

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

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Release copies to District

Date 11-22-99

Surname [REDACTED]

Date:

OCT 19 1999

Employer Identification Number:
[REDACTED]

Contact Person:
[REDACTED]

Contact Number:
[REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED], under the laws of the [REDACTED]. Your Articles of Incorporation state that your purpose is to engage in the profession of medicine. On [REDACTED], you amended your Articles to delete the above purpose and provide that you are a nonprofit mutual benefit corporation organized under the [REDACTED] and that your purpose "is to engage in any lawful act and activity for which a corporation may be organized under the said Law and specifically without limitation to facilitate arrangements for the provision of medical services by members pursuant to contracts with third-party payors, on the so-denominated 'Messenger Model,' so that the interests and needs of the members are served." Your Articles provide for the following principles to guide your activities:

1. Create access to managed care contracts for your members.
2. Preserve freedom and independence of choice for physicians and patients.
3. Address the needs of all medical specialties equally.

Your Articles also provide that you shall provide the following services to your members:

1. Analysis and negotiation of managed care contracts to assist members in making individual decisions regarding participation in third-party contracts.
2. Education of members and their staffs regarding managed care contracts.
3. Communication and resources that support members in dealing with third-party contracts in their practices.

Your bylaws provide that any person who is a member of the Active Medical Staff of [REDACTED] and who agrees (in writing) to abide by your bylaws, rules, and regulations is eligible to become a member. Any person who has completed an application for active medical staff privileges, and has been granted provisional status of allied health status at [REDACTED] and who agrees (in writing) to abide by your bylaws, rules, and regulations is eligible to be a member. Anyone whose application for active medical staff privileges is pending shall, subject to the approval of your board of directors, be entitled to the privileges of being a member. If the applicant is

[REDACTED]

not accepted as either an allied health or an active medical staff member within one year of the final submission of their application, they shall not, absent further action by your board of directors, be entitled to the benefits of being a member. In your application, you state that your membership is open (but not mandatory) to all active, provisional, and allied health members of the [REDACTED]

Your statements of revenue and expenses for your tax years ending in the years [REDACTED] submitted with your application, indicate that your primary ongoing source of funds has been and will be dues and assessments of your members. Your application also states that your activities are as follows:

1. Create access to and provide information about managed care contracts to facilitate the practice of medicine for your members. This activity comprises approximately 18% of your total activities.
2. Analyze and negotiate managed care contracts to assist your members in making individual decisions regarding participation in third-party contracts. This activity comprises approximately 18% of your total activities.
3. Provide information through your [REDACTED] Manual and its annual updates to assist your members and their staffs in their day-to-day operations when dealing with managed care contracts and billing. This activity comprises approximately 18% of your total activities.
4. Through credentialing already done by the [REDACTED] act as a facilitator or go-between, to provide most of the information necessary to the managed care networks for credentialing and recredentialing of members. This relieves members' offices of the enormous amount of paperwork involved in keeping credentialing information current with the various managed care networks. This activity comprises approximately 12% of your total activities.
5. Keep members abreast of changes in the managed care marketplace through a quarterly newsletter, [REDACTED]. This activity comprises approximately 12% of your total activities.
6. Educate members and their staffs regarding the complexities of managed care contracting through free seminars and workshops, periodic bulletins, and other occasional publications. This activity comprises approximately 10% of your total activities.
7. Act as a liaison or advocate for members with the various managed care networks, particularly when problems arise. This activity comprises approximately 10% of your total activities.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 58-65, 1958-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally. The activities of the organization consist of the maintenance of plan rooms for the convenience of members, where plans and specifications for local construction projects, together with the names of general contractors bidding on specific projects, are filed.

Rev. Rul. 65-164, 1965-1 C.B. 238, holds that negotiating written collective bargaining labor contracts for the general membership, interpreting such contracts, and mediating or settling jurisdictional and other disputes are to be considered incidental activities under section 501(c)(6) of the Code since these activities further the common purpose with respect to the common labor problems of the business group and do not represent services to individual members which the members could purchase elsewhere. The revenue ruling also states that where such services do not further the common interests and individual members derive a direct and non-incidental benefit from the services rendered, the organization would not qualify for exemption under section 501(c)(6).

Rev. Rul. 68-264, 1968-1 C.B. 264, defines a particular service for purposes of section 501(c)(6) of the Code as an activity that serves as a convenience or economy to the members of the organization in the operation of their own businesses. The revenue ruling holds that primary activities that constitute a regular business of a kind ordinarily carried on for profit will preclude exemption from federal income tax under section 501(c)(6) of the Code. In this case, the organization was providing services to members and nonmembers.

Rev. Rul. 69-106, 1969-1 C.B. 153, holds that a nonprofit manufacturers' organization that conducts research in projects of common interest to their industry and makes the results available only to its members rather than to the industry as a whole does not qualify for exemption under section 501(c)(6) of the Code. The revenue ruling states that although membership in the organization is open to all businesses in the industry on an equal basis, not all the businesses in the industry are members. The revenue ruling concludes that since the organization distributes the results of its research only to its members, its activities are not aimed at the improvement of business conditions for the entire industry.

Rev. Rul. 72-211, 1972-1 C.B. 150, which clarifies Rev. Rul. 56-65, *supra*, holds that an organization formed to promote the interest of its members and persons or firms related to the building and construction industry by providing a plan room and news bulletins available for the entire industry qualifies for exemption under section 501(c)(6) of the Code. The revenue ruling concludes that providing a news bulletin and plan room available to the entire building and construction industry without charge improves the business conditions of that line of business because it makes information on construction projects freely available to the construction industry as a whole. The revenue ruling stresses that one of the main reasons for exemption is the fact that the organization's facilities are open for use by all individuals and businesses in the industry, nonmembers as well as members.

Rev. Rul. 73-411, 1973-2 C.B. 180, in discussing the exempt status of a shopping center merchants' association under section 501(c)(6) of the Code, describes in detail the history of section 501(c)(6) and the types of organizations described therein. In the case of a chamber of commerce or similar organization, the common business interest required under section 1.501(c)(6)-1 of the regulations is usually the general economic welfare of a community, and it has been accepted that an organization seeking exemption under section 501(c)(6) as a chamber of commerce must be one whose efforts are directed at promoting the common economic interests of all the commercial enterprises in a given trade community. Trade associations or business leagues under section 501(c)(6) are defined as being similar to chambers of commerce, except that they serve only the common business interests of

the members of a single line of business or of the members of closely related lines of business within a single industry. The revenue ruling also stresses that membership in section 501(c)(6) organizations is voluntary and open generally to all businesses and professional persons in the community.

Rev. Rul. 74-81, 1974-1 C.B. 135, holds that a nonprofit organization formed to promote the business welfare and interests of persons engaged in the contracting trade and related industries and whose principal activity is to provide its members with group workmen's compensation insurance is not entitled to exemption under section 501(c)(6) of the Code. The revenue ruling states that by providing group workmen's compensation insurance for its members, the organization relieves the members of obtaining this insurance on an individual basis, resulting in a convenience in the conduct of their businesses. Therefore, the organization is rendering particular services for individual persons as distinguished from the improvement of business conditions in the contracting and related industries generally, and does not qualify for exemption from federal income tax under section 501(c)(6) of the Code.

In Glass Container Industry Research Corporation, 70-1 USTC 9214, the Tax Court examined an organization conducting scientific research in the field of glass container production and manufacture. Independent commercial research organizations, colleges, and universities performed the actual research. The contracts for the research almost all provided that the results were not to be disclosed. Members were forbidden to disclose the research reports to nonmembers and the aim of the organization with respect to the reports which were made public was not to disclose information which would be of assistance to a nonmember from a production standpoint. The Court found that because the results of the research were only for the benefit of members, the organization was a cooperative effort on the part of a limited number of persons to research business projects for the benefit of themselves rather than the public at large, or the industry at large, and thus exemption under section 501(c)(6) of the Code was denied. The Court stated that 30% of a group of manufacturers engaged in an industry cannot organize themselves solely for the purpose of investigating and discovering cheaper and better methods of conducting their business with a view to increasing their profits with restrictions on dissemination of the research results and at the same time be tax-exempt under the statute. The Court found it unnecessary to speculate what the situation might have been in the event the organization relaxed its rules and regulations with regard to dissemination of research results.

In Associated Master Barbers & Beauticians of America, Inc. v. Commissioner, 69 TC 53 (1977), the court sustained the revocation of the petitioner's exempt status under section 501(c)(6) of the Code because of the extensive commercial services provided to members. The court stated:

Because these activities serve as a convenience or economy to petitioner's members in the operation of their business, we think they constitute "particular services" as proscribed by the regulations. By providing insurance or textbooks for its members, the petitioner relieves its members of obtaining insurance or textbooks on an individual basis from a nonexempt commercial business. If the petitioner did not provide these goods and services, its members would have to obtain them from nonexempt businesses at a substantial increased cost. Thus, the organization is rendering "particular services" for the individual members as distinguished from an improvement of business conditions in barbering and beautician professions generally.

Since your efforts are not directed at promoting the common economic interests of all the commercial enterprises in a given trade community, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a business league or trade association. The information you have submitted, however, indicates that your membership is limited to the medical staff of a private, not-for-profit, general acute care hospital, the ~~_____~~ to certain allied medical staffs of separate individual hospitals. Therefore, we do not consider your membership to be open generally to all individuals in the field of health or any other related line of businesses in your

[REDACTED]

community, and you are not considered to be a business league or trade association within the meaning of section 501(c)(6), as described in Rev. Rul. 73-411, *supra*. The fact that your membership is open, but not mandatory, to all active, provisional, and allied health members of the [REDACTED] is not relevant to this conclusion.

You have made clear that your membership consists solely of persons on the medical staff of the [REDACTED], and certain allied medical staffs. It is also clear that any person not on the medical staff of the [REDACTED] or one of the allied staffs cannot become one of your members. Thus, all the benefits that you provide to your members, such as educating members regarding the complexities of managed care contracting, are obtained by your members at the exclusion of the persons in the medical profession or public health in your area who are not on the staff of the [REDACTED] or one of the allied staffs. By the same token, your credentialing and recredentialing process for each member's professional performance benefits only your members rather than hospitals or the medical profession in general.

The information you have submitted indicates that your primary activities are directed solely to your members, and your expenses all go toward the upkeep of such system. Such a system, however, because it is limited to your members, provides your members with a convenience or economy in the operation of their own businesses within the medical profession. As stated in Rev. Rul. 88-264, *supra*, such an activity is defined as a particular service. By primarily performing this activity, you are not directing your efforts to the improvement of business conditions of the entire industry as required under section 1.501(c)(6)-1 of the regulations.

It is also clear from the facts you have presented that you were formed for, and one of your primary activities consists of, contracting with preferred provider organizations or insurance companies for your members to facilitate their practice of medicine. Also, more than 50 percent of your activities that are not directly concerned with the active contract negotiations revolve around and are connected with or dependant upon this central activity. We have determined that your contract negotiating activity is the performance of particular services for your individual members, and, as such, is proscribed from being a primary activity for purposes of exemption under section 501(c)(6) of the Code pursuant to section 1.501(c)(6)-1 of the regulations. The argument described in Rev. Rul. 56-85, *supra*, is also applicable to you because your performance of particular services is your primary activity.

Your contract negotiating activity is not similar to the exempt negotiation activity carried on by the organization described in Rev. Rul. 65-164, *supra*, because your contract negotiations represent services to individual members which the members may purchase elsewhere. Also, your members receive a direct and non-incidental benefit from your services. Similar to the organization described in Rev. Rul. 74-81, *supra*, your primary activities relieve your members of negotiating contracts on an individual basis, resulting in a convenience in the conduct of their businesses. The fact that the services may be more expensive if sought by your members individually rather than collectively is immaterial for purposes of exemption as noted in Associated Master Barbers & Beauticians of America, Inc., *supra*.

Even if all of your activities could be considered to be proper activities for organizations exempt under section 501(c)(6) of the Code, the fact that your services are to be limited to your members and not to one or more lines of business within the meaning of section 501(c)(6) would preclude exemption as explained in Rev. Rul. 56-85, *supra*, and as clarified by Rev. Rul. 72-211, *supra*, and Rev. Rul. 69-28, *supra*. See also Glass Container Industry Research Corporation, *supra*.

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be

[REDACTED]

submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to the Ohio EP/EO key district office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, EP/EO Customer Service, P.O. Box 2508, Cincinnati, OH 45201.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
OP:E:EO:T-2- [REDACTED] Room 6539
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

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

Sincerely yours,
(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

cc: [REDACTED]
[REDACTED]
[REDACTED]

OP: E:EO:T:2
[REDACTED] OP: E:EO:T:2
[REDACTED]