TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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501.09-01

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Taxpayer=

Plan =

Dear :

This is in response to a letter dated submitted on your behalf by your authorized representative requesting rulings regarding the provision of certain health benefits in the manner described below by an organization described in section 501(c)(9) of the Internal Revenue Code (the Code).

You (Taxpayer) are a collectively bargained, joint labor-management employee benefit trust, (the Trust). You qualified for tax-exempt status pursuant to section 501(c)(9). You are established and maintained pursuant to numerous collective bargaining agreements, with approximately employers contributing. You cover approximately active employees and retired persons (including spouses and dependents).

The unions and employer associations have agreed that your Trustees can create a health reimbursement plan, the Plan, which will be maintained as a separate plan under the Trust. Contributions will be made to the Plan on behalf of active employees; however the Plan is designed to provide benefits for retired employees. The following individuals will be eligible to receive benefits under the Plan: (1) employees who are 52 or older and who have terminated all employment with a contributing employer; (2) employees receiving retiree health benefits under the Trust; (3) employees who qualify for disability retirement benefits under the terms of the defined benefit pension plan sponsored by the bargaining parties; and (4) employees who are entitled to disability benefits under the Social Security Act. Self-employed persons are not eligible to participate in the Plan. If an employee dies, the employee's eligible dependents may

continue to receive benefits from the account. . Employee benefits are forfeitable to the Trust upon death of the employee and all the employee's eligible dependents.

The Plan only provides for benefits for eligible expenses incurred for medical care as defined under section 213(d). Benefits are not provided for expenses that are reimbursable by another employer-provided accident and health plan or any other group or individual accident or health insurance, or expenses used as a deduction on the employee's federal tax return.

The amount of employer contributions to the Plan will equal $X for each hour worked by the employee as determined under the applicable contribution rate in the collective bargaining agreement. No employee will be able to receive cash in lieu of contributions to the Plan, nor will the employees be allowed to make a salary reduction election to the Plan. Employer contributions made on behalf of an active employee will be allocated to an individual account under the Plan in the name of the employee. The balance in an employee's account (unless subject to forfeiture) will be carried forward each year until the employee satisfies the requirements for eligibility.

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(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.

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 to illness or personal injury to a member or dependent. Such benefits may be provided through reimbursement to a member or a member's dependents for amounts expended because of illness or personal injury, or though the payment of premiums to a medical benefit or insurance program.

Section 105(a) of the Code provides that, in general, amounts received by an employee through employer provided accident or health insurance for personal injuries or sickness shall be included in the gross income of the employee to the extent such amounts: (1) are attributable to contributions by the employer which were not includible in the gross income of the employee; or (2) are paid by the employer.

Section 105(b) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under Code section 213 for any prior taxable year. Gross income does not included amounts referred to sec section 105(a) if such amounts are paid directly or indirectly to the taxpayer to reimburse the taxpayer for medical care of the taxpayer, his spouse, or dependents.

Section 105(e) of the Code provides that amounts received under an accident or health plan for employees shall be treated as amounts received through accident or health insurance for

purposes of section 105.

Section 1.105-2 provides that only amounts that are paid specifically to reimburse the taxpayer for expenses incurred by the taxpayer for the prescribed medical care are excludable from gross income. Therefore, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of whether or not the taxpayer incurs expenses for medical care.

Section 105(h)(1) of the Code provides that, unless the plan satisfies the nondiscrimination requirements of section 105(h)(1), amounts paid under a self-insured medical expense reimbursement plan to a highly compensated individual will not be excludable from that individual's gross income under section 105(b) to the extent they constitute excess reimbursements.

Section 106(a) of the Code provides that the gross income of an employee does not include employer provided coverage under an accident or health plan.

Section 1.106-1 provides that the gross income of an employee does not include contributions which the employee's employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries of sickness incurred by the employee or the employee's spouse or dependents.

Rev. Rul 66-212, 1966-2 C.B. 230 provides that the fact that only retired employees will be eligible to receive benefits will not adversely affect exemption under section 501(c)(9) of the Code

Revenue Ruling 2002-41, 2002-28 IRB 75 provides that employer provided coverage and medical care reimbursements made under a reimbursement arrangement that allows unused amounts of an annual maximum reimbursement to be carried forward are excludable from gross income under section 105 and 106 of the Code.

Notice 2002-45 I.R.B. 2002-28 provides that, in general, a health reimbursement plan (HRA) is one that: (1) is paid for solely by the employer and not provided pursuant to a salary reduction election or otherwise under a cafeteria plan; (2) reimburses the employee for medical care expenses (as defined by Code Section 213(d)) incurred by the employee, and the employee's spouse and dependents; and (3) provides reimbursements up to a maximum dollar amount for a coverage period and any unused portion of the maximum dollar amount is carried forward to increase the maximum reimbursable amount in subsequent periods. Notice 2002-45 also provides that to the extent that an HRA is an employer provided accident or health plan, coverage and reimbursements of medical care expenses of an employee and the employee's spouse and dependents are excludable from the employee's gross income under section 105 and 106 of the Code. Finally, Notice 2002-45 provides that medical care expense reimbursements under an HRA are excludible under section 105(b) to the extent reimbursements are provided to current and former employees (including retired employee), their spouses and dependents and the spouses and dependents of deceased employees. To the extent that an HRA is a self-insured medical expense reimbursement plan, the nondiscrimination rules under section 105(h) apply.

The Plan satisfies the first criteria for an HRA because it is funded solely by employer contributions. There is no salary reduction election, and employees will not be allowed to receive cash in lieu of any benefits. The Plan satisfies the second criteria, since it only provides benefits for medical care expenses as defined by section 213(d) of the Code. The Plan satisfies the third criteria because any unused portion the end of a coverage period will be carried forward to increase the maximum reimbursable amount in subsequent periods. If a balance remains in the employee's account at his or her death, the employee's spouse and dependents may use the remaining amount for qualified medical expenses. Any unused balance at the death of the employer, the employer's spouse, and all dependents will be forfeited top the employer. Nothing in Notice 2002-45 precludes providing benefits exclusively for former employees.

A trust that was previously recognized as tax-exempt under section 501(c)(9) does not lose its tax-exempt status when it provides additional benefits of the type contemplated by section 501(c)(9). All of the benefits provided pursuant to Plan B can be described as "other benefits" under the regulations, since they related to safeguarding the health of an employee and his or her spouse and dependents and become payable as the result of unanticipated events. As such they are within the definition of "other benefits" described by Section 1.501(c)(9)-3(d) that may be provided under a plan that is exempt under section 501(c)(9).

Accordingly, based upon the information you submitted we rule that:

1. Establishing and funding Plan B through a Code 501(c)(9) Trust neither causes the Plan to fail to satisfy the requirements for a health reimbursement arrangement (HRA) as described in Notice 2002-45, nor causes the Trust to lose tax-exempt status under section 501(c)(9

2. Employer contributions paid to the Trust with respect to the Plan on behalf of active employees, and benefits received by eligible employees and the eligible employees' spouses and dependents, are excludable from gross income under sections 106 and 105 respectively.

3. The Plan meets the requirements for an HRA as described in Notice 2002-45.

These rulings are based on the understanding that there will be no material changes in the facts and representations upon which they are based. Except as we have ruled herein, we express no opinion as to the 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.

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,

Mary Jo Salins
Manager, Exempt Organizations
Technical Group 2