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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Fund =

Union =

Dear

This is in reply to your letter of July 8, 2008 submitted on behalf of Trust, requesting a ruling concerning whether providing benefits to the former spouses of its participants will adversely affect Trust's exemption under section 501(c)(9) of the Internal Revenue Code (the "Code").

The Fund is a jointly trusted multi-employer, fringe benefit fund established by the Union, and signatory Employers, for the purpose of providing insurance benefits under section 501(c)(9) of the Code.

The Fund currently provides medical, hospital, surgical benefits, prescription drug coverage, accidental death and related insurance, life insurance, disability, vision, dental, legal services and supplemental accident benefits to the Union's members and eligible dependents.

The Fund was established as a part of a larger scheme of providing a fringe benefit package to the Union's members. The Fund would like to assist its participants by continuing to provide health care coverage to their spouses, even after divorce, through the related insurance fund. The trustees approved a motion to allow court-ordered continuation coverage for ex-spouses to be maintained under the eligible participant's account. The coverage is to be provided only to the participant's ex-spouse if that participant was ordered to pay for coverage under the terms of a qualified divorce judgment. The coverage will be provided for whatever period is specified in the

judgment, unless the former spouse remarries.

The Fund represents that it will maintain separate accounting for health benefits and group life insurance benefits. The Fund also represents that the fair market value of the health coverage for former spouses will be included in the participant's gross income.

RULINGS REQUESTED

1. The Fund meets the tax-exempt requirements of section 501(c)(9) of the Code if it provides permissible benefits, without limitation, to former spouses who are dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations.

2. The Fund's tax-exempt status under section 501(c)(9) of the Code will not be jeopardized if impermissible benefits are provided to former spouses who are not dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations, as long as the total amount of impermissible benefits is three percent or less of the total of all benefits paid to all beneficiaries of the Fund in the plan year.

LAW

Section 104(a)(3) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include amounts received through accident or health insurance (or through an arrangement having the effect of accident or health insurance) for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not included in the gross income of the employee, or (B) are paid by the employer).

Section 105(a) of the Code provides that, except as otherwise provided in section 105, amounts received by an employee through accident or health insurance for personal injuries or sickness shall be included in the gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includable in the gross income of the employee, or (2) paid by the employer.

Section 105(b) of the Code provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical expenses) for any prior taxable year, gross income does not include the amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to

the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152).

Coverage under an accident or health plan for personal injuries or sickness incurred by individuals other than the employee, his or her spouse, or his or her dependents, as defined in section 152, is not excludable from the employee's gross income under section 106. In addition, reimbursements received by the employee through an employer-provided accident or health plan are not excludable from the employee's gross income under section 105(b) unless the reimbursements are for medical expenses incurred by the employee, his or her spouse, or his or her dependents, as defined in section 152. However, reimbursements that are not excludable under section 105(b) may be excludable under section 104(a)(3) if they are attributable to employer contributions that were included in the employee's gross income.

Section 106 of the Code provides that an accident or health plan is an arrangement for the payment of amounts to employees in the event of personal injuries or sickness.

Section 1.106-1 of the regulations provides that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152.

Section 501(c)(9) of the Code provides that the organizations exempt from income tax under section 501(a) of the Code include a voluntary employees' beneficiary association (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)-3(a) of the regulations provides that, for purposes of section 501(c)(9) of the Code, dependent means the member's spouse; any child of the member or the member's spouse who is a minor or a student; any other minor child residing with the member; and any other individual who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a) of the Code. It also provides that the life, sick, accident or other benefits provided by a VEBA must be payable to its members, their dependents, or their designated beneficiaries and that a VEBA is not operated for the purpose of providing life, sick, accident, or other benefits unless substantially all of its operations are in furtherance of the provision of such benefits. Further, an organization is not described in section 501(c)(9) if it systematically and knowingly provides benefits (of more than a

de minimis amount) that are not permitted by paragraphs (b), (c), (d), or (e) of this section.

Sections 1.501(c)(9)-3(b) through (e) of the regulations detail the types of benefits that a tax-exempt VEBA may provide as well as who is eligible to receive the benefits. These benefits include life, sick and accident, and certain other benefits ("permissible benefits").

Section 1.501(c)(9)-3(b) defines a life benefit as a benefit (including a burial benefit or a wreath) payable by reason of the death of a member or dependent.

Section 1.501(c)(9)-3(c) defines sick and accident benefits to mean amounts furnished to or on behalf of a member or a member's dependents in the event of illness or personal injury to a member or dependent.

Section 1.501(c)(9)-3(d) provides that the term other benefits includes only benefits that are similar to life, sick, or accident benefits. A benefit is similar to a life, sick, or accident benefit if:

(1) It is intended to safeguard or improve the health of a member or a member's dependents, or

(2) It protects against a contingency that interrupts or impairs a member's earning power.

Section 1.509(c)(9)-3(f) provides examples of nonqualifying benefits, which are benefits not described in paragraphs (d) or (e) as being other benefits.

Section 152(a) provides in general that the term "dependent" means; (1) a qualifying child, or (2) a qualifying relative.

ANALYSIS

Ruling One

The issue is whether Fund may maintain its tax exempt status under section 501(c)(9) of the Code if it provides health benefits to ex-spouses under a judgment of divorce who meet the definition of dependent under section 152(a) of the Code and section 1.501(c)(9)-3 of the regulations.501(c)(9) of the Code.

Section 152(a) of the Code defines the term "dependent" to include, among others, any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer: sons

and daughters; stepsons and stepdaughters; nieces and nephews; aunts and uncles; in-laws; and an individual (other than the spouse) who, for the taxable year, has as his/her principal place of abode the home of the taxpayer and is a member of the taxpayer's household. Section 1.501(c)(9)-3(a) of the regulations allows a tax-exempt VEBA to provide permissible benefits to individuals "who an association, relying on information furnished to it by a member, in good faith believes is a person described in section 152(a) of the Code."

Fund may provide permissible benefits to former spouses who meet the definition of dependent set forth in section 152(a) of the Code. Section 501(c)(9) regulations require Fund to obtain information to determine whether former spouses meet the definition of dependent. Under these circumstances, Fund does not jeopardize its tax-exempt status under section 501(c)(9) of the Code by providing permissible benefits to former spouses who meet the definition of dependent set forth in section 152(a) of the Code and as dependents within the meaning of section 1.501(c)(9)-3(a) of the regulations. Any permissible benefits provided to dependents are not "impermissible" benefits described in section 1.501(c)(9)-3(a) of the regulations.

Ruling Two:

The issue is whether Fund may provide impermissible benefits to non-dependent former spouses pursuant to a judgment of divorce without adversely affecting Fund's tax-exempt status under section 501(c)(9) of the Code.

Section 1.501(c)(9)-3(a) of the regulations allows an exempt VEBA to provide a de minimis amount of benefits that are not permitted by paragraphs (b), (c), (d), or (e) of section 1.501(c)(9)-3(a). The Fund describes the amount of benefits it will provide to former spouses of participants as de minimis. The Fund represents that the total amount of impermissible benefits it will provide in a plan year, including health benefits to non-dependent former spouses, will not exceed three percent of the total of all benefits it provides in the plan year to all beneficiaries of the Fund. Under these facts, Fund providing impermissible benefits of three percent or less of the total of all benefits provided by Fund in a plan year will not adversely affect the tax-exempt status of the Fund under section 501(c)(9) of the Code.

RULINGS

Based on the information submitted, representations made, and the authorities cited above, we conclude as follows:

1. The Fund meets the tax-exempt requirements of section 501(c)(9) of the Code if it provides permissible benefits, without limitation, to domestic partners who are dependents within the meaning of section 152 of the Code

and section 1.501(c)(9)-3(a) of the regulations.

2. The Fund may provide benefits to former spouses who are not dependents within the meaning of section 152 of the Code and section 1.501(c)(9)-3(a) of the regulations without adversely affecting Fund's tax-exempt status under section 501(c)(9) of the Code provided the total amount of impermissible benefits provided by the Fund in a plan year is three percent or less of the total of all benefits provided by the Fund in the plan year to all beneficiaries. In addition, the Fund will, in accordance with applicable law, include in the gross income of members or employees the fair market value of the health coverage for former spouses who are not dependents of the participants or employees.

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