TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Contact Person:

Number: **201512006**
Release Date: 3/20/2015

Identification Number:

Telephone Number:

Date: December 24, 2014

Employer Identification Number:

UIL: 419.00-00; 419A.00-00;
501.09-00; 512.00-00; 7701.00-00

Legend:

Plan	=
Trust	=
Company	=
Union	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year A	=
N years	=
$x	=
$y	=

FACTS

Trust has received a determination letter from the Service that it is a voluntary employees' benefits association under section 501(c)(9) of the Internal Revenue Code ("Code").

Trust holds assets to provide benefits provided under Plan. Plan and Trust are part of a single employer welfare arrangement that was sponsored by Company. Plan was originally established through negotiation of a collective bargaining agreement ("CBA") between Company and Union on Date 1. Plan was amended and restated on Date 3 and Date 4. Prior to the Date 3 restatement, a Joint Committee of the Union and the Company administered Plan.

Prior to its restatement, the purpose of Plan was to provide supplemental health insurance coverage and/or reimbursement to certain former employees who were members of Union with at least ten years of Union seniority, and who retired after Year A from employment with Company. Plan also offered benefits to the eligible dependents of those retirees.

Under the terms of the collectively bargained Plan, during the term of any CBA between Company and Union, Plan could be modified, amended or terminated only through collective bargaining. Plan terms also provided that at the conclusion of the CBA, Plan could be modified, amended or terminated by the president of Company.

On Date 2, Company ended its production and all Union members were laid off. The CBA between Company and Union was extinguished by agreement of the parties. A Shutdown Agreement was negotiated between Company and Union with respect to the effects of the plant closing on bargaining unit employees, but did not address the effects on employees who were already retired.

On Date 3, the president of Company modified Plan in accordance with the then-existing terms set forth in Plan. Changes to Plan include capping benefits at current levels, limitations on movement in and out of Plan, and an eventual conversion to a Plan providing health reimbursements only. Plan as modified also eliminates the Joint Committee. The Plan Administrator notified Union members of the Committee of the changes to Plan and stated Company's position that Company is not required to continue present benefits or to provide replacement benefits after existing assets of Trust are used up. The notification states, however, that without additional funding, the hourly retiree benefits would end within N years, and, therefore Company will make an additional contribution in an amount intended to provide a medical benefit up to the time the last participant no longer needs benefits. At the same time, Company sent detailed information about Plan changes to the retiree Plan participants, and informed them that that in order to participate in the revised Plan the participant must sign a Participation Agreement and a Release waiving any claims regarding Plan. Company also informed participants that it was amending Plan with the intention of transferring Plan to an outside provider that would oversee its management.

Union subsequently sent a letter to retirees explaining the changes to Plan, outlining Union's history relating to Plan, including its continuous monitoring of Plan since the plant closure, and stating that Union would continue to do its best to protect the interest of the retirees. The letter also reminded participants that they needed to sign the Participation Agreement and Release by a specified date in order to receive continued benefits, and it stated that while retirees could bring their own lawsuit the Union recommended that the retirees sign the Participation Agreement and Release instead.

All participants who could be located (more than 99 percent of total plan participants) have signed releases.

Plan was modified again effective Date 4 to make certain clarifications and other administrative changes.

Company, which is in the process of dissolving as a corporation, recently further funded Trust with approximately $x. Trust now holds approximately $y in assets, and Company has transferred the responsibility for sponsoring Plan and Trust to a professional firm acting as an independent fiduciary for the Plan and Plan Administrator. Together with a professional third-party administrator, the successor entities will oversee and administer Plan and Trust for the life

of Trust. At the end of Trust's existence, remaining funds in Trust will be distributed to the remaining participants and beneficiaries for incurred and payable benefits as provided for under Trust provisions. If funds exist beyond the life of all participants and beneficiaries, surplus Trust assets that remain will be distributed as provided under Trust provisions. You further represent that in no event will Trust assets revert to or inure to the benefit of Company, its shareholders, Union, any trustee or named fiduciary, or any other party responsible for maintaining Plan and Trust after Company's dissolution.

RULINGS REQUESTED

1. Trust is maintained pursuant to a collective bargaining agreement for purposes of section 419A(f)(5) of the Code.

2. Any investment income, employer contributions and other income received by Trust and set aside to pay Plan benefits is exempt function income within the meaning of section 512(a)(3)(B), and therefore, Trust's earnings shall not constitute unrelated business taxable income within the meaning of section 512.

LAW

Section 419A(a) provides that for purposes of sections 419, 419A and 512 the term "qualified asset account" means any account consisting of assets set aside to provide for the payment of disability benefits, medical benefits, SUB or severance pay benefits, or life insurance benefits.

Section 419A(c)(1) provides that, in general, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund (A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and (B) administrative costs with respect to such claims.

Section 419A(c)(2) provides that the account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for (A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or (B) post-retirement life insurance benefits to be provided to covered employees.

Section 419A(f)(5)(A) provides that no account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund under a collective bargaining agreement.

Section 501(a) provides that an organization described in section 501(c) (including a VEBA described in section 501(c)(9)) shall be exempt from taxation unless the exemption is denied under section 502 or 503.

Section 511 imposes tax on the unrelated business taxable income (as described in section

512) of organizations described in section 501(c).

Section 512(a)(3)(A) provides that, in the case of an organization described in section 501(c)(9), the term "unrelated business taxable income" means the gross income (excluding any exempt function income), less the allowable deductions that are directly connected with the production of gross income (excluding exempt function income), both computed with specified modifications.

Section 512(a)(3)(B) provides that the term "exempt function income" means, for a section 501(c)(9) organization, the gross income from dues, fees, charges, or similar amounts paid by members of the organization as consideration for providing the members or their dependents or guests goods, facilities, or services in furtherance of the organization to which such income is paid. Such term also means all income (other than an amount equal to the gross income derived from any unrelated trade or business regularly carried on by the organization) which is set aside to provide for the payment of life, sick, accident, or other benefits, including reasonable costs of administration directly connected with the provision of such benefits.

Section 512(a)(3)(B) further provides that, if during the taxable year, an amount that is attributable to income so set aside is used for a purpose other than to provide for the payment of life, sick, accident or other benefits, or for purposes specified in section 170(c)(4), such amount shall be included, under subparagraph (A), in the unrelated business taxable income for the taxable year.

Section 512(a)(3)(E) provides that the set-aside described in section 512(a)(3)(B) for a section 501(c)(9) organization may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

Section 7701(a)(46) and Treas. Reg. section 301.7701-17T provide that in determining whether there is a collective bargaining agreement between employee representatives and one or more employers, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer. An agreement shall not be treated as a collective bargaining agreement unless it is a bona fide agreement between bone fide employee representatives and one or more employers. Additionally, the Internal Revenue Service shall make the determination for purposes of the Code as to whether there is a collective bargaining agreement between employee representatives and one or more employees. Further, specific Code provisions may require other conditions than those in section 7701(a)(46) to be satisfied in order for a plan to be considered to be collectively-bargained.

Section 1.419A-2T, Q&A-1 provides that contributions to welfare benefit funds that are maintained pursuant to one or more collective bargaining agreements and the reserves of such a fund generally are subject to the rules of sections 419, 419A, and 512. However, neither contributions to nor reserves of such a collectively bargained welfare benefit fund shall be treated as exceeding the otherwise applicable limits of section 419(b), 419A(b), or 512(a)(3)(E)

until the earlier of: the date on which the last collective bargaining agreement relating to the fund in effect on, or ratified on or before, the date of issuance of final regulations concerning such limits for collectively bargained welfare benefit funds terminates, or (ii) the date three years after the issuance of such final regulations.

Section 1.419A-2T, Q&A-2 provides that for purposes of Q&A-1, a collectively bargained welfare benefit fund is a welfare benefit fund that is maintained pursuant to agreement that the Secretary of Labor determines to be a collective bargaining agreement. In addition, the benefits provided through the fund must have been the subject of arms-length negotiations between employee representatives and one or more employers, and the agreement between the employee representatives and the employer(s) satisfies section 7701(a)(46). Moreover, the circumstances surrounding a collective bargaining agreement must evidence good faith bargaining between adverse parties over the welfare benefits to be provided through the fund. Finally, a welfare benefit fund is not considered to be maintained pursuant to a collective bargaining agreement unless at least 50 percent of the employees eligible to receive benefits under the fund are covered by the collective bargaining agreement (90 percent for a welfare benefit fund that was not in existence on July 1, 1985).

Section 1.512(a)-5T, Q&A-1 explains that section 512(a)(3) restricts the amount of income that may be set aside by a section 501(c)(9) organization for exempt purposes.

Section 1.512(a)-5T, Q&A-3(a) provides that the amounts set aside in a section 501(c)(9) VEBA as of the close of the taxable year of the VEBA to provide for the payment of life, sick, accident, or other benefits may not be taken into account for purposes of determining "exempt function income" to the extent that such amounts exceed the qualified asset account limit, determined under sections 419A(c) and 419A(f)(7), for such taxable year. (Section 419A(f)(7) involves a special rule for tax years not applicable to this ruling request.) In calculating the qualified asset account limit for this purpose, a reserve for post-retirement medical benefits under section 419A(c)(2)(A) is not to be taken into account.

Section 1.512(a)-5T, Q&A-3(b) provides that the exempt function income of a VEBA for a taxable year of the VEBA includes: (1) certain amounts paid by members of the VEBA ("member contributions"); and (2) other income of the VEBA (including earnings on member contributions) that is set aside for the payment of life, sick, accident, or other benefits to the extent that the total amount set aside in the VEBA as of the close of the taxable year for any purpose (including member contributions and other income set aside in the VEBA as of the close of the taxable year) does exceed the qualified asset account limit for such taxable year of the organization. For purposes of section 512(a)(3)(B), member contributions include both employee contributions and employer contributions to the VEBA. In calculating the total amount set aside as of the close of the taxable year, certain assets with useful lives extending substantially beyond the end of the taxable year (e.g., buildings and licenses) are not to be taken into account to the extent they are used in the provision of life, sickness, accident, or other benefits. Accordingly, the unrelated business taxable income of a VEBA for the taxable year of the organization generally will equal the lesser of two amounts: the income of the VEBA for the taxable year (excluding member contributions); or, the excess of the total amount set aside as of the close of the taxable year (including member contributions, and excluding certain

assets with a useful life extending substantially beyond the end of the taxable year to the extent they are used in the provision of welfare benefits) over the qualified asset account limit (calculated without regard to the otherwise permissible reserve for post-retirement medical benefits) for the taxable year. See Treas. Reg. section 1.419A-2T for special rules relating to collectively bargained welfare benefit funds.

ANALYSIS AND CONCLUSION

Under the facts of this ruling request, benefits originally provided by Plan were part of a bona fide agreement between employer (Company) and employee representatives meeting the requirements of section 7701(a)(46) (Union), and the Plan benefits were the subject of arms-length negotiations between those parties. One of the terms negotiated as part of the Plan was that, at the conclusion of the CBA, Plan could be modified, amended or terminated by the president of Company. On Date 2, the CBA between Company and Union was extinguished by agreement of the parties when all Union members were laid off, and subsequently the president of Company modified Plan in accordance with the terms set forth in the collectively bargained Plan. Those modifications and the additional funds contributed by Company essentially resulted in the freezing of the benefits previously negotiated by Company and Union. Plan and Trust are currently being maintained pursuant to those modifications.

Section 511 imposes income tax on the unrelated business taxable income (UBTI) of certain tax-exempt organizations, including VEBAs. Under section 512(a)(3)(A), the UBTI of a VEBA is the VEBA's gross income (excluding exempt function income), less certain specified deductions, both computed with certain specified modifications.

Under Treas. Reg. section 1.512(a)-5T, Q&A-3(b), in the case of a VEBA, exempt function income includes employer contributions to the VEBA.

Under section 512(a)(3)(B), in the case of a VEBA, exempt function income generally means all income set aside to provide for the payment of life, sick, accident, or other benefits, including certain specified reasonable costs of administration. However, if an amount so set aside is used for another purpose, that amount is included in the VEBA's UBTI for the year so used.

Further, section 512(a)(3)(E)(i) places limitations on the amount that is set aside to provide for the payment of life, sick, accident, or other benefits that may be treated as exempt function income. Under these limitations, a set-aside for any purpose specified in section 512(a)(3)(B)(ii) may be taken into account as exempt function income only to the extent that it does not result in an amount of assets that exceeds the account limit determined under section 419A for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

However, funds maintained pursuant to collective bargaining agreements come within a special rule for collectively bargained plans under section 419A(f)(5) and Temp. Treas. Reg. section 1.419A-2T. Pending the adoption of final regulations, Treas. Reg. section 1.419A-2T, Q&A 1 provides that amounts held in welfare benefit funds that are maintained pursuant to a

collective bargaining agreement will not be treated as exceeding the otherwise applicable limits of sections 419(b), 419A(b), or 512(a)(3)(E).

In this case, we conclude that contributions to Trust by Company are exempt function income within the meaning of section 512(a)(3)(B), and so are not subject to tax on unrelated business income under section 511. Moreover, under the particular facts presented here, we conclude that for purposes sections 419, 419A, and 512, Trust is a welfare benefit fund maintained pursuant to a collective bargaining agreement. We further conclude under the facts presented here that because Trust is a welfare benefit fund maintained pursuant to a collective bargaining agreement, the limitation otherwise imposed by section 512(a)(3)(E) on the amounts set-aside to provide welfare benefits that can be treated as exempt function income does not apply. Finally, we conclude that income received by Trust and set aside to pay Plan benefits is exempt function income within the meaning of section 512(a)(3)(B) of the Code.

RULINGS

1. Trust is maintained pursuant to a collective bargaining agreement for purposes of section 419A(f)(5) of the Code.

2. Employer contributions and any income received by the Trust and set aside to pay Plan benefits is exempt function income within the meaning of section 512(a)(3)(B) of the Code and, therefore, Trust's earnings will not constitute unrelated business taxable income within the meaning of section 512.

This ruling will be made available for public inspection under section 6110 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.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

Xxxxxxxxxx Xxxxxxxxxxx

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

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Mary Jo Salins
Acting Manager, EO Technical

Enclosure
Notice 437