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

UIL: 4976.01-00

200037052

Date: JUN 22 2000

Contact Person:

ID Number:

Telephone Number:

OP:E:EO:T2

Employer Identification Number:

LEGEND:

M =

N =

O =
P =
Q =

Dear Sir or Madam:

This is in reply to the letter submitted on behalf of M regarding the proposed consolidation of certain retiree life, medical and dental benefits which are currently funded by M through two welfare benefit trusts.

M acquired N several years ago. Since its acquisition M has modified its business plan and divested many of its holdings. Ultimately M expects to concentrate its efforts in one line of business. As a result of its consolidation plans, M has proposed to adjust its benefit program.

Prior to the acquisition of N, the employees and retirees of both M and N had their own separate benefit plans. Currently, two welfare benefit trusts are used by M to provide for the payment of certain benefits. The two welfare benefit trusts, O and P, have been recognized as exempt from Federal income tax under section 501(c)(9) of the Internal Revenue Code.

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Re:

As currently operated, O provides funds for the payment of life insurance benefits for the retirees of N. It also funds benefits provided under a long-term disability plan for all of N's employees. It has been represented that the assets of the respective plans are accounted for separately. N also has entered into a separate insurance contract relating to the retiree life insurance benefit. P provides funding for medical benefits for N's retirees. M provides retiree dental benefits for M's employees. M also provides retiree life insurance and medical benefits under a separate plan. None of these benefits have been prefunded, rather all three benefits have been paid out of M's general assets.

M has proposed to modify the benefits structure currently funded through O and P (which is to be renamed Q). Various benefits within the overall structure will be rearranged between the two funds. After the consolidation Q will provide only post-retirement benefits. Under the amended program the amount of benefits paid may vary. However, any such variances are based on employee classifications and have not been established in a discriminatory manner. Furthermore, assets will be separately accounted for.

Your legal representative has presented in the August 16, 1999, letter that despite the broad language in O and P's trust instruments concerning the ability of the trusts to fund benefits for both active and retired employees, no contributions made to fund post-retirement benefits were used to pay benefits for active employees. It also represents that retiree funds shall continue to be separately accounted for from funds for active employees and no contributions to fund post-retirement benefits will be used to pay benefits for active employees. As emphasized in the letter of June 9, 2000, assets set aside to provide retiree medical benefits would be used only to provide retiree medical benefits. In addition, appropriate changes to the underlying trust documents to reflect these representations will be made on receipt of a favorable ruling from the Service.

The following rulings have been requested:

1. M will not be subject to the 100 percent excise tax imposed by Code section 4976 as a result of the consolidation of the benefits program.

2. Q will continue to be tax-exempt under section 501(c)(9) of the Code after the consolidation.

3. O will continue to be tax-exempt under section 501(c)(9) of the Code after the consolidation.

Section 501(c)(9) of the Code provides for the exemption from federal income tax of voluntary employees' beneficiary associations 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 I.50l(c)(9)-l of the Income Tax Regulations provides that for an organization to be described in section 50l(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; and there can be no inurement (other than by payment of permitted benefits) to the benefit of any private shareholder or individual.

Section I.50l(c)(9)-3(f) of the regulations provides that the term "other benefits" does not include any benefit that is similar to a pension or annuity payable at the time of mandatory or voluntary retirement. For the purposes of section 50l(c)(9) a benefit will be considered similar to that provided under a pension, annuity, stock bonus or profit sharing-plan if it provides for deferred compensation that becomes payable by reason of the passage of time rather than as the result of an unanticipated event.

Section I.50l(c)(9)-4(a) of the 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 1.50l(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 50l(c)(9), any assets remaining in the association, after the satisfaction of all liabilities to 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 I.50l(c)(9)-3 pursuant to criteria that do not provide for disproportionate benefits to officers, shareholders, 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 contributing to or other unding 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 50l(c)(9).

Section 4976 of the Code imposes an excise tax on an employer equal to l00 percent of any disqualified benefit provided by an employer-maintained welfare benefit fund.

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

The submitted information establishes that M proposes to merge several welfare benefit plans which provide benefits to both retired and active employees. It has been represented that both

before and after the consolidation retiree funds were and shall continue to be separately accounted for from funds for active employees, and no contributions to fund post-retirement benefits were, or shall be used to pay benefits for active employees. As represented in the letter of June 9, 2000, it is not intended that postretirement life reserves will be used to pay postretirement medical benefits or vice versa and the governing trust documents will be amended to reflect these representations. Furthermore, all benefits funded through O and Q shall be qualifying section 501(c)(9) benefits.

Under the terms of Q, M will be prohibited from receiving a reversion of assets. Q will contain provisions requiring the trustee to separately account for postretirement life reserves and postretirement medical reserves. The funds attributable to amounts transferred from O with respect to postretirement life reserves will be used exclusively for the payment of postretirement life benefits. The funds attributable to postretirement medical reserves previously held in P will be used exclusively for the payment of postretirement medical benefits. These provision are effective to preserve the integrity of the postretirement life and postretirement medcial reserves in Q after the transfer of assets from O to P (to be renamed Q). Accordingly, the transfer of assets from O will not create a reversion to M.

Therefore, based on the information submitted and various representations which have been made pertaining to benefits provided and separate accounting for funds, we have concluded that:

1. M will not be subject to the 100 percent excise tax imposed by Code section 4976 as a result of the consolidation of this welfare benefits program.

2. Q will continue to be tax-exempt under section 501(c)(9) of the Code after the consolidation.

3. O will continue to be tax-exempt under section 501(c)(9) of the Code after the consolidation.

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 TE/GE Customer Service Office of this ruling. Because this letter could help resolve any question about the trust's exempt status, a copy of it should kept in your permanent records.

If there are any question about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. For other matters, including questions concerning reporting requirements, please contact the Ohio TE/GE Customer Service Office.

Sincerely Yours,

(signed) Garland A. Carter

Garland A. Carter
Manager, Exempt Organizations
Technical Group 2

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