

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

Employer Identification Number:  
Key District:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

FACTS

You are a corporation organized and existing under the law of the State of [REDACTED]. You were incorporated on [REDACTED]. Based on the information submitted, it would appear that the primary activity of the organization is to negotiate on behalf of the organization's members a contract or contracts with purchasers of [REDACTED] services, such as HMOs, PPOs, third party payors, self insured health and welfare benefit plans and health care delivery systems. Thus, your organization is an arranger that serves the interest of its members by negotiating contracts with third party health care providers for the professional services of your members.

The purposes of the organization, as provided in the articles of incorporation, include providing [REDACTED] services in the examination, diagnosis and treatment of conditions of the human eye. However, it is clear from all the information that such [REDACTED] services is not provided by your organization directly. Such services, when provided, will be provided by your members in return for a fee. Your articles of incorporation also include the provision "[REDACTED]

[REDACTED] allowable for the corporation to qualify as an exempt organization under section 501(c)(3) of the Code." You describe no other programs or activities for your organization.

The information submitted also suggests that the organization is a membership organization in which certain of the [REDACTED] are [REDACTED]

[REDACTED]

eligible to join. Included in the information submitted with the application is the criteria for membership with the organization. The criteria for membership lists the following items:

1. Listed office equipment and facilities.
2. Maintenance of patient records.
3. Each member shall have graduated from an accredited school or college of [REDACTED].
4. Each member must be licensed to practice [REDACTED] in the State of [REDACTED].
5. Each member shall provide quality care to patients.
6. Each member shall provide an appropriate level of professional liability insurance at all times.
7. Members shall submit to peer review.
8. Each member shall adhere to all State Board of [REDACTED] rules and regulations for examinations, record keeping, and referrals.
9. Members may advertise only in a certain specific way.
10. Members agree to comply with the provisions of contracts negotiated on their behalf with HMOs, PPOs and other health care providers.
11. Members shall be participating providers under Medicare.
12. Members must be or become therapeutic drug certified.

To become a member of the organization, the [REDACTED] must submit an application on a form provided by your organization and pay an annual membership fee to your organization of [REDACTED].

LAW

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net

earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities are not in furtherance of an exempt purpose.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "the presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization will not be considered as operated exclusively for charitable purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in Code section 501(c)(3) in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second), Trusts, sec. 368 and sec. 372; IV Scott on Trusts (3d ed. 1967), sec. 368 and sec. 372; and Rev. Rul. 69-545, 1969-2 C.B. 117.

In Rev. Rul. 75-199, 1975-1 C.B. 160, the Service held that a mutual sick and death benefits society was not exempt under section 501(c)(4) of the Code since the organization was essentially a mutual, self-interest type of organization. Its income was used to provide direct economic benefits to members and any benefit to the larger community is minor and incidental.

Rev. Rul. 71-504, 1971-2 C.B. 231, and Rev. Rul. 71-505, 1971-2 C.B. 232 stand for a similar principle. In each of those rulings an organization exempt under section 501(c)(6) directed

[REDACTED]

its activities to the promotion common business purpose of its members. Each was a professional society; the former a medical society and the latter a city bar association. In each case the Service held that the organization failed to qualify for exemption under section 501(c)(3) of the Code because, while the organization conducted some charitable or educational activities, it also conducted a number of noncharitable activities that are directed at the promotion of the profession of its members and thus furthered the common business purpose of such members. Such activities were substantial in nature.

#### RATIONALE

1. While the promotion of health is considered a charitable purpose within the meaning of section 501(c)(3) of the Code, providing contracting services for professional members engaged in health care [REDACTED] does not directly promote health. Instead, you are providing ordinary commercial services for a group of non-exempt health care professionals. There is no broad community benefit that results from such activities. Providing these services is not a charitable activity but rather an ordinary commercial activity. See Rev. Rul. 71-504, supra; Rev. Rul. 71-505, supra; and Rev. Rul. 75-199, supra.

2. An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3) if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 969 (1964).

Your primary activity is negotiating contracts on behalf of your professional members to offer a panel of [REDACTED] to HMOs, PPOs, insurance companies and other health care providers. This purpose serves the interest of your professional members by furthering their business interests. This noncharitable purpose is substantial in nature.

Therefore, based on paragraphs 1 and 2, above, you are not operated exclusively for charitable purposes under sections 1.501(c)(3)-1(b)(1) and 1.501(c)(3)-1(c)(1) of the regulations.

CONCLUSION

[REDACTED]

For the reasons stated above, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

For your convenience, our FAX number is [REDACTED]

[REDACTED]

If you have any questions, 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,

[REDACTED]

[REDACTED]	Reviewer	Reviewer	Reviewer	Reviewer
[REDACTED]				
[REDACTED]				

[REDACTED]