



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200651036**
Release Date: 12/22/06
Date: September 27, 2006

U.I.L.: 501.09-04

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(9) of the Internal Revenue Code. Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 11, 2006

Contact Person:

U.I.L.: 501.09-04

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

Dear :

We have considered your application for recognition of exemption from Federal income tax under section 501(a) Internal Revenue Code. Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(9) of the Code. The basis for our conclusion is set forth below.

You were formed on June 23, 2003, pursuant to an Agreement and Declaration of Trust (Declaration) entered into between M and the persons designated by M to serve as Trustees. The Declaration states that you were created for the purpose of maintaining, through policies or certificates of insurance issued by a licensed insurance company or companies or by self-funding or a combination thereof for the benefit of eligible retirees, health and welfare benefits as the Trustees may determine in such amounts, of such types and with such coverages as the Trustees in their sole discretion shall determine. Retirees are defined to mean and include retired officers of M who are eligible to participate in and receive benefits from you in accordance with the Declaration and with Article XXII of M's Bylaws. Article II, Section 1 of the Declaration states that you shall not be used to provide pension benefits, or benefits to individuals who have not retired from active employment, or benefits to individuals who have not served as Officers of M as specified in M's bylaws, or benefits to individuals who fail to meet the eligibility requirements set forth in the Declaration, or in any other policy, certificate of insurance, or health and welfare plan provided by you.

Article 23, Section 1, of M's Bylaws, approved March 25, 1976, states that M "shall establish a Trust for the sole purpose of providing lifetime health and welfare coverage to retired officers and their spouses." Section 2 of Article 23 states that "to be eligible for the benefit described under Article 23, Section 1 above, an individual must have served as an officer for (M) for twenty (20) years and have retired as a member in good standing with (M). Section 3 of

Article 23 states that the "Trust, established in Article 23, Section 1 above, shall be for the sole benefit of the retired officers and their spouses who meet the eligibility requirements set forth at Article 23, Section 2." Section 5 of Article 23 states that the Trust shall be administered by a Board of three (3) Trustees who shall be appointed by the President of M, and that the President may be one of the three Trustees.

The Declaration states that M shall contribute and pay into you an amount sufficient to fund the obligations incurred by you. The contributions shall be made periodically at such times as necessary to enable you to fund your obligations. In no event shall M directly or indirectly receive any refund on contributions made by it to you, nor shall M directly or indirectly participate in the disposition of your funds or receive any benefits.

The Declaration states that its purpose is to provide the following types of benefits:

- Death benefits providing for payment to the beneficiaries named by Employee in the event of death;
- Accidental death and dismemberment benefits providing for payment in the event of non-occupational death or dismemberment;
- Accident and health insurance providing for benefits to the Employee for limited periods of time when injury or illness prevents work;
- Hospital benefits providing for payment of hospital bills; payment of surgical bills and payment of physician's bills (arising from non-occupational sources);
- Such other benefits as your Trustees may agree upon subject to the provisions of any applicable statutes;

for Retirees who meet the qualifications as to age, length of service with M and such other provisions, limitations, and conditions as may be established by your Trustees under the authority granted to your Trustees.

In your application, you state that the number of persons covered by the plan who are highly compensated individuals is zero (0), the number of other employees covered by the plan is one (1), the number of employees not covered by the plan is zero (0), and the total number employed is one (1). You also state that the number of persons, if any, other than employees and their dependents who are entitled to receive benefits is one (1). Your Chairman is the President of M.

In your letter dated November 11, 2005, you explain that Article 23 of M's Bylaws authorizes M to establish a trust for the purpose of providing lifetime health and welfare coverage to certain retired officers and their spouses. At the present time, only one individual has met the criteria set forth in Article 23 and has become eligible to receive benefits. You state that you anticipate that at some point in the future, an additional five individuals will be become eligible to receive benefits. You further state that "(a) you can see from the provisions of Article 23 of (M)'s Bylaws, in order to be eligible for benefits, an individual must have served as an officer of (M) for twenty years and have retired as a member in good standing with M."

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations (VEBA) 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 (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the Income Tax Regulations provides that, in general, the membership of a VEBA 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 a VEBA are defined by reference to a common employer, to coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)), to membership in a labor union, or to membership in one or more locals of a national or international labor union.

Section 1.501(c)(9)-2(a)(2)(ii) of the regulations provides that, in general, eligibility for membership in a VEBA may be restricted by objective conditions or limitations reasonably related to employment, a limitation based on a reasonable minimum period of service, a limitation based on maximum compensation, or a requirement that a member be employed on a full-time basis. Similarly, eligibility for benefits may be restricted by objective conditions relating to the type or amount of benefits offered. Any objective criteria used to restrict eligibility for membership or benefits may not, however, be selected or administered in a manner that limits membership or benefits to officers, shareholders, or highly compensated employees of an employer contributing to or otherwise funding the VEBA.

As explained in section 1.501(c)(9)-2(a)(2)(ii) of the regulations, a VEBA may impose restrictions on eligibility for benefits through objective conditions relating to the type or amount of benefits provided. However, the criteria used to define such conditions may not be selected or administered in a manner which limits benefits to officers, shareholders, or highly compensated employees or which has the effect of entitling members of this prohibited group of individuals to benefits that are disproportionate as compared to those to which other members are entitled.

Your eligibility for benefits is based solely on the recipient being a retired officer of M. Rather than being based on a membership defined by reference to objective standards that constitute an employment-related common bond among eligible individuals, your benefits are being provided and will be provided only to retired officers of M. This limitation is specifically proscribed in section 1.501(c)(9)-2(a)(2)(ii) of the regulations for exempt VEBAs. Further, there is no evidence in the file that retired persons who were members of M, but who were not officers, have comparable benefits. Therefore, this limitation is in direct opposition to the favorable requirements for exemption discussed in section 1.501(c)(9)-2(a)(2)(ii).

Based on the foregoing, we rule that you do not qualify for exemption as an organization described in section 501(c)(9) of the Code. Therefore, you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T)

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely yours,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements