

§ 1.501(c)(17)-1

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association is exempt under section 521 and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of § 1.521-1 relating to a reserve or surplus and to capital stock shall also apply to corporations coming under this section.

§ 1.501(c)(17)-1 Supplemental unemployment benefit trusts.

(a) *Requirements for qualification.* (1) A supplemental unemployment benefit trust may be exempt as an organization described in section 501(c)(17) if the requirements of subparagraphs (2) through (6) of this paragraph are satisfied.

(2) The trust is a valid, existing trust under local law and is evidenced by an executed written document.

(3) The trust is part of a written plan established and maintained by an employer, his employees, or both the employer and his employees, solely for the purpose of providing supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) and paragraph (b)(1) of § 1.501(c)(17)-1).

(4) The trust is part of a plan which provides that the corpus and income of the trust cannot (in the taxable year, and at any time thereafter, before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits. Thus, if the plan provides for the payment of any benefits other than supplemental unemployment compensation benefits as defined in paragraph (b) of this section, the trust will not be entitled to exemption as an organization described in section 501(c)(17). However, the payment of any necessary or appropriate expenses in connection with the administration of a plan providing supplemental unemployment compensation benefits shall be considered a payment to provide such benefits and shall not affect the qualification of the trust.

(5) The trust is 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)(17)(A)(iii), relating to the requirement that the benefits paid under the plan be nondiscriminatory, 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 employees 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 bear a larger ratio to their compensation than the benefits paid to the lower paid employees bear to their compensation. In addition, section 501(c)(17)(B) sets forth certain other instances in which a plan will not be considered discriminatory (see paragraph (c) of § 1.501(c)(17)-2).

(6) The trust is part of a plan which requires that benefits are to be determined according to objective standards. Thus, a plan may provide similarly situated employees with benefits which differ in kind and amount, but may not permit such benefits to be determined solely in the discretion of the trustees.

(b) *Meaning of terms.* The following terms are defined for purposes of section 501(c)(17):

(1) *Supplemental unemployment compensation benefits.* The term *supplemental unemployment compensation benefits* means only:

(i) Benefits paid to an employee because of his involuntary separation from the employment of the employer, whether or not such separation is temporary, but only when such separation is one resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions; and

(ii) Sick and accident benefits subordinate to the benefits described in subdivision (i) of this subparagraph.

(2) *Employee.* The term *employee* means an individual whose status is that of an employee under the usual

common-law rules applicable in determining the employer-employee relationship. The term *employee* also includes an individual who qualifies as an *employee* under the State or Federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under such common-law rules.

(3) *Involuntary separation from the employment of the employer.* Whether a separation from the employment of the employer occurs is a question to be decided with regard to all the facts and circumstances. However, for purposes of section 501(c)(17), the term *separation* includes both a temporary separation and a permanent severance of the employment relationship. Thus, for example, an employee may be separated from the employment of his employer even though at the time of separation it is believed that he will be reemployed by the same employer. Whether or not an employee is *involuntarily* separated from the employment of the employer is a question of fact. However, normally, an employee will not be deemed to have separated himself voluntarily from the employment of his employer merely because his collective bargaining agreement provides for the termination of his services upon the happening of a condition subsequent and that condition does in fact occur. For example, if the collective bargaining agreement provides that the employer may automate a given department and thereby dislocate several employees, the fact that the employees' collective bargaining agent has consented to such a condition will not render any employee's subsequent unemployment for such cause voluntary.

(4) *Other similar conditions.* Involuntary separation directly resulting from *other similar conditions* includes, for example, involuntary separation from the employment of the employer resulting from cyclical, seasonal, or technological causes. Some causes of involuntary separation from the employment of the employer which are not similar to those enumerated in section 501(c)(17)(D)(i) are separation for disciplinary reasons or separation because of age.

(5) *Subordinate sick and accident benefits.* In general, a sick and accident benefit payment is an amount paid to an employee in the event of his illness or personal injury (whether or not such illness or injury results in the employee's separation from the service of his employer). In addition, the phrase *sick and accident benefits* includes amounts provided under the plan to reimburse an employee for amounts he expends because of the illness or injury of his spouse or a dependent (as defined in section 152). Sick and accident benefits may be paid by a trust described in section 501(c)(17) only if such benefits are subordinate to the separation payments provided under the plan of which the trust forms a part. Whether the sick and accident benefits provided under a supplemental unemployment compensation benefit plan are subordinate to the separation benefits provided under such plan is a question to be decided with regard to all the facts and circumstances.

[T.D. 6972, 33 FR 12900, Sept. 12, 1968]

§ 1.501(c)(17)-2 General rules.

(a) *Supplemental unemployment compensation benefits.* Supplemental unemployment compensation benefits as defined in section 501(c)(17)(D) and paragraph (b)(1) of § 1.501(c)(17)-1 may be paid in a lump sum or installments. Such benefits may be paid to an employee who has, subsequent to his separation from the employment of the employer, obtained other part-time, temporary, or permanent employment. Furthermore, such payments may be made in cash, services, or property. Thus, supplemental unemployment compensation benefits provided to involuntarily separated employees may include, for example, the following: Furnishing of medical care at an established clinic, furnishing of food, job training and schooling, and job counseling. If such benefits are furnished in services or property, the fair market value of the benefits must satisfy the requirements of section 501(c)(17)(A)(iii), relating to non-discrimination as to benefits. However, supplemental unemployment compensation benefits may be provided only to an employee and only under circumstances described in paragraph