



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201224037**
Release Date: 6/15/2012

Date: March 23, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

N = Bank
O = Date # 1
Q = Date # 2
S = Date # 3
T = State

UIL #'s:

501.09-00
501.09-04

Dear :

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

Issue(s):

Are you an association of employees which qualifies for exemption from tax under the provisions of §501(c)(9) of the Code? You are not for the reasons stated below.

Facts:

You were formed on O as an insurance trust pursuant to an Agreement and Declaration of Trust (Declaration) entered into between N, a bank, and unspecified Employers. The Declaration was later amended and restated .

According to the Declaration, your purpose is to obtain, maintain, renew, and hold insurance policies through which participating employers can provide health and other insurance benefits under employee benefit plans maintained by participating employers for their participants and beneficiaries.

The members of your Board of Trustees must be employees of employers participating in the trust, or employees or members of a chamber of commerce endorsing the trust.

An employer is entitled to participate in the trust and to provide its eligible employees with benefits if the employer satisfies the following requirements:

- a. The employer agrees to participate in the trust for the purpose of providing benefits to its employees and their dependents;
- b. The employer is accepted for participation in the trust pursuant to any underwriting rules established by providers or underwriters of insurance policies;
- c. The employer makes any and all contributions required by the trust and premium contributions due under the insurance policies; and
- d. The employer is a member in good standing of an association or chamber of commerce that is endorsing the trust.

You represent that the trust operated as a dry trust, without income, without expenses and without reserves until Q.

Your stated objective is to enable small companies to join together in order to obtain insurance protection through mass purchasing. Your insurance plans are available to sponsoring chambers of commerce and associations through brokers and agents.

You, also, confirmed that the trust was not established pursuant to a collective bargaining agreement and no contributions are received arising out of a collective bargaining agreement.

You currently offer plans and coverage which provide medical, dental, vision, and life and disability insurance through a program specifically created for sponsoring chambers of commerce. Each participating group must be a member of one of over 100 chambers and associations in the T and have a group size between 2 and 99 enrolled employees.

You do not compile or maintain records of the compensation of the employees, including those who are highly compensated. There are no separate categories for

participation based on compensation. You do not request or maintain records concerning the number of each group participant's employees not covered by the plan.

Brokers and agents must be affiliated with you and also appointed by your carrier prior to receiving quotes or writing business. Brokers and agents are paid 5% commission on groups of 5-99 employees and 2% on groups of 2-4 employees.

Your website outlines the following participation and contribution requirements:

- The employer must contribute a minimum of 75% toward the employee premium unless the group is in a restricted industry. Restricted industry employers must contribute 100% toward the employee premium.
- At least 75% of eligible employees must enroll. If the group is in a restricted industry, 90% participation is required.

Active, full-time employees of participating employers are eligible for coverage.

Law:

A Voluntary Employees' Beneficiary Association (VEBA) is a mutual association of employees providing certain specified benefits to its members or their designated beneficiaries. It may be funded by the employees or their employer. The VEBA has existed in the tax law since the Revenue Act of 1928 when it was given exempt status under section 101(16) of the Act. Exemption for this type of entity was re-enacted by the Revenue Acts of 1932, 1934, 1936 and 1938. Provisions for continued recognition of VEBA arrangements was incorporated into the 1939 Code as section 101(16) and subsequently into the 1954 Code, as amended to date, as section 501(c)(9).

Section 501(c)(9) of the Code exempts from federal income tax the voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident or other benefits to its members (or their dependents or designated beneficiaries) if no part of the net earnings inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-1 of the Income Tax Regulations provides that for an organization to be described in section 501(c)(9) of the Code an organization must meet all the following requirements:

- (a) The organization must be an association of employees;
- (b) Membership in the association must be voluntary;

- (c) The organization's purpose is to provide 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 (c), to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-2(a)(1) of the regulations states 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) of the Code are defined by reference to:

- A common employer (or affiliated employers),
- Coverage under one or more collective bargaining agreements (with respect to benefits provided by reason of such agreement(s)),
- Membership in a labor union, or
- Membership in one or more locals of a national or international labor union.

For example, membership in an association might be open to all employees of a particular employer, or to employees in specified job classifications working for certain employers at specified locations and who are entitled to benefits by reason of one or more collective bargaining agreements. In addition, employees of one or more employers engaged in the same line of business in the same geographic locale will be considered to share an employment-related bond for purposes of an organization through which their employers provide benefits. Employees of a labor union also will be considered to share an employment-related common bond with members of the union, and employees of an association will be considered to share an employment-related common bond with members of the association.

Section 505(b) of the Code contains certain requirements for organizations described in sections 501(c)(9) and 501(c)(20) unless they are subject to the exception of section 505(a)(2) for collective bargaining agreements. Under 505(b)(1), a plan will meet the requirements of section 505(b)(1) only if,

- (1) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and that does not discriminate in favor of employees who are highly compensated individuals, and

(2) In the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated individuals. A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

Under section 105(a), amounts received by an employee through a self-insured medical reimbursement plan which are attributable to contributions of the employer, or are paid by the employer, are included in the employee's gross income unless such amounts are excludable under section 105(b). For amounts reimbursed to a highly compensated individual to be fully excludable from such individual's gross income under section 105(b), the plan must satisfy the requirements of section 105(h). Section 105(h) is not satisfied if the plan discriminates in favor of highly compensated individuals as to eligibility to participate or benefits. All or a portion of the reimbursements or payments on behalf of such individuals under a discriminatory plan are not excludable from gross income under section 105(b). A self-insured medical reimbursement plan is a separate written plan for the benefit of employees which provides for reimbursement of employee medical expenses under section 105(b). A plan or arrangement is self-insured unless reimbursement is provided under an individual or group policy of accident or health issued by a licensed insurance company or under an arrangement in the nature of a prepaid health care plan that is regulated under federal or state law in a manner similar to the regulation of insurance companies.

Section 105(h)(2) of the Code provides that a plan satisfies the requirements of section 105(h) only if it does not discriminate in either eligibility or benefits in favor of highly-compensated individuals. Section 105(h)(5) of the Code provides, in part, that a highly-compensated individual is an individual who owns more than 10% in value of the stock of the employer and is among the highest paid 25% of all employees (other than those employees described in section 105(h)(3)(B) who are not participants.

In *Harding Hospital, Inc. v. United States*, 505F2nd 1068 (1974), the court held that an organization seeking a ruling as to recognition of its exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

Application of the Law:

Section 501(c)(9) of the Code, in conjunction with section 501(a), exempts from federal income tax a voluntary employees' beneficiary association (VEBA) providing for the payment of life, sick, accident, or other benefit to its members or their dependents, or designated beneficiaries, if no part of the "net earnings" of the association inures (other than through such payments) to the benefit of any private shareholder or individual. A

VEBA functions primarily as a cooperative device for pooling funds and distributing risks over and benefits to a defined group of employees sharing an employment-related common bond.

You are not as defined in section 501(c)(9) of the Code and sections 1.501(c)(9)-1 or 1.501(c)(9)-2(a)(1) of the regulations, because you are not an association of employees whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Employees of any small business that is a member of one of over 100 chambers of commerce in the T may become a member of your plan. Therefore, membership is not defined by reference to a common employer, affiliated employers, coverage under a collective bargaining agreement, or membership in a labor union. Additionally, there is no evidence that the eligible employers are engaged in the same line of business in the same geographic locale.

You have, also, failed to meet the requirements under sections 505(b) and 105(h) because you do not maintain adequate records to demonstrate that you do not discriminate in favor of highly compensated individuals.

Therefore, you have not met the burden of proving that you are organized and operating as a VEBA described by section 501(c)(9) of the Code.

Applicant's Position:

You represent that the employment-related common bond that exists between your members is their employment relationship with employer members of chambers of commerce and business associations within the T endorsing the trust. You admit that the employment-related common bond is not identical to any of the deemed employment-related common bonds or the examples given as guidance in the facts-and-circumstances test. However, you claim the facts and circumstances, together with the structure and administration of the trust satisfies the employment related common bond requirement established in the Regulations.

You represent you are similar to a legitimately formed VEBA and are unlike a commercial insurance program. You make the following claims:

- You have an employer-employee relationship while an insurance program identifies an insurance company-customer relationship. You claim the employees receiving benefits under the trust do not purchase insurance directly from the insurance companies, and the insurance companies do not directly solicit the employees to purchase insurance through the trust. You represent that no insurance company–

customer relationship exists between the trust and the employees receiving benefits under the trust or their employers.

- You are unlike an insurance program and similar to a VEBA because you are non-commercial in nature and lack a profit motive.
- You are unlike an insurance program and similar to a VEBA because you do not market or advertise the availability of benefits to the general public. Knowledge of the benefits of the plan is made available to the employer members of endorsing chambers of commerce and business associations within T through brokers, endorsing chambers of commerce and business associations, and your website.
- You are unlike an insurance program and similar to a VEBA because membership is restricted to employees within a geographic local. You claim this is adequate to minimize the possibility that it could be used as a vehicle to sell insurance to individuals.
- You represent that the trust exists independent of the member-employees or their employers, the trust is controlled by independent trustees, and membership is trust is voluntary. You state the trust is an employee welfare plan as defined in ERISA section 3(1), and complies with ERISA's reporting, disclosure and fiduciary responsibility provisions.

Service's Response to Applicant's Position:

The fact that all of your members are employees of employers who are themselves members of one of over 100 chambers of commerce or business associations in the T is not sufficient to demonstrate an employer-related common bond as required by the Regulations.

Although you state that you are unlike a commercial insurance provider, you admit that your objective is to enable small companies to join together in order to obtain insurance protection through mass purchasing. Your insurance plans are available to sponsoring chambers of commerce and associations through brokers and agents who are paid on commission. You do not maintain information regarding highly compensated employees or the number of employees who are not covered by the plan. These are all characteristics of commercial insurance providers.

You did not provide any relevant information that would result in a favorable determination. As in *Harding Hospital, Inc. v. United States*, 505F2d 1068 (1974), you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to provide enough information to prove to us that members share an

employment-related common bond and that you are not operating in a manner similar to a commercial insurance provider.

Conclusion:

You have not demonstrated employment-related common bond as required under section 1.501(c)(9)-2(a)(1) of the regulations. And you have not satisfied the non-discriminatory requirements imposed under sections 105(a) and 505(b).

Therefore, you do not qualify for exemption under Code subsection 501(c)(9) as a voluntary employees' beneficiary association (VEBA).

Your Appeal Rights:

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 that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, 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 to you. That letter will provide information about filing tax returns and other matters.

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

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

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,

Lois G Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892