Bond Case Briefs

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IRS LTR: VEBA's Exemption Not Jeopardized.

The IRS ruled that a voluntary employees' beneficiary association's tax-exempt status will not be jeopardized when it provides benefits to active and retired staff of a labor union's affiliates who are not members of the union or its affiliates.

Citations: LTR 201422025

Contact Person: * * *
Identification Number: * * *
Telephone Number: * * *

UIL: 501.09-00, 501.09-04
Release Date: 5/30/2014
Date: March 6, 2014

Employer Identification Number: * * *

LEGEND:

Association = * * *
x = * * *

Dear * * *:

We have considered your ruling request dated June 26, 2012, as amended on January 2, 2014, concerning your proposal to provide welfare benefits to certain actively employed and retired non-member staff of the state and local affiliates of Association.

FACTS

You are a voluntary employees' beneficiary association (VEBA) exempt under § 501(c)(9) of Internal Revenue Code. The Association established and controls you. You provide certain life, accidental death and dismemberment, and other insurance benefits to the Association's members.

The Association, your sponsor, is a national labor union recognized as exempt under § 501(c)(5). The Association operates through a network of affiliated state and local associations. The Association charters these affiliates and requires that they meet certain standards in order to retain their affiliation with Association. The Association requires members of its state and local affiliates to join the Association, unless they are otherwise ineligible. Because of this structure, nearly all members of the Association's state and local affiliates (99%) are also members of the Association.

You propose to amend your plan to allow participation by certain actively employed and retired staff of the Association's state and local affiliates ("proposed participants"). The proposed participants are not members of, and are not eligible for membership in, the Association or its state and local affiliates. You estimate the number of proposed participates to be x. You certify that, on at least one

day of each quarter of your taxable year, 90 percent of your total membership consists of members of the Association and its affiliates.

RULINGS REQUESTED

You have requested the following rulings:

1. The participation of non-member actively employed and retired staff of the Association's state and local affiliates will not jeopardize your exempt status under § 501(a) as an organization described in § 501(c)(9).
LAW

I.R.C. § 501(c)(9) exempts VEBAs from federal income 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 tax. A VEBA provides for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries.
Treas. Reg. § 1.501(c)(9)-1 provides that, for an organization to be described in § 501(c)(9), it must be an employees' association; membership in the association must be voluntary; the organization must 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 no part of the net earnings of the organization can inure, other than by payment of the permitted benefits to the benefit of any private shareholder or individual.

Treas. Reg. § 1.509(c)(9)-2(a)(1) provides that 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 (or affiliated employers), 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. For example, membership in VEBA 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 a VEBA will be considered to share an employment-related common bond with members of the VEBA. Whether a group of individuals is defined by reference to a permissible standard or standards is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this paragraph. Exemption will not be denied merely because the membership of an association includes some individuals who are not employees (within the meaning of § 1.501(c)(9)-2(b)), provided that such individuals share an employment-related bond with the employee-members. Such individuals may include, for example, the proprietor of a business whose employees are members of the association. For purposes of the preceding two sentences, an association will be considered to be composed of employees if 90 percent of the total membership of the association on one day of each quarter of the association's taxable year consists of employees (within the meaning of § 1.509(c)(9)-2(b)).

Treas. Reg. § 1.509(c)(9)-2(b) provides that whether an individual is an employee is determined by reference to the legal and bona fide relationship of employer and employee. The term employee includes the following:

(1) An individual who is considered an employee:

(i) For employment tax purposes under subtitle C of the Internal Revenue Code and the regulations thereunder, or
(ii) For purposes of a collective bargaining agreement,

whether or not the individual could qualify as an employee under applicable common law rules. This would include any person who is considered an employee for purposes of the Labor Management Relations Act of 1947, 61 Stat. 136, as amended, 29 U.S.C. 141 (1979).

(2) An individual who became entitled to membership in the association by reason of being or having been an employee. Thus, an individual who would otherwise qualify under this paragraph will continue to qualify as an employee even though such individual is on leave of absence, works temporarily for another employer or as an independent contractor, or has been terminated by reason of retirement, disability or layoff. For example, an individual who in the normal course of employment is employed intermittently by more than one employer in an industry characterized by short-term employment by several different employers will not, by reason of temporary unemployment, cease to be an employee within the meaning of this paragraph.

(3) The surviving spouse and dependents of an employee (if, for purposes of the 90-percent test of § 1.501(c)(9)-2(a)(1) they are considered to be members of the association).

In Water Quality Asso. Employees' Benefit Corp. v. United States, 795 F.2d 1303 (7th Cir. 1986), the court invalidated a regulation under § 501(c)(9) that required all employees to be of the "same geographic locale." Nonetheless, the court confirmed "[t]hat the quintessential element of a section 501(c)(9) tax-exempt VEBA is the commonality of interests among its employee members."

ANALYSIS

Your information establishes that you are a VEBA recognized under § 501(c)(9) providing certain welfare benefits to the members of the Association. You propose to amend your governing instrument to provide benefits to certain active and retired staff of the Association's state and local affiliates who are not members of the Association or its state and local affiliates ("proposed participants").

The membership of a VEBA must consist of individuals: (1) who became entitled to participate by reason of their being employees; and (2) whose eligibility for membership is defined by reference to objective standards that constitute an employment-related common bond among such individuals. Treas. Reg. § 1.509(c)(9)-2(a)(1). The proposed participants are all active or retired employees of the Association's state and local affiliates. Treas. Reg. § 1.501(c)(9)-2(b). Thus, the issue is whether the proposed participants share an employment-related common bond with the members of the Association and its state and local affiliates. Even though the proposed participants are not members of the Association, they share an employment-related common bond with members of the Association and with members of the state and local affiliates of the Association.

The purpose of requiring an employment-related common bond is to evidence "a commonality of interests among [the VEBA's] employee members." Water Quality Assoc. Employees' Benefit Corp. v. United States, 795 F.2d 1303 (7th Cir. 1986). The regulations list several categories of individuals that "will be considered" to share an employment related common bond:

Employees of one or more employers engaged in the same line of business in the same geographic locale;

Employees of a labor union with the members of that labor union;
Employees of a VEBA with the members of that VEBA.

Treas. Reg. § 1.501(c)(3)-2(a)(1). The same commonality of interests that exists between the employees of the labor union or VEBA and its respective members exists between the proposed participants and the members of the Association's state and local affiliates. Accordingly, the proposed participants share an employment-related common bond with the members of the state and local affiliates who are also the members of the Association.

CONCLUSION

Based on the foregoing, we rule as follows:

1. The participation of non-member actively employed and retired staff of the Association's state and local affiliates will not jeopardize your exempt status under § 501(a) as an organization described in § 501(c)(9).

This ruling is based on the representation that at least 90% of your total membership consists of members the Association and its state and local affiliates on one day of each quarter of your taxable year. See Treas. Reg. § 1.501(c)(9)-2(a)(1).

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.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code 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.

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,

Theodore Lieber
Manager, Exempt Organizations
Technical Group 3
Enclosure
Notice 437

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