

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Release copies to District

Date: [REDACTED]

Surname: [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

[REDACTED]

Employer Identification Number: [REDACTED]

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.

You were incorporated under the laws of the State of [REDACTED] for the purpose of providing health and human services, mental health and drug and alcohol services. You are not a membership organization.

Neither your Articles of Incorporation nor your Bylaws provide for the number which will comprise your Board of Directors, how the Board will be selected or the terms of the members of the Board. [REDACTED] of your Bylaws regarding number and terms of your Board of Directors, in addition to other sections of your Bylaws, appears to have been deleted.

Neither your Articles of Incorporation nor your Bylaws provide for a conflicts of interest policy. However, you have indicated that you are willing to adopt a conflicts of interest policy and are also willing to amend your Articles of Incorporation to satisfy the organizational test, which is described below.

Your Board of Directors is comprised of [REDACTED] members, [REDACTED] are [REDACTED] an attorney. [REDACTED] None of the Board members provides services to you other than as a Board member.

On Form 1023 you state that your sources of financial support will be contributions from your parent corporation, [REDACTED], management services fees, and payments from community mental health providers. You state that

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the type of contributions you will receive from [REDACTED] will be in cash or forgiveness of intercompany charges.

[REDACTED] is a management corporation and parent of [REDACTED]

[REDACTED] There is no indication in the information submitted that The Consortium is exempt from federal income tax under section 501(c)(3) of the Code. [REDACTED] provides management and administrative services to its subsidiaries through management contracts.

Your management agreement with [REDACTED] provides that: [REDACTED] will render [REDACTED] service to give oversight of your overall management; you will have a [REDACTED] to be selected by your Board upon recommendation of the [REDACTED] administrative oversight to you, according to and along the lines of functional description attached as [REDACTED]; you will reimburse [REDACTED] for the foregoing services according to reasonable and allocable accounting methodology; any disputes regarding responsibilities will be resolved by arbitration; the contract shall be in effect for a period of [REDACTED], and thereafter shall be subject to cancellation on [REDACTED] days notice, but if not cancelled, shall continue as agreed.

[REDACTED] of the agreement provides that the role of [REDACTED] is to provide management and financial support services. The organizational structure that will fulfill this role is a [REDACTED] concept whereby all administrative functions necessary to support you will be designated as the [REDACTED]. Those functions include, but may not be limited to, general administration, finance, [REDACTED] and development. The personnel of [REDACTED] will include the [REDACTED] and related [REDACTED] staff. [REDACTED] will employ these individuals and allocate their costs to you based on reasonable allocation methodologies. Staff time will be allocated based on the relative services delivered to you by [REDACTED]

On Form 1023 you state that you provide or arrange for health services, human services, mental health services and alcohol services. You also state that you would create and provide behavioral health services to persons who are economically disadvantaged. However, in your letter dated [REDACTED], you state that your sister agency provides the services to the economically disadvantaged. You plan to have the revenue you generate serve as alternate revenue stream for your sister agency. You also state that you were created to be a

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[REDACTED]

[REDACTED] . As such, you state, you will arrange for financial/administrative management services, and coordinate the delivery of health care services through contractual arrangements with other providers. You state that you will not provide any direct health care services yourself. You state that from the identified market, you plan to offer services from the following list of administrative and financial management services.

Administrative Management Services: quality assurance/peer review processes; on going staff/program review, supervision, and evaluation; specific and general consultation, technical assistance, and crisis intervention; response to requests for aid/assistance by various groups and individuals; project management, staff recruitment, hiring, and supervision; provision of legal entity and governing body; provision and maintenance of nonprofit tax-exempt focus and status; contract negotiation, review and management; liaison with contracting, regulatory, and funding sources; new program development and explanation; in-service and management training; intra/inter-corporate networking; insurance provision and risk-loss analysis; legal consultation and representation; real estate/facility search, review, negotiation, and procurement; personnel management.

Fiscal Management Services: correlation of program/client needs with available resources; contract for annual independent audits of corporate financial activity; management and maximization of cash flow; securing and provision of credit line/cash flow; accounts payable, cash receipts, general Ledger, accounts receivable, and payroll (all functions); management of all payroll taxes and employee benefits; budget development, revision, monitoring, projection and control; income/expense projection and control; production and control of all reports and billing; record/transaction accuracy, including audit trials; maintenance of all books of original entry; internal monitoring, system design, evaluation, and training; liaison with all funding/contracting sources; financial oversight and control.

You state that providers of behavioral health services for people on Medicaid/Medicare and people without health insurance need administrative and fiscal management services. You state that it is evident by the changes in the marketplace bought on by managed care that small community providers will need assistance to survive.

You state that you support mental health delivery systems and the development of a mental health management information system. You state that you designed the software and purchased the hardware needed for a Management Information System [REDACTED]

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created a data center and market remote on-line access to the system to providers needing the system. You state that if providers want access to the latest benefits and managed care technology and want to reduce their capital and labor cost, they would be encouraged to investigate using your [redacted]. This data center would allow providers access to the most current software system solutions complete with software support, processing time, disk back-up and storage and other valuable professional system support services for a low monthly charge based on their use of these services.

You state you have been supporting the targeted community via the financial support of two organizations, [redacted], that provide direct mental health services. You state that beginning [redacted], The [redacted] has received financial support from you to provide acute and short-term mental health services to the targeted population enrolled via managed health care firms.

[redacted] is a for-profit provider of [redacted]. The [redacted] is a [redacted] between [redacted] is a [redacted] engaged in providing comprehensive behavioral health care. Two members of your Board sit on the [redacted]. During the period of [redacted] you provided [redacted] with \$ [redacted]. Such amount was provided either as direct cash (\$ [redacted]), payments made on their behalf (\$ [redacted]) or cash investments per joint venture agreement (\$ [redacted]). Cash advances and payments made on their behalf were based on the need to provide working capital for [redacted] to meet its financial liabilities. The purpose of the venture is to provide behavioral health care services in the areas of mental health and drug and alcohol outpatient services to, including but not limited to, managed care providers, employers and employee assistance programs. The interests of the respective venturers in the assets, liabilities, profits and losses shall be fifty-fifty. Initial contribution is \$ [redacted] each. The managing Board of the Venture shall consist of [redacted] members, two appointed by [redacted].

You state that beginning [redacted] you began supporting, via financial and management services, [redacted] a provider of outpatient drug and alcohol services in [redacted]. You state that [redacted] is a [redacted] behavioral health provider in [redacted]. [redacted] management services to [redacted]. The contract ended in [redacted]. There is no other relationship between [redacted] and [redacted].

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[REDACTED]

[REDACTED]. There is no indication in the file that [REDACTED] is exempt from federal income tax under section 501(c)(3) of the Code.

Pursuant to a [REDACTED] between you and [REDACTED], your financial support of [REDACTED] appears to be in the form of a [REDACTED]. The total amount of \$[REDACTED] includes loaned funds (\$[REDACTED]) and development service fees (\$[REDACTED]).

With respect to your contractual agreements with health providers for providing your [REDACTED], you state that the charges to access [REDACTED] will be made on a [REDACTED]. The exact formula to determine fees has not been finalized. You state that, to date, you have no contracts with customers to use [REDACTED].

With respect to how you will market your services, you state that the formal marketing plan is in the process of being developed. A marketing pamphlet submitted states that your [REDACTED] are designed to deliver and coordinate all the administrative support services necessary for behavioral health practices to compete in today's health care world. It states that your staff works jointly with practice staff to provide services that address the managerial, administrative, clerical, financial and clinical needs of each of your clients. It states that your [REDACTED] was developed by [REDACTED] and is specially designed to serve [REDACTED].

Section 501(c)(3) of the Code provides for the exemption from federal income tax, as provided under section 501(a), of organizations organized and operated exclusively for, among others, charitable or educational purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in part, that the term "charitable" is used in its generally accepted legal sense.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that, in general, 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 empower the organization to engage, other 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(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a state or local government, for a public purpose.

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 is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

In Revenue Ruling 54-305, 1954-2 C.B. 127, a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of unrelated tax-exempt charitable organizations was held not to be exempt under

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section 101(6) of the Code (the predecessor to section 501(c)(3)) because it was engaged in ordinary business activities.

Revenue Ruling 69-528, 1969-2 C.B. 127, describes an organization formed to provide investment services on a fee basis only to organizations exempt under section 501(c)(3) of the Code. The organization invested funds received from participating tax-exempt organizations. The service organization was free from the control of the participating organizations and had absolute and uncontrolled discretion over investment policies. This revenue ruling held that the service organization did not qualify under section 501(c)(3) and stated that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Revenue Ruling 70-535, 1970-2 C.B. 117, describes an organization formed to provide management, development and consulting services for low and moderate income housing projects for a fee. The ruling held that the organization did not qualify under section 501(c)(4) of the Code (and by extension is not exempt under section 501(c)(3)). This revenue ruling stated: "Since the organization's primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for profit, the organization is not operated primarily for the promotion of social welfare."

Revenue Ruling 72-369, 1972-3 C.B. 245, describes an organization formed to provide management and consulting services for non-profit organizations exempt under section 501(c)(3) of the Code to improve the administration of their charitable programs. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The services consist of writing job descriptions and training manuals, recruiting personnel, constructing organizational charts, and advising organizations on specific methods of operation. These activities are designed for the individual needs of each client organization. Receipts of the organizations are from services rendered. Disbursements are for operating costs.

The revenue ruling concludes that providing managerial and consulting services on a regular basis for a fee is trade or business ordinarily carried on for profit. The fact that the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code. The revenue ruling holds that the organization's activities are

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not charitable and therefore the organization does not qualify for exemption under section 501(c)(3).

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), held, in part, that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of statutorily exempt purposes.

B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), held that an organization which provided consulting services for a fee to nonprofit organizations did not qualify for exemption under section 501(c)(3) of the Code. The court noted that B.S.W.'s activities constituted the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

Your Articles of Incorporation do not limit your activities to those activities within section 501(c)(3) of the Code and have no provision for the disposition of assets upon termination. Your assets are not dedicated exclusively to an exempt purpose. Consequently, your Articles of Incorporation do not meet the "purpose" and "dissolution" requirements under sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations. Therefore, you fail to meet the organizational test under section 1.501(c)(3)-1(a)(1) of the regulations. This is true even though you have indicated that you are willing to amend your Articles of Incorporation so as to satisfy the organizational test.

You are a management services organization. You operate in a manner similar to the organizations described in revenue rulings 72-369, 70-535, 69-528, and 54-305, supra, in that you are providing managerial and consulting services on a regular basis for a fee, and like the organizations in the revenue rulings, you are engaging in a trade or business regularly carried on for profit. You will contract with nonprofit and for-profit unrelated behavioral health care providers to provide financial and administrative management services. Some of your specific services, as stated previously, will consist of quality assurance/peer review processes; specific and general consultation; project management, staff recruitment and supervision; contract negotiations, review and management; insurance provision and risk-loss analysis; real estate/facility search, review, negotiation and procurement; inter-corporate networking; correlation of program/client needs with available resources; securing and provision of credit line/cash flow; budget development, revision, monitoring, projection and control;



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[REDACTED]

financial oversight and control; and mental health management information system.

Your financial support of [REDACTED], is in the form of loans and in the form of provision of services for a fee. Such assistance appears to be within the range of commercial services you regularly offer your behavioral health provider clients.

You operate in a manner similar to the organizations described in the revenue rulings and court cases cited above in that you are engaging in the provision of services in a regular commercial manner. The difference between you and the organizations in the revenue rulings and court cases cited above is that they confined their services to organizations which were exempt from federal income tax.

The provision of administrative, managerial, financial, clerical, and clinical needs on a regular basis for a fee, whether to exempt or nonexempt organizations, is a trade or business ordinarily carried on for profit. The provision of services in a regular commercial manner is not an exempt activity within the meaning of section 501(c)(3) of the Code. Therefore, you are not operated exclusively for exempt purposes.

Based on the above, we conclude that you are neither organized nor operated exclusively for charitable purposes. Consequently, 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)

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of the Code provides, in part, that a declaratory judgement 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:

INTERNAL SERVICE  
[REDACTED]

If you wish to FAX information to us, our FAX number is [REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

[REDACTED]