

200511003

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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: October 1, 2004

Form Numbers: 990

Tax Period Ended: _____

Person to Contact: _____

Contact Telephone Number: _____

Employee Identification Number: _____

EIN: _____

Contact Address: _____

Internal Revenue Service

CERTIFIED MAIL

Dear [REDACTED]:

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(9) of the Internal Revenue Code (Code) is necessary effective

You have agreed with us and have signed on _____ Form 6018-A, Consent to Proposed Adverse Action, revoking your exempt status. If you still accept our findings, you do not need to take further action.

If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the examination report and this letter will become final. In that event, you will be required to file future Federal income tax return Form 1041, *U.S. Income Tax Return for Estates and Trusts* if you have any taxable income or gross receipts of at least \$600 for tax periods after the above effective date. You will also still be required to file Form 5500, *Annual Return/Report of Employee Benefit Plan*. File these returns with the appropriate service center indicated in the instructions for those returns.

TP:
EIN:

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If you do not agree with our position, you may appeal your case. The enclosed Publications 3498, *The Examination Process* and 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you or Appeals do not agree on some or all the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in the United States Tax Court, the United States Court of Federal Claims, or the United States District Court, after satisfying procedural and jurisdictional requirements as described in Publications 3498 and 892.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based upon technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate is not able to reverse a legally correct tax determination, nor extend the time fixed by law that you have to file a petition in the U.S. Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. If you want Taxpayer Advocate assistance, please call toll-free 1-877-777-4778. If you prefer to respond by mail, please direct your correspondence to the following address:

Internal Revenue Service
Attn: Taxpayer Advocate

If you have any questions, please call or write the contact person whose name and telephone number are shown above. If you write, please include your telephone number, the best time to call you if we need more information, and a copy of this letter to help us identify your account.

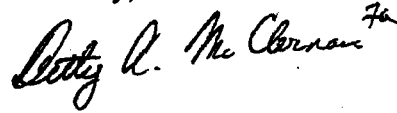
Thank you for your cooperation.

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TP: A
EIN:

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Sincerely,

Handwritten signature of Betty A. McCleran in cursive script.

Betty A. McCleran
Acting Director, EO Examinations

Enclosures:

Examination Report
Publications 3498 and 892
Envelope

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ISSUE:

Whether the organization continues to qualify for exempt status as an IRC 501(c)(9) organization.

FACTS:

was established in or the purpose of providing group health, life, long-term disability, short-term disability, and accidental death and dismemberment) to active and retired employees of participating member bank (members). It was granted exempt status under IRC 501(c)(9) in

The Trust is governed by a board of six trustees elected from the participating members. The Trust has an agreement for the service and administration of the Trust with the Kempton Company (Plan Administrator) which expires in Participating members make monthly contributions to the Trust to cover the cost of group programs provided and the cost of administering the Trust. These contributions are comprised of employer and employee contributions which are determined based upon the arrangements that each participating member has with its employees. Rates charged for the group programs are determined by the Trustees. Such rates vary by type of coverage. The Trust offers eight major employee welfare benefit medical plans covering employee claims of participating members.

Effective , the Trust was amended and restated to (a) change its name from to and (b) to expand the definition of "participant" to include entities other than those employers in the banking industry. On the Trust, through its representative, notified the IRS of its change in membership participation in a letter to Austin Service Center (Exhibit 1). The letter stated that the organization "will no longer be a trust under Section 501(c)(9)". On the organization filed Form 990 for tax year ended s its "final return".

The case was assigned to a revenue agent (determinations agent) for consideration of the amendment. On or about 2, the organization was asked to provide additional information relating to the total member population and the number of members outside the banking industry. In a letter dated o the determinations agent (Exhibit 2), responded that approximately of the employees were from banking institutions and the remaining were employees outside the banking industry. In her letter, refers to the fact that the determinations agent indicated that it may be possible to provide benefits to a nominal percentage of the employers not in the same line of business and still remain a 501(c)(9) trust.

In Letter 976 dated (Exhibit 3), the IRS advised the Trust that the amendments made by the organization did not adversely affect the organization's exempt status under IRC 501(c)(9). This conclusion was reached nearly two years after the organization first notified the IRS of the amendments, and after numerous telephone discussions and correspondence between the organization, its representatives, and the determination agent(s).

By the time the organization received the IRS Letter 976 dated the Form 990 for tax year ended was delinquent. On , relying on the IRS Letter 976 dated The Trust filed a delinquent Form 990 for tax year ended and reflected its status as a 501(c)(9) exempt trust.

On the determinations agent submitted Form 5666, Information Report, which stated,

"The organization submitted an Amended and Restated Trust, effective to change its name from (Also,

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one of the changes included new members who are not related to the same industry (common employers). The organization may not satisfy the requirements for exemption as described under Regulation 1.509(c)(9)-2".

Based on interviews conducted with [redacted] and [redacted] with the [redacted] (Chief Financial Officer of the Plan Administrator), [redacted] and [redacted],

it is clear that the Trust intends to continue to make its product available to as many employers as possible without regard to industry. By increasing the number of members, the Trust is able to keep costs to members more affordable. The banking industry has changed over the past several years, and small banks are dwindling in numbers as they are bought by larger banks. The larger banks are able to offer major medical coverage with a variety of providers, whereas the smaller banks have nowhere to turn for affordable benefits. The Trust will continue to offer its plans to members in the banking industry but will expand its membership where possible to include other industries.

The Trust is a "welfare benefit fund" as defined in IRC Section 419. As such, contributions to this welfare benefit fund by the various participating employers are subject to certain limitations. The Trust is licensed and authorized to act as a [redacted] under the provisions codified in Title 36, Section 633 of the [redacted] Statutes. It is required to file Form 990, Annual Return/Report of Employee Benefit Plan. The Trust has in excess of 100 participating employers and provides for a pooled risk. The Trust prohibits individual ratings on an employer-by-employer basis.

LAW AND ARGUMENT:

IRC 501(a) provides that an organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503. IRC 501(c) includes IRC 501(c)(9) organizations.

IRC Section 501(c)(9) provides exempt status for Voluntary Employees' Beneficiary Associations (VEBA's) providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries.

T.R. 1.501(c)(9)-1 provides that to be described in section 501(c)(9) an organization must meet all of the following requirements:

- (a) The organization is an employees' association,
- (b) Membership in the association is voluntary,
- (c) The organization provides for the payment of life, sick, accident, or other benefits to its members or their dependents or designated beneficiaries, and substantially all of its operations are in furtherance of providing such benefits, and
- (d) No part of the net earnings of the organization inures, other than by payment of the benefits referred to in paragraph (c) of this section, to the benefit of any private shareholder or individual. [Reg. §1.501(c)(9)-1.]

T.R. 1.501(c)(9)-2(a)(1) provides that the membership of an organization described in section 501(c)(9) must consist of individuals who become entitled to participate by reason of their being employees and whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Typically, those eligible for membership in an organization described in section 501(c)(9) are defined by reference to a common employer, coverage under one or more collective bargaining agreements, membership in a labor union, or membership in one or more locals of a national or international labor union. ~~In addition, employees of one or more employers engaged in the same line of~~

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Members in the same geographic location will be considered to share an employment-related bond for purposes of an organization through which their employees provide services.

IRC 6012(a)(4) provides that a trust must file a return for the taxable year if it has "any taxable income, or having gross income of \$600 or over, regardless of the amount of taxable income".

IRC 419A of the Code provides that a welfare benefit fund which is NOT a 501(c)(9) trust shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year. IRC 419A(g)(2) provides that the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under 512(a)(3) if such fund were an organization described in 501(c)(9).

IRC 512(a)(3)(A) provides that in the case of an organization described in 501(c)(9), the term "unrelated business taxable income" means the "gross income excluding any exempt function income.

IRC 512(a)(3)(B) provides that the term "exempt function income" means the gross income from dues, fees, charges or similar amounts paid by members of the organization as consideration for providing such members or their dependents....services in furtherance of the purpose constituting the basis of the exemption.

TAXPAYER'S POSITION:

The Trust agrees that as of [REDACTED] it no longer met the requirements of IRC 501(c)(9) when it amended its trust instrument to include participants (employers) outside the banking industry. The Trust notified the IRS in March 2001 that it no longer met the requirements of IRC 501(c)(9). The Trust notes that it was the IRS who insisted that the amendments did NOT adversely affect the organization's exempt status under IRC 501(c)(9). Relying upon IRS Letter 976 dated March 3, 2003, the organization reported its income and expenses as a tax-exempt trust under IRC 501(c)(9) for tax years ended 6/30/01 (as amended), 6/30/02, and 6/30/03.

CONCLUSION:

The organization does not meet the requirements of Regulation 1.501(c)(9)-2 because all participants do not have an employment related bond. Neither the Code nor the Treasury Regulations allow a diminimis exception for this requirement. As a result, employers outside the banking industry were eligible to become members. Since the organization does not meet the definition of an organization described in IRC 501(c)(9), it is no longer exempt. Because the organization relied upon IRS Letter 976 dated [REDACTED] in filing its Forms 990 for tax years ended [REDACTED] the revocation is effective beginning [REDACTED] rather than the date the amendments in the trust instrument caused the organization to no longer qualify under IRC 501(c)(9).

There has been no change in the structure or management of the Trust. The assets have not been moved or distributed to any members in any way. The only change is from an exempt trust under IRC 501(c)(9) to a taxable trust. Because the management has not changed, there is no requirement to change the Employer Identification Number (EIN).

The taxpayer has agreed to file Form 990 for tax year ended [REDACTED] as its final Form 990. Because the assets have not been transferred or moved in any way, there is no need to "zero out" the balance sheet items at year end.

The taxable trust is still required to file Form 5500, Annual Return/Report of Employee Benefit Plan. In addition, the taxable trust is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts if it has

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either any taxable income or gross income of at least \$600. It is not expected that the trust will have taxable income or gross income as defined in Section 512(a)(3) because all of its income is "exempt function income". If the trust has income that would not be "exempt function income", it would create a requirement to file Form 1041.