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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

4976.00-00

Date: 02/15/05

Number: **200519086**
Release Date: 5/13/2005
SE:T:EO:RA:T:2

Contact Person:

ID Number:

Telephone Number:

Employer Identification Number:

Legend:

M =
N =
O =
Q =
R =
S =

Dear :

We have considered M's ruling request dated January 16, 2004, in which M requested rulings whether the purchase for certain eligible employees of group life insurance coverage with M's remaining assets and subsequent termination of M will not constitute prohibited inurement under section 501(c)(9) of the Internal Revenue Code nor a disqualified benefit under section 4976 of the Code.

Rulings Requested:

1. Whether the purchase for certain eligible employees of group life insurance coverage with M's remaining assets and subsequent termination of M will not constitute prohibited inurement under section 501(c)(9) of the Code.

2. Whether the proposed transaction would be a disqualified benefit under section 4976 of the Code.

Facts:

M is recognized as exempt from federal income tax under section 501(c)(9) of the Code. M was previously known as N. On January 1, 1996, O established M for the purpose of providing benefits to O's employees.

In late 1998, O de-affiliated from Q. R acquired O as part of the de-affiliation. On January 1, 1999, O became a member of R controlled group. On January 1, 2000, O became a participating employer in all of R's employee welfare benefit plans. O amended and restated M to provide benefits to O's employees through R's employee welfare benefit plans. Certain of O's employees became participants in R's employee benefit plans effective on or about June 1, 1999 and before the required January 1, 2000 transferred date

Prior to the de-affiliation, certain group life insurance benefits were provided to O's employees under a group life insurance policy issued by S. O's employees contributed amounts that were used, in part, to pay the Group Life Policy premiums. The Group Life Policy included a premium stabilization reserve that held excess premium amounts, including excess amounts attributable to employee contributions (PSR Funds). O's Group Life Policy was terminated and the PSR Funds were transferred to M. The Trustees of M are now proposing using the PSR Funds to provide additional life insurance benefits to O's employees. M was amended to provide that the PSR funds could not be used for reducing employer contributions and that the PSR funds would be applied solely for benefiting certain of O's employees participating in R's employee benefit plan. The amendment required that the PSR Funds be applied in compliance with applicable law and pursuant to nondiscriminatory eligibility rules and procedures.
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R does not maintain a VEBA. Accordingly, R will not be making any additional contributions to M. Accordingly, M's trustees have decided to terminate M.

M's assets consist primarily of the PSR Funds. The Trustees of M desire to use all the assets in M, after reduction for payment of all appropriate expenses, to purchase additional group life insurance coverage for O's employees. Any O employee that was a participant on or after June 1, 1999, and is an active employee of R is eligible for the additional group life insurance benefit. Each eligible participant will receive the same amount of group life insurance coverage for the duration of each participant's employment by R. The additional coverage will be in addition to any coverage that was previously provided by M. No evidence of insurability is needed for M's additional life benefit. Following the purchase of this additional life benefit, M will terminate.

Law:

Section 501(c)(9) of the Code describes a 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, and in which no part of its net earning inures (other than through such payments) to the benefit of any private shareholder or individual.

Section 1.501(c)(9)-4(a) of the Income Tax Regulations provides that no part of the net earnings of an employees' association may inure to the benefit of any private shareholder or individual other than through the payment of permissible benefits. Whether prohibited inurement has occurred is a question to be determined with regard to all the facts and circumstances.

Section 1.501(c)(9)-4(d) of the regulations provides that it will not constitute prohibited inurement if, on termination of a plan established by an employer and funded through an association described in section 501(c)(9), any assets remaining in the association, after the satisfaction of all liabilities to the existing beneficiaries of the plan, are applied to provide either directly or through the purchase of insurance, life, sick, accident or other benefits within the meaning of section 1.501(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholder, or highly compensated employees of the employer. Similarly, a distribution to members upon the dissolution of the association will not constitute prohibited inurement if the amount distributed to members are determined pursuant to the terms of a collective bargaining agreement or on the basis of objective and reasonable standards which do not result in either unequal payment to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees of any employer contribution to or other funding the employees' association. Except as otherwise provided in the first sentence of this paragraph, if the association's corporate charter, articles of association, trust instrument or other written instrument by which the association was created, as amended from time to time, provides that on dissolution its assets will be distributed to its member's contributing employers, or if in the absence of such provision the law of the state in which the association was created provides for such distribution to the contributing employers, the association is not described in section 501(c)(9).

Section 4976(a) of the Code imposes an excise tax on an employer equal to 100 percent of any disqualified benefit provided by an employer-maintained welfare benefit fund.

Section 4976(b)(1)(C) of the Code defines "disqualified benefit" to include any portion of a welfare benefit fund reverting to the benefit of the employer.

Rationale:

Section 1.501(c)(9)-4(d) of the regulations provides that a section 501(c)(9) organization may terminate by distributing its assets to members. This distribution must be on a basis of objective and reasonable standards which do not result in either unequal payment to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees of any employer contribution to or other funding the employees' association. The information shows that the funds that will be used to purchase additional life insurance for members on an equal basis. M will terminate by purchasing additional life insurance for its members. This termination is necessary because of the de-affiliation of O from R and being acquired by Q. Based on the above circumstance the funds paid to purchase additional life insurance on an equal basis to members will not result in unequal payments to similarly situated members or in disproportionate payments to officers, shareholders, or highly compensated employees. Accordingly, M’s proposed distribution which will result in termination would not be prohibited inurement.

Since M is distributing its funds to purchasing additional life insurance for its members, this is not a reversion of M’s funds to the employer or a disqualified benefit. Thus, we rule that there is no tax imposed on any of M’s employers under section 4976 of the Code by your proposed transaction.

Rulings:

1. Based on the information submitted, we rule that the purchase of certain eligible employees of additional group life coverage with M's remaining assets and subsequent termination of M will not constitute prohibited inurement under section 501(c)(9) of the Code.

2. Based on the information submitted, we rule that the proposed transaction would not be a disqualified benefit under section 4976 of the Code.

Cash and noncash benefits realized by a person on account of this proposed transaction must be included in gross income to the extent provided in the Code. No opinion is expressed or implied as to whether there is any provision available under the Code to exclude from gross income contributions to you or payments made by you. Further, no opinion is expressed or implied as to whether you are liable for taxes under the Federal Insurance Contributions Act (social security taxes) or the Federal Unemployment Tax Act on the payment of M's termination of benefits. If you have any questions about these matters, please contact the TE/GE Customer Accounts Service Office

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 as precedent.

We are informing the Ohio EP/EO key district office of this ruling. Because this letter could help resolve any questions about M's exempt status, M should keep it in its permanent records.

If there are any questions about reporting requirements or about excise, employment, or other federal taxes, please contact the Ohio EP/EO Customer Service office at 877-829-5500 (a toll free number) or send correspondence to the following address: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201. If there are any immediate questions about this ruling, 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