

§ 1.501(c)(18)-1

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employee is the amount by which such distribution and any prior distributions of such separation payments exceeds the employee's total contributions to fund such separation benefits.

(2) *Sick and accident benefits.* Any benefit payment received from the trust under the part of the plan, if any, which provides for the payment of sick and accident benefits must be included in gross income under section 61(a), unless specifically excluded under section 104 or 105 and the regulations thereunder. See section 105(b) and §1.105-2 for benefit payments expended for medical care, benefit payments in excess of actual medical expenses, and benefit payments which an employee is entitled to receive irrespective of whether or not he incurs expenses for medical care. See section 213 and §1.213-1(g) for benefit payments representing reimbursement for medical expenses paid in prior years. See §1.501(c)(17)-2(i) for the requirement that a trust described in section 501(c)(17) which receives employee contributions must be part of a written plan which provides for the allocation of the cost of funding sick and accident benefits.

(b) *Exemption as a voluntary employees' beneficiary association.* Section 501(c)(17)(E) contemplates that a trust forming part of a plan providing for the payment of supplemental unemployment compensation benefits may, if it qualifies, apply for exemption from income tax under section 501(a) either as a voluntary employees' beneficiary association described in section 501(c)(9) or as a trust described in section 501(c)(17).

(c) *Returns.* A trust which is described in section 501(c)(17) and which is exempt from tax under section 501(a) must file a return in accordance with section 6033 and the regulations thereunder. If such a trust realizes any unrelated business taxable income, as defined in section 512, the trust is also required to file a return with respect to such income.

(d) *Effective date.* Section 501(c)(17) shall apply to taxable years beginning after December 31, 1959, and shall apply to supplemental unemployment benefit trusts regardless of when created or organized.

[T.D. 6972, 33 FR 12902, Sept. 12, 1968]

§ 1.501(c)(18)-1 Certain funded pension trusts.

(a) *In general.* Organizations described in section 501(c)(18) are trusts created before June 25, 1959, forming part of a plan for the payment of benefits under a pension plan funded only by contributions of employees. In order to be exempt, such trusts must also meet the requirements set forth in section 501(c)(18) (A), (B), and (C), and in paragraph (b) of this section.

(b) *Requirements for qualification.* A trust described in section 501(c)(18) must meet the following requirements:

(1) *Local law.* The trust must be a valid, existing trust under local law, and must be evidenced by an executed written document.

(2) *Funding.* The trust must be funded solely from contributions of employees who are members of the plan. For purposes of this section, the term *contributions of employees* shall include earnings on, and gains derived from, the assets of the trust which were contributed by employees.

(3) *Creation before June 25, 1959—(i) In general.* The trust must have been created before June 25, 1959. A trust created before June 25, 1959 is described in section 501(c)(18) and this section even though changes in the makeup of the trust have occurred since that time so long as these are not fundamental changes in the character of the trust or in the character of the beneficiaries of the trust. Increases in the beneficiaries of the trust by the addition of employees in the same or related industries, whether such additions are of individuals or of units (such as local units of a union) will generally not be considered a fundamental change in the character of the trust. A merger of a trust created after June 25, 1959 into a trust created before such date is not in itself a fundamental change in the character of the latter trust if the two trusts are for the benefit of employees of the same or related industries.

(ii) *Examples.* The provisions of this subparagraph may be illustrated by the following examples:

Example 1. Assume that trust C, for the benefit of members of participating locals of National Union X, was established in 1950 and adopted by 29 locals before June 25, 1959.

The subsequent adoption of trust C by additional locals of National Union X in 1962 will not constitute a fundamental change in the character of trust C, since such subsequent adoption is by employees in a related industry.

Example 2. Assume the facts as stated in example 1, except that in 1965 National Union X merged with National Union Y, whose members are engaged in trades related to those engaged in by X's members. Assume further that trust D, the employee funded pension plan and fund for employees of Y, was subsequently merged into trust C. The merger of trust D into trust C would not in itself constitute a fundamental change in the character of trust C, since both C and D are for the benefit of employees of related industries.

(4) *Payment of benefits.* The trust must provide solely for the payment of pension or retirement benefits to its beneficiaries. For purposes of this section, the term *retirement benefits* is intended to include customary and incidental benefits, such as death benefits within the limits permissible under section 401.

(5) *Diversion.* The trust must be part of a plan which provides that, before the satisfaction of all liabilities to employees covered by the plan, the corpus and income of the trust cannot (within the taxable year and at any time thereafter) be used for, or diverted to, any purpose other than the providing of pension or retirement benefits. Payment of expenses in connection with the administration of a plan providing pension or retirement benefits shall be considered a payment to provide such benefits and shall not affect the qualification of the trust.

(6) *Discrimination.* The trust must be part of a plan whose eligibility conditions and benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. See sections 401(a)(3)(B) and 401(a)(4) and §§ 1.401-3 and 1.401-4. However, a plan is not discriminatory within the meaning of section 501(c)(18) merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan. Accordingly, the benefits provided for highly paid employ-

ees may be greater than the benefits provided for lower paid employees if the benefits are determined by reference to their compensation; but, in such a case, the plan will not qualify if the benefits paid to the higher paid employees are a larger portion of compensation than the benefits paid to lower paid employees.

(7) *Objective standards.* The trust must be part of a plan which requires that benefits be determined according to objective standards. Thus, while a plan may provide similarly situated employees with benefits which differ in kind and amount, these benefits may not be determined solely in the discretion of the trustees.

(c) *Effective date.* The provisions of section 501(c)(18) and this section shall apply with respect to taxable years beginning after December 31, 1969.

[T.D. 7172, 37 FR 5618, Mar. 17, 1972]

§ 1.501(c)(19)-1 War veterans organizations.

(a) *In general.* (1) For taxable years beginning after December 31, 1969, a veterans post or organization which is organized in the United States or any of its possessions may be exempt as an organization described in section 501(c)(19) if the requirements of paragraphs (b) and (c) of this section are met and if no part of its net earnings inures to the benefit of any private shareholder or individual. Paragraph (b) of this section contains the membership requirements such a post or organization must meet in order to qualify under section 501(c)(19). Paragraph (c) of this section outlines the purposes, at least one of which such a post or organization must have in order to so qualify.

(2) In addition, an auxiliary unit or society described in paragraph (d) of this section of such a veterans post or organization and a trust or foundation described in paragraph (e) of this section for such post or organization may be exempt as an organization described in section 501(c)(19).

(b) *Membership requirements.* (1) In order to be described in section 501(c)(19) under paragraph (a)(1) of this section, an organization must meet the membership requirements of section 501(c)(19)(B) and this paragraph. There