TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200537036**
Release Date: 9/16/2005
SE:T:EO:RA

Date: 06/21/05

Uniform Issue List Numbers: 501.09-01
501.09-04

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Legend: Taxpayer=

A =

B =

C =

Corporation M=

x =

Dear :

This is in response to a letter dated May 4, 2004 as revised in a letter dated January 28, 2005, in which your legal representative requested rulings that the provision of certain health benefits in the manner described below will not adversely affect your status as an organization described in section 501(c)(9) of the Internal Revenue Code (the Code).

You received a determination letter from the Internal Revenue Service that you were a tax-exempt entity under section 501(c)(9) of the Code. You provide various group life insurance and health insurance to your members through group policies. You also provide other benefits for your members including a dependent scholarship program, discounts on prescription drugs, travel benefits, and an affinity credit card program. Your membership is open to individuals described in A, B, and C.

You administer the above-described insurance programs under contract with the insurance carrier by providing services such as underwriting, premium collections, and payment of agent commissions where applicable, assistance with claims handling, marketing, and issuance of enrollment certificates; and you receive compensation for the insurance carrier for such

administrative services.

You wish to make available the same type of insurance benefits that you provide to your members available to two additional categories of individuals: adult former dependents of individuals described in A, B, and C; and individuals who retired from A before becoming eligible for retirement benefits. You intend to have Corporation M, your wholly-owned for-profit subsidiary, make available to these two groups the same type of insurance benefits which you make available to your members. You would be willing to have Corporation M hold in its name the group policy that covers these individuals but applicable state insurance regulations require that the entity in whose name the group policy is held be at least five years old and that such policy cover all members of the association in whose name the policy is held. Since Corporation M is less than five years old, you intend to create a new voting membership category for the two groups and to cover them under the same group policy that covers A,B, and C. You intend to call members of this new voting membership "Auxiliary Members. Therefore, you intend to amend your articles of organization to create a new category of Auxiliary Members to be covered by the same group insurance policy that covers A,B, and C.

This program will be structured so that Corporation M enters into a contract with the insurance carrier for M Corporation to provide all administrative services in support of that portion of the group policy which covers the Auxiliary members, including provision of administrative services such as underwriting, premium collection, payment of agent commissions where applicable, assistance with claims handling, marketing and the issuance of enrollment certificates. All payments for such administrative services will be paid by the carrier to Corporation M. You will incur no expenses or time in connection with the administrative services necessary to provide group insurance policy benefits to the Auxiliary members and shall receive no income from the provision of the group insurance policies to Auxiliary Members. All income derived from the offering of such group insurance program benefits to Auxiliary Members shall be received by Corporation M, not you, and corporation M as a for-profit subsidiary will pay taxes on such income after offset of allowable deductions. You will take care to hold out Corporation M as a separate legal entity, to maintain a separate non-identical Board of Directors, and to hold separate Board of Director meeting.

You request the following two rulings:

1. That individuals who terminated employment as A before becoming eligible for retirement benefits are "employees" within the meaning of section 1.501(c)(9)-2(b)(2) of the Income Tax Regulations and therefore you may provide life, sick, accident and other benefits allowed by section 501(c)(9) of the Code without adversely affecting your exemption under section 501(c)(9).

2. That the use of M Corporation to administer that portion of your group insurance policies that covers the adult former dependents of A, B, and C in a manner which results in M Corporation and not you incurring all administrative expenses for and deriving all income from the provision of such group insurance policy benefits to such adult former dependents does not constitute the provision by you or more than a de minimis amount of unpermitted benefits under section 1.501(c)(9)-3(a) and therefore does not adversely affect your exempt status under section 501(c)(9) of the Code so long as the number of such covered adult former dependents does not exceed x% of the total number of individuals for whom you provide benefits.

Section 501(c)(9) of the Internal Revenue Code provides that a voluntary employee benefit association (VEBA) that provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries shall be exempt from taxation.

Section 1.501(c)(9)-3(c) of the regulations describes the term "sick and accident benefits" to mean amounts furnished to or on behalf of a member or a member's dependents in the event of illness or personal injury to a member or dependent.

Section 1.501(c)(9)-2(b)(2) states that the term “employee” includes an individual who became entitled to membership in the association by reason of being or having been an employee. An individual who would otherwise qualify under this paragraph therefore will continue to qualify even though such individual is on leave of absence, works temporarily for another employer or has been terminated by reason of retirement, disability or lay off. The determination that a terminated employee is eligible for inclusion under a VEBA is made with reference to the reasons for termination of employment. Eligibility for retirement benefits is not one of the relevant criteria. Individuals who retire from employment with the common employer but do not receive retirement benefits are included among the types of terminated employees who are “employees” within the meaning of section 1.501(c)(9)-2(b)(2). Thus, the provision of health benefits to terminated employees who retired without retirement benefits will not adversely affect your exempt status under section 501(c)(9) of the Code.

Section 1.501(c)(9)-3(a) of the Income Tax Regulations provides that the life, sick, accident, or other benefits provided by a VEBA must be payable to its members, their dependents, or their designated beneficiaries. For the purpose of section 501(c)(9), "dependent" means the member's spouse; any child of the member or the member's spouse who is a minor or a student; any other minor child residing with the member; and any other individual who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a). An organization is not described in this section if it systematically and knowingly provides more than a "de minimis" amount of impermissible benefits.

Section 152(a) of the Code defines the term "dependent" to include any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer: sons and daughters; stepsons and stepdaughters; nieces and nephews; aunts and uncles; in-laws; and an individual (other than the spouse) who, for the taxable year, has as his/her principal place of abode the home of the taxpayer and is a member of the taxpayer's household.

An adult former dependent defined in the proposed benefit is not a dependent within the meaning of section 1.501(c)(9)-3(a) of the regulations and section 152(a) of the Code. Section 1.501(c)(9)-3(c) of the regulations provides that sick and accident benefits may not be provided to a member's other "designated beneficiaries" (individuals who are not a member's dependents). Therefore, providing such benefits to an employee's "domestic partner" would constitute non qualifying benefits, which would cause a VEBA to lose its tax exempt status under section 501(c)(9) unless the provision of such benefit could be considered a de minimis amount.

You have submitted information indicating that your role will be limited to the ministerial role of holding ownership of the insurance policies covering the adult former dependents; that all expenses incurred and income derived from the administration of benefits for such adult former dependents would be incurred by your for profit subsidiary and not by yourself, and that no more than x% of your current membership will be adult former dependent children of A, B, and C. Based on the facts submitted, it appears that operations with respect to health coverage for adult former dependent are of A, B, and C will be no more than de minimis. Provision of a de minimis amount of nonqualifying benefits will not adversely affect exemption under section 501(c)(9) of the Code.

Accordingly, we rule that based upon the information you have submitted, your proposal to provide otherwise unallowable health benefits to adult former dependents of Members will not cause you to lose your exempt status under section 501(c)(9) of the Code. This ruling is based upon your representations that the provision of such benefits will be a "de minimis" amount of the total benefits you provide.

Except as we have specifically ruled above, we express no opinion as to the federal income tax consequences of the transactions described above under any other provision of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

Any changes that may have bearing on your tax status should be reported to the Service.

We are informing your Key District Director of this ruling. Because this ruling could help resolve future tax questions about your federal income tax status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

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

Sincerely yours,
Jane Baniewicz
Manager, Exempt Organizations
Technical Group 2