Trust B has also been recognized as exempt from Federal income tax under section 501(c)(9) of the Code.

Trust A and Plan D were established on September 20, 1982. Plan D provided disability coverage and benefits and survivor benefits on a self-insured basis until December 31, 1999.

Trust B was established on January 1, 1982 to provide the funding for welfare benefits to participants in Plan E. This trust is used to fund all welfare benefits aside from disability and survivor benefits which are currently funded by Trust A.

Trust A received a determination letter dated March 20, 2000 establishing exemption under section 501(c)(9) of the Code.

Trust B received a determination letter dated February 9, 2001 establishing exemption under section 501(c)(9) of the Code.

Company G, the employer and plan sponsor, has been recognized as exempt under section 501(c)(3) of the Code. Company G represents that it has taken a deduction under section 419 of the Code for contributions made to the welfare benefit plans.

G consolidated all of its welfare and fringe benefit programs into Plan E as of December 31, 1998. Plan E currently offers the following benefit options:

1) Health
2) Dental and vision
3) Flexible spending account reimbursements
4) Life and disability insurance

In 2000, Plan E was amended to provide an employer-provided basic level of disability insurance and a basic level of life insurance on a fully insured basis. This disability insurance is offered through Plan E and funded through Trust A. Company G pays the full amount of the premium on a basic level of group term life and long term disability insurance for its employees. Plan E offers eligible employees life insurance at one to four times their compensation and offers an option to purchase additional disability coverage. Only the long-term basic level of disability coverage is paid through Trust A. Because of Company G's decision to provide a basic level of life and disability benefits to its employees, the old self-insured benefits under the Plan D became redundant and therefore Company G decided to terminate Plan D in favor of the fully insured benefits under Plan E.

Those individuals that are receiving disability or survivor benefits under the terms of Trust A have been or will be provided for through (1) the purchase of annuities, (2) a segregated fund in Trust B, or (3) a lump sum payment. All other participants have received the survivor and disability coverage which they had purchased under Plan D in prior years There are no accounts in which participants may vest nor are there any records of employee contributions from the inception of Plan D to date. Those currently receiving long-term disability benefits will have that coverage provided through insurance. Those receiving survivor benefit payments will have them provided from the funds transferred to Trust B, which encompasses the benefits under the former Plan D that are now a component benefit under Plan E. All future disability and survivor benefits (life insurance) will be provided through Plan E with all other welfare benefits. It is proposed that Trust A be merged with Trust B so that all funds used to provide the welfare benefits, including disability and life insurance benefits, are held in one trust to minimize costs of administering two trusts related to one plan, Plan E.

Beginning in 2002, Company G offered a new short-term disability benefit entirely funded from Company G's assets. However, funds relating to this benefit have not been paid from Trust A.

In order to consolidate the assets in Trusts A and B, it is proposed that Trust A be terminated and all of its assets be transferred to Trust B.

Section 9.4 of Plan D states that neither Company G nor an affiliate of Company G has any right, title or interest in any of the contributions made to its corresponding trust fund. Also, this section provides that no part of this trust fund shall revert to Company G or its participating affiliates with the exception of a mistake of fact contribution from a participant which may be returned within one year of participant's contribution.

Section 9.1(a) of Trust A dated 1/1/84 and a proposed amendment to Section 12.1(a) of Trust A dated January 1, 1992 does not permit an amendment to allow the return or repayment to Company G or its affiliates of any part of Trust A.

Section 4.3(g) of Plan E dated January 1, 2000 gives power to the Plan Administrator to take unilateral or other action to ensure that Plan E does not fail any of the non-discrimination requirements imposed by the Code.

A proposed amendment to Trust A's Trust document to permit the merger of Trust A into Trust B and a corresponding amendment of Trust B to accept the merger was prepared.

The purpose of this consolidation of assets is to minimize costs of administering two separate trusts related to Plan E.

Company G proposes to dispose of Plan D's assets in the following manner:

1) In order to satisfy the fixed and contingent disability benefit liabilities from Plan D, a purchase of annuities or a lump sum payment equal or greater than the present value of all future benefit payments will be made to the beneficiaries.

2) The funds related to persons entitled to and currently receiving survivor benefits in Trust A will be transferred to Trust B but segregated from the other assets and held solely for satisfying present or future obligations.

3) The remaining assets in Trust A will be directly transferred to Trust B. Once in Trust B, these assets will be used to provide life, long term disability or other welfare benefits (through the purchase of insurance or on a self-insured basis) under Plan E which qualify under section 501(c)(9) of the Code

4) Following the transfer of the remaining funds of Trust A to Trust B, Trust A will merge into Trust B, with Trust B emerging as the surviving trust that will be utilized to fund the welfare benefits provided to Company G's employees.

The following rulings have been requested:

1. That the transfer of assets from Trust A to Trust B will not cause either Trust A or Trust B to cease to be recognized as exempt from Federal income tax under section 501(c)(9) of the Code.

2. That neither Trust A nor Trust B will be liable for excise tax under section 4976 of Code as a result of the transfer of assets from Trust A to Trust B.

Law:

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 to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(d) of the Income Tax Regulations provides that it will not constitute prohibited inurement if on termination of an organization 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 association, are applied to provide, either directly or through the purchase of insurance, life, sick, accident or other permissible benefits pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders or other highly compensated employees of the employer. it further states that if the trust document or charter provides for the reversion of assets to the employer on dissolution, or if reversion is permitted through operation of law, the trust is not an organization described in section 501(c)(9).

Section 4976 provides that any portion of a welfare benefit fund reverting to the benefit of the employer will be subject to a 100 percent excise tax. A welfare benefit fund includes an organization described in section 501(c)(9

The transfer of assets from A to B will not affect the tax-exempt status of either A or B because no prohibited inurement will occur. The transferred assets will be used to provide permissible life, sick, accident or other benefits pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, or highly compensated employees. Specifically, the proposed surviving plan will provide the following benefits:

1) Health
2) Dental and vision
3) Flexible spending account reimbursements
4) Basic and additional life and disability insurance

These benefits will be provided in a non-discriminatory manner pursuant to section 11.6 of Trust E dated January 1, 2000 and with reference to section 3.1 concerning eligibility.

These assets will be used for the exclusive purpose of providing the above permissible benefits to eligible persons under Plan E. All of A's liabilities will be satisfied before assets are transferred to B.

Under the terms of both Trust A and Trust B and pursuant to section 1.501(c)(9)-4(d) of the regulations, G is prohibited from receiving a reversion of assets from either Trust A or Trust B., and G will not in fact receive such assets. Thus, the transfer of assets from Trust A to Trust B will not result in a reversion to G or its subsidiaries.

Accordingly, we rule as follows:

1. The transfer of assets from Trust A to Trust B will not cause either Trust A or Trust B to cease to be recognized as exempt from Federal income tax under section 501(c)(9) of the Code.

2. Neither G nor any of its subsidiaries will be liable for excise tax under section 4976 of the

Code as a result of the transfer of assets from Trust A to Trust B.

This ruling is based on the understanding that there will be no material change in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Service. We are not ruling whether the account or sub-account balances in the plans are subject to the tax on unrelated business income under Sections 511 and 512(a) of the Code. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

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.

Because this letter could help resolve future questions about your income tax responsibility, please keep a copy of this ruling in your permanent records. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

We have sent a copy of this letter to your authorized representative as indicated in your power of attorney.

Sincerely,

(Signed) Robert C. Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3