TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: [redacted]

Contact Person: [redacted]

Identification Number: [redacted]

Contact Number: [redacted]

FAX Number: [redacted]

E Mail Address: [redacted]

[redacted]

Legend:

L = [redacted]
M = [redacted]
N = [redacted]
a = [redacted]
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Date 1 = [redacted]
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Date 4 = [redacted]
Date 5 = [redacted]
Date 6 = [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)(4). 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 were incorporated on Date 1 as a nonprofit corporation under the a Not-for-Profit Corporation Law. Your sole member is L, an organization recognized by the Internal Revenue Service as described in section 501(c)(3) of the Code. According to your Articles of Incorporation, your principal purpose is to improve the health and welfare of the population of a by reducing the number of uninsured workers in a, to help small businesses gain access to quality health insurance for their employees, and to provide counseling and education about the quality and value of health benefit plans.

You have described your purpose as enabling employees of small employer groups engaged in business in the b metropolitan area to obtain health insurance that they would

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otherwise be unable to afford. (You have defined the term "small employer groups" as employers who employ between 2 and 50 employees.) You accomplish this by contracting with four insurance companies to enable employer groups that participate in your programs to purchase health insurance from these insurance companies for the benefit of their employees. You do not sell or provide insurance, either directly or as a broker. Your activities are described generally as follows.

Small employer groups obtain health insurance for their employees through your organization by participating in your health insurance programs. You collect the premiums from your participating employers, and in turn, you pay a portion of these premiums to your four contracting insurance companies. You also pay a portion of these premiums, on behalf of these insurance companies, as fees and/or commissions to various licensed insurance agents and brokers.

You describe yourself as a facilitator between four insurance companies, their agents and brokers, and your participating small employers and their employees. You facilitate access to health insurance by small employers and their employees by contracting with each of these insurance companies to provide them with certain administrative services under an Administrative Services Agreement. Under these agreements, the services you provide to the insurance companies include billing participating employers for premiums, collecting these premiums and remitting the collected premiums to the appropriate insurance company. You also are responsible for recruiting, training and educating the insurance companies' agents and brokers regarding your health insurance program. In addition, from the premiums you receive from your participating employers, you pay the sales commissions the insurance companies owe to their agents and brokers as compensation for selling each insurance company's respective insurance product. You provide these various services to and on behalf of the four insurance companies in return for their payment to you of certain administrative service fees.

You have formed the M as a component of your organization, not as a separate entity, to administer your health insurance programs. You have entered into an Administration Agreement dated Date 2, amended on Date 3, with N, a wholly-owned for-profit corporation, to serve as third-party administrator for these programs. Under this agreement, N provides you with various administrative and management services relating to your health insurance programs. In return, you pay N the fees described in the agreement.

You state that by virtue of the large number of employers who participate in your programs, you are able to negotiate with insurance companies, for the benefit of your participating employers and their employees, lower, more affordable premium rates for health insurance than these employers would otherwise be able to obtain on their own. You state that without your programs, these employers would be unable to afford to provide health insurance for their employees. You state that since these employees cannot afford to purchase health insurance on their own, were it not for your programs, they would be unable to obtain health insurance for themselves and their families.

For the years ending Date 4 through Date 6, your actual and estimated revenues were and are expected to be as follows:

[redacted]

	Fiscal Year Ending [redacted]				
	[redacted]				Pct,
Administrative services fees	$[redacted]	$[redacted]	$[redacted]	$[redacted]	[redacted]%
New York City funding agreement	$[redacted]	$[redacted]	$[redacted]	$[redacted]	[redacted]%
New York State funding	$0	$0	$[redacted]	$[redacted]	[redacted]%
Total	$[redacted]	$[redacted]	$[redacted]	$[redacted]	[redacted]%

For the years ending Date 4 and Date 5, you collected the following premiums from your participating employers and paid the following amounts as premiums to your four contracting insurance companies and as commissions to their agents and brokers:

	Fiscal Year Ending June 30,	
	[redacted]	[redacted]
Premiums paid to insurance companies	$[redacted]	$[redacted]
Commissions paid to their agents	$[redacted]	$[redacted]
Total premiums received	$[redacted]	$[redacted]

You also engage in sales and marketing advertising programs to promote your health insurance programs. For the years ending Date 4 through Date 6, your actual and estimated expenses for this purpose are expected to be 23 percent of your total expenses:

	Fiscal Year Ending June 30,			
	[redacted]	[redacted]	[redacted]	Total
Sales support	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Marketing	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Total	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Total expenses	$[redacted]	$[redacted]	$[redacted]	$[redacted]
Percent	[redacted]%	[redacted]%	[redacted]%	[redacted]%

LAW

Section 501(a) of the Code provides that an organization described in subsection (c) is exempt from income taxation.

Social Welfare

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

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Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations states that a civic league or organization may be exempt as an organization described in section 501(c)(4) if it is not organized or operated for profit; and it is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

In Rev. Rul. 54-394, 1954-2 C.B. 131, an organization's sole activity was to provide television reception for its members on a cooperative basis in an area not readily adaptable to ordinary reception. Members were required to contract for and to pay services and installation fees. In concluding that this organization did not qualify for exemption under section 501(c)(4) of the Code, this revenue ruling stated:

> When an organization's only activity is to provide television reception on a cooperative basis to its members, who contract and pay for such services, such organization is held to operate for the benefit of its members rather than for the promotion of the welfare of mankind.

In Rev. Rul. 55-311, 1955-1 C.B. 72, the members of a local association of employees consisted solely of the employees of a particular corporation. The association operated a bus for the convenience of its members. The association's income was derived from bus fares used to pay for the operation of the bus. Since the bus operated primarily for the benefit of the association's members, this revenue ruling concluded that the association did not qualify for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 62-167, 1962-2 C.B. 142, an organization's purpose was to construct and maintain a reflector-type television station, capable of receiving signals of television stations and reproducing these signals so that satisfactory television would be available to the community in general. Membership was available to all persons in the area and the organization's income was derived from membership fees and donations. The reflector-type equipment received signals from three television stations and retransmitted these signals into the community. The signals retransmitted by the reflector-type apparatus were available to any television in the community. This revenue ruling distinguished Rev. Rul. 54-394, supra, because in that revenue ruling, the television services were available only to members of the organization and only pursuant to a contract requiring the payment of membership fees and monthly maintenance charges. However, in this revenue ruling, the organization operated its system for the benefit of all television owners in the community, it retransmitted television signals for the benefit of the entire community, and it obtained memberships and contributions on a voluntary basis. Therefore, the organization qualified for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 73-349, 1973-2 C.B. 179, an organization was formed to purchase groceries for its membership at the lowest possible prices. It received orders from its members, consolidated them, and purchased the food in quantity. Each member paid for the cost of his or

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her food, and each member was assessed an equal monthly service charge for the monthly operating costs. Membership was open to all individuals in a particular community. This revenue ruling stated that the organization was a private cooperative enterprise for the economic benefit or convenience of its members. Similar to the organization in Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), the organization in this revenue ruling was operated primarily for the private benefit of members and any benefits to the community were not sufficient to meet the requirement of the regulations that the organization be operated primarily for the common good and general welfare of the people of the community. Accordingly, it did not qualify for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 75-199, 1975-1 C.B. 160, an organization provided sick benefits for its members and paid death benefits to the beneficiaries of members. Membership in the organization was restricted to individuals of good moral character and health who belonged to a particular ethnic group and resided in a stated geographical area. The organization's activities consisted of holding monthly meetings and maintaining an established system for the payment of sick and death benefits. Its income was derived primarily from membership dues and was used to pay benefits to members and for miscellaneous operating expenses. In concluding that this organization did not qualify for exemption under section 501(c)(4) of the Code, this revenue ruling found that it was essentially a mutual, self-interest organization. Its income was used to provide direct and economic benefits to members and any benefit to the larger community was minor and incidental. This revenue ruling stated:

> Where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code.

Rev. Rul. 75-199 pointed out the distinction between Rev. Rul. 54-394, supra, and Rev. Rul. 62-167, supra, stating:

> The first activity is designed to benefit only the organization's members who have contracted to pay membership fees and monthly maintenance charges while the second is made available to everyone in the area.
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> Accordingly, since the benefit from the organization in question is for its members and there is only minor and incidental benefit to the community as a whole, the organization does not qualify for exemption from Federal income tax under section 501(c)(4) of the Code.

In addition, Rev. Rul. 75-199 modified Rev. Rul. 55-495, 1955-2 C.B. 259, by removing the conclusion that the organization in that revenue ruing was exempt under section 501(c)(4) of the Code. That ruling involved an association providing life, sick, accident, or other benefits to members or their dependents, where membership was restricted to individuals who subscribe to a designated religious creed, are of good character and health, and have the ability to earn a livelihood.

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In Rev. Rul. 75-286, 1975-2 C.B. 210, the residents of a city block formed an organization to preserve and beautify that block, to improve all public facilities within the block and to prevent physical deterioration of the block. Much of the public area improved by the organization is part of the public roadway lying between the sidewalk and the street in front of private property owned by members of the organization. This revenue ruling concluded that since the organization's activities promote social welfare because they beautify and preserve public property, although they are limited to a particular block, the community as a whole benefits. Thus, the organization qualifies for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 78-69, 1978-1 C.B. 156, an organization was formed by residents of a suburban community to provide bus transportation during rush hours between the community and the major employment centers in the metropolitan area. During that time, regular bus service was inadequate. The organization contracted for buses and drivers, planned their routes and schedules and arranged for volunteers to collect the fares on each trip. Although everyone may ride the organization's buses for the established fare, almost all riders live in the community. Since revenue from fares was not always sufficient to meet the organization's expenses, the organization sought and received financial assistance from different governmental units. This revenue ruling found that the organization was providing a useful service to all members of the community. The bus service provided was not commercially available and was subsidized by governmental financial assistance. Participation in the organization's activities was open to all community residents and volunteers carried out its activities. This method of operation indicated that it was not carrying on a business with the general public in a manner similar to organizations that are operated for profit. As a result, since it promoted the common good and general welfare of the people of the community, it qualified for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 78-429, 1978-2 C.B. 178, an organization operated an airport on land owned by a municipality under a contract with the municipality's city council. The municipality supervises the overall operation of the airport through a special committee appointed by the city council. The airport serves a four-county rural area that has no other airport facilities. Although any member of the community may use the airport, most of the planes stored at the airport are owned by key local businesses that are essential the area's economy. The airport is used predominantly by executives, employees and clients of the local companies. Hangers are available for rent to any aircraft owner in the community. The F.A.A. provides grant aid to the organization. This revenue ruling concluded that by operating an airport not otherwise available to the people of a rural area, the organization meets a community need. The overall supervision and control exercised by the city council ensures that the organization is responsible to the community. Therefore, the organization qualifies for exemption under section 501(c)(4) of the Code.

In Rev. Rul. 80-205, 1980-2 C.B. 184, the IRS announced that it will not follow the decision in Eden Hall Farm v. U.S., 389 F.Supp. 858 (W.D. Pa. 1975), which held that an organization providing recreational facilities to the employees of selected corporations qualifies for exemption under section 501(c)(4) of the Code. In this case, the organization had a board of trustees consisting of three employees of a certain corporation. The organization's activities consisted of maintaining and operating guest and recreational facilities on a farm near the

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community where the corporation was located. The organization's facilities were available principally to employees of the corporation, and also to their guests and the employees of other selected corporations and their guests. This revenue ruling concluded that by restricting use of the facilities to employees of selected corporations and their guests, the organization was primarily benefiting a private group rather than primarily benefiting the common good and general welfare of the community.

In Rev. Rul. 81-58, 1981-1 C.B. 331, an association of officers of a police department in a community promoted the professional development of its members, educated the public to recognize and appreciate the value of the service of the members and provided a lump-sum payment to each member upon retirement or a lump-sum payment to beneficiaries upon the member's death. Its primary sources of income were from contributions by the general public and through public fund-raising events. Upon joining the organization, members are required to pay a nominal, one-time membership fee. In concluding that the organization did not qualify for exemption under section 501(c)(4) of the Code, this revenue ruling described the organization as essentially a mutual, self-interest type organization. Its income was used to provide direct economic benefits to members. In relying on Rev. Rul. 75-199, supra, the ruling stated:

> Although the class of employees benefited by the organization consist of police officers engaged in the performance of essential and hazardous public services and there is an incidental benefit provided by the organization to the larger community, the fact remains that the primary benefits from the organization are limited to its members.

Rev. Rul. 86-98, 1986-2 C.B. 74, held that an individual practice association that provides health services through written agreements with health maintenance organizations ("HMOs") does not qualify for exemption under section 501(c)(4) of the Code. The organization negotiates contracts on behalf of its members with various HMOs, administers the claims received from its members, and pays them according to its reimbursement agreement. This ruling concluded that the organization is akin to a billing and collection service and a collective bargaining representative negotiating on behalf of its member-physicians with HMOs. In addition, the organization does not provide to HMO patients access to medical care which would not have been available but for the establishment of the organization. This ruling also concluded that the organization operates in a manner similar to organizations carried on for profit, and its primary beneficiaries are its member-physicians, rather than the community as a whole, citing Rev. Ruls. 75-199 and 81-58, both supra.

In Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), Lake Forest was organized as a nonprofit membership corporation. It purchased from the federal government two defense housing projects for use as cooperative, nonprofit homes for its members. The number of members in the corporation was limited to the number of dwellings available. Preference in membership was given to war veterans having inadequate housing and then to "other eligible persons." A member was entitled to purchase the right to perpetually use a dwelling unit at a specific price. A member would pay monthly principal and interest and a monthly operating fee. A member could transfer his perpetual use only to a member of his family. If a member desired to leave the residence, Lake Forest had a right to purchase the

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perpetual use, but if it did not, the member could sell the use to anyone acceptable to Lake Forest.

In reversing the Tax Court, the Court of Appeals concluded that Lake Forest did not qualify for exemption under section 501(c)(4) of the Code.

The court first concluded that Lake Forest did not meet the dictionary definition of "civic," stating:

> While the [advantages offered by Lake Forest] are available to all citizens eligible for membership, the benefits are not municipal or public in their nature. Nor are they bestowed upon the commonalty as such. United States v. Pickwick Electric Membership Corp., 158 F.2d 272, 276 (6 Cir. 1946). Lake Forest is not a movement of the citizenry or of the community. Rather, at most it is a venture - - unquestionably praiseworthy - - for securing its members living quarters.
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> 305 F.2d at 818.

The court also concluded that Lake Forest did not meet the dictionary definition of "social" or "welfare," stating:

> It does not propose to offer a service or program for the direct betterment or improvement of the community as a whole. [Citations omitted.] It is not a charitable corporation in law or equity, for its contribution is neither to the public at large nor of a public character. [Citations omitted.] Lake Forest does, of course, furnish housing to a certain group of citizens but it does not do so on a community basis. It is a public-spirited but privately-devoted endeavor. Its work in part incidentally redounds to society but this is not the "social welfare" of the tax statute.
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> . . . .
>
> Whatever the nature of the rights or privileges thus afforded persons other than members, it is a circumstance too insubstantial to qualify the entire activity of the corporation as in the social welfare. Size of membership in ratio to local population is not controlling on whether an organization is "civic' or "social." The number affected is not the criterion. A private project may touch an appreciable segment of the people of a large physical area and yet, for want of the considerations mentioned, not be converted into a civic or social undertaking. Classification as "civic" or "social" depends on the character - - as public or private - - of the benefits bestowed, of the beneficiary, and of the benefactor. [Emphasis added.]

The Court of Appeals concluded:

> . . . [T]he property has been sold to a private corporation having no civic, community or public status, and permitted - - though as a last classification - - to sell shelter not only to veterans but even generally to "other eligible persons", without delimitation, unless each preceding class exercises its preference in 30 days. While the occupancy preferences may contribute to the promotion of social welfare, they do not overbalance the private nature of the project.

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The court distinguished U.S. v. Pickwick Electric Membership Corp., 158 F.2d 272 (6th Cir. 1946) by stating:

> [Pickwick] dealt with a situation embraced by the statute. The taxpayer was a public utility corporation organized and run to provide electric energy for several counties under a program authorized and encouraged by the State of Tennessee. One of its purposes was to bring electricity to many communities which had none, as well as to speed the improvement of rural electrification of the area generally. The service and membership could be enjoyed by the public at large and on a nonprofit basis. Although a commercial benefit, it was available to citizens as citizens and promotive of social welfare.

305 F.2d at 819 - 820.

In People's Educational Camp Society, Inc. v. Commissioner, 39 T.C. 756 (1963), a nonprofit membership corporation that was created in 1920 purchased nearly 2,200 acres of land in the Pocono Mountains of Pennsylvania to carry on studies and continue the development of certain liberal and progressive social programs. (This facility is referred to as "Tamiment"). Its membership was limited to 35 persons. In 1936, the organization was recognized as tax-exempt under the predecessor of section 501(c)(4) of the Code, and in 1939, it was recognized as exempt under section 501(c)(4).

Except for 1921 to 1923, Tamiment never received any contributions. Through 1957, Tamiment earned substantial profits, so that its accumulated surplus grew from about $19,400 in 1922 to about $2.3 million in 1957.

For the fiscal years ended September 30, 1953 through 1957, 93.3 percent of Tamiment's total revenues were derived from operating the Tamiment resort; 83.2 percent of total revenues were used for operating expenses, 4.3 percent of total revenues was expended for social welfare activities, and 2.6 percent of total revenues consisted of contributions and donations to other organizations. From September 30, 1953 through September 30, 1957, Tamiment's accumulated surplus grew from $1.9 million to $2.3 million.

The IRS revoked Tamiment's tax-exemption under section 501(c)(4) of the Code. The Tax Court sustained this revocation, finding that Tamiment was primarily engaged in the operation of the resort at Tamiment, and that "its activities in operating said resort did not in themselves constitute, and were not merely incident to, the promotion of social welfare." 39 T.C. at 767.

The Tax Court concluded that Tamiment's operation of this resort, when considered in relation to its activities as a whole, precluded it from qualifying for exemption under section 501(c)(4) of the Code for several reasons:

First, Tamiment's activities, in operating the resort were not "exclusively," or even principally or primarily, for the promotion of social welfare within the meaning of the statute, citing Lake Forest, Inc., supra. The Tax Court stated:

> . . . [P]etitioner's activities in maintaining and operating the large resort at Tamiment, were not directed to, and did not result in providing benefits either for the

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public at large, or for any community as a whole. Rather, the facilities and activities at said resort were devoted principally and primarily to providing living accommodations, meals, and a variety of recreational and cultural programs for the personal benefit of paying guests, who were attracted to the resort because it was an enjoyable and luxurious place for summer vacations, and who were willing and able to pay the substantial daily or weekly overall rates which petitioner charged.

True it is, that both the recreational and cultural activities provided, did benefit those who participated in them. But, when the same are considered in light of the facts that they were furnished for financial consideration, and were paid for by the guests as part of the "package rates" charged therefor, we think it would be overstretching the meaning and intent of the tax exemption statute to include them within the ambit of "promotion of social welfare."

39 T.C. at 768 - 769.

Second, the Tax Court was convinced that the operation of Tamiment was its primary activity and not merely incidental to those social welfare activities that it carried on. In this regard, the Tax Court stated:

What is even more significant, is the fact that petitioner's total revenues from all sources . . . were disposed of principally in handling the operating expenses of said resort, in enlarging and improving the resorts' facilities, and in making additions to petitioner's accumulated surplus; and that, by comparison, only a relatively insignificant portion of such total revenues was expended in the promotion of social welfare activities.

Ibid.

In addition, the Tax Court compared Tamiment's revenues and social welfare activities to its accumulated surplus for each of the years ended September 30, 1953 to 1957.

The Tax Court concluded by stating:

We find that the crucial factor, in light of the evidence, is that the sales aspect of plaintiff's work looms so large as to overshadow all else.

39 T.C. at 770.

Commerciality

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

In Mutual Aid Association of the Church of the Brethren v. U.S., 759 F.2d 792 (10th Cir. 1985) ("Mutual Aid"), the organization provided property and casualty insurance only to members of the Church and their dependents. If a member left the Church, the insurance would be cancelled. The Court of Appeals determined that the Church did not promote social welfare because it sold insurance. It operated as a mutual insurance company, not as a church

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congregation. It engaged in underwriting practices consistent with those of the industry in general, it required premium payments, and it paid on claims when it received supporting documentation. The Court of Appeals concluded that the presence of a substantial non-exempt purpose, i.e., insurance for its members in return for premiums, precluded the organization's exempt status as an organization primarily engaged in the promotion of social welfare under section 501(c)(4) of the Code.

In American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. U.S., 850 F.2d 1510 (11th Cir. 1988) ("American Association"), the American Association of Christian Schools, Inc., a tax-exempt association of churches, formed a trust to provide health, hospital, disability, life, accidental death and dismemberment, dental, and prescription drug insurance to employees of members' schools and their dependents and beneficiaries. Citing Mutual Aid, supra, the Court of Appeals held that since the Trust had a substantial private purpose, providing insurance in return for premiums to its members, it was not an organization exclusively engaged in the promotion of social welfare under section 501(c)(4) of the Code.

RATIONALE

Social Welfare

Organizations described in section 501(c)(4) of the Code include civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. In order to meet the requirements under section 501(c)(4), an organization must be operated exclusively for the promotion of social welfare. See section 1.501(c)(4)-1(a)(2)(i) of the regulations. An organization will meet this requirement, if it is primarily engaged in promoting the common good and general welfare of the people of the community. These regulations also state that an organization is embraced within this provision if it is operated primarily for the purpose of bringing about civic betterments and social improvements.

In accordance with section 1.501(c)(4)-1(a)(2)(i) of the regulations, a nonprofit corporation whose activities benefit primarily its enrollees, rather than the general public, does not promote the common good and general welfare of the people of the community. Depending on how different organizations operate, the same activities may cause different results under section 501(c)(4) of the Code. Rev. Ruls. 54-394 and 62-167, both supra, involved the provision of television services, but since the organization in the latter ruling provided services to the entire community, rather than just to its members, it qualified for exemption as a social welfare organization. Rev. Rul. 75-199, supra, made this distinction clear by holding that an association providing life, sick, accident, or other benefits to members or their dependents, where membership was restricted to individuals who subscribe to a designated religious creed, are of good character and health, and have the ability to earn a livelihood, does not qualify for exemption under section 501(c)(4).

Similarly, Rev. Ruls. 55-311 and 78-69, both supra, involved the provision of bus transportation. In the former ruling, the bus service benefited the organization's members, but

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in the latter ruling, the community as a whole benefited from the bus service, and thus the organization qualified for exemption as a social welfare organization.

In Rev. Rul. 73-349, supra, the Service held that an organization that purchased groceries at the lowest possible prices but only for its members did not qualify as a social welfare organization under section 501(c)(4) of the Code, even though its membership was open to all individuals in the community. Also, in Rev. Rul. 81-58, supra, an organization that provided a lump-sum payment to each retired police officer or his or her beneficiaries, in the event of their death, did not qualify for exemption under section 501(c)(4) because it was a mutual, self-interest type organization.

And in Rev. Rul. 86-98, supra, an organization that provided billing and collection services and collective bargaining negotiation only for its members did not qualify for exemption under section 501(c)(4) of the Code because its primary beneficiaries were its members, rather than the community as a whole.

Consistent with these revenue rulings are the decisions in People's Educational Camp Society, Inc. v. Commissioner and Commissioner v. Lake Forest, Inc., both supra. These cases hold that organizations engaged in otherwise commendable activities, the benefits of which are limited to the members of the organization, rather than available to the community as a whole, are not operated primarily for the purpose of bringing about civic betterments and social improvements within the meaning of section 1.501(c)(4)-1(a)(2)(i) of the regulations.

Your operations are similar to the revenue rulings and judicial decisions, which deny recognition of exemption under section 501(c)(4) of the Code, in that your health insurance programs benefit only your members, i.e., your participating employers and their employees. Your activities, making health insurance programs available to small employers who enter into Participating Trust Agreements, benefit only these employers and their employees, rather than the community as a whole. Your health insurance programs are not available to non-participating employers or to the employees of non-participating employers.

Your activities are distinguishable from the organization described in Rev. Rul. 75-286, supra, in that unlike the organization described in that ruling, whose activities resulted in preserving and beautifying a public street, your activities benefit only your participating employers and their employees. Your activities are also distinguishable from the activities carried on by the organization described in Rev. Rul. 78-429, supra, which operated an airport that was available to all members of the community. Your activities, which limit the availability of health insurance only to your participating employers, are similar to the activities of the organization described in Eden Hall Farm, supra (a decision which the IRS announced in Rev. Rul. 80-205, supra, it would not follow), which restricted the use of its facilities to employees of selected corporations and their guests.

If a small business in your community does not offer health insurance to its employees and has not entered into a Participating Trust Agreement, an employee of the small business who cannot afford to purchase health insurance independently may not purchase health insurance under your health insurance programs. Because you restrict your health insurance

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programs to employers who participate in your programs and their employees, affordable health insurance is available only to limited persons in the community. In addition, individuals who are unemployed may not take advantage of your health insurance programs. Similar to the revenue rulings discussed above, and the decisions in Commissioner v. Lake Forest, Inc. and People's Educational Camp Society, Inc., both supra, where the organizations' benefits were limited to its members, since the beneficiaries of your activities are restricted to participating employers and their employees, rather than the community as a whole, you are not operated exclusively for the promotion of social welfare by primarily engaging in promoting the common good and general welfare of the people of the community, as required by section 1.501(c)(4)-1(a)(2)(i) of the regulations.

Finally, you have not established that any benefit that the community as a whole may derive from your health insurance programs for participating employers and their employees, such as relieving the community of the financial burden of providing healthcare services to uninsured members of the community, is more than incidental, remote and tenuous.

Consequently, since your activities benefit only your participating employers, rather than the community as a whole, you do not operate primarily for the purpose of bringing about civic betterments and social improvements under section 1.501(c)(4)-1(a)(2)(i) of the regulations.

Commerciality

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations states that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit.

You operate as a facilitator between four insurance companies, their agents and brokers, and your participating small employers and their employees. You facilitate access to health insurance by small employers and their employees by contracting with these insurance companies to provide them with certain administrative services. These services include billing and collecting the premiums from your participating employers and remitting the appropriate premiums to your four contracting insurance companies and paying on their behalf the sales commissions they owe to their agents and brokers as compensation for selling each insurance company's respective insurance product. You also recruit, train and educate agents and brokers as to your health insurance program. You provide these various services for these insurance companies in return for certain administrative fees, which represent [redacted] percent of your total revenues. You contract with your own third-party administrator to provide various administrative and management services in connection with these activities. You also engage in extensive marketing and advertising programs.

In fiscal years [redacted] and [redacted] you collected premiums from your participating employers of $[redacted] and $[redacted], respectively; remitted premiums to your four contracting insurance companies of $[redacted] and $[redacted], respectively; and paid on their behalf the sales commissions they owe to their agents and brokers of almost $[redacted] and $[redacted]

[redacted], respectively. In addition, your marketing and advertising programs represent [redacted] percent of your total expenses.

By operating as a facilitator for the sale of health insurance by your contracting insurance companies to your participating employers and by providing various commercial services for your contracting insurance companies in return for a fee, you operate in a commercial manner, similar to the organizations described in Rev. Rul. 86-98, Mutual Aid, and American Association, all supra. Thus, your activities are not significantly distinguishable from the same activities carried on by similar for-profit organizations that arrange for the sale of insurance to participating employers.

Therefore, you are carrying on a business with the general public in a manner similar to organizations which are operated for profit, within the meaning of section 1.501(c)(4)-1(a)(2)(ii) of the regulations. Thus, you are not operated primarily for the promotion of social welfare under section 501(c)(4) of the Code.

Conclusions

Based on all the facts and circumstances, you have not established that you operate primarily for the purpose of bringing about civic betterments and social improvements as required by section 1.501(c)(4)-1(a)(2)(i) of the regulations. In addition, you have not established that your activities are significantly distinguishable from the same activities carried on by a business operated for profit, as required in section 1.501(c)(4)-1(a)(2)(ii). Thus, you are not primarily engaged in promoting the common good and general welfare of the people of the community. As a result, you are not operated exclusively for the promotion of social welfare as required by section 1.501(c)(4)-1(a)(2)(i). Consequently, you do not qualify for recognition of exemption under section 501(a) of the Code as an organization described in section 501(c)(4).

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within thirty (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 we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) 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, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details,

[redacted]

see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, and do not intend to protest our denial of exempt status, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If you also disagree with our proposed deletions, you should send your comments on the deletions with your protest statement, and not to the address shown in Notice 437.

Internal Revenue Service
[redacted]

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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]

for Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437