



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200724035**
Release Date: 6/15/07
Date: January 24, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Uniform Issue List No.: 501.03-00
501.36-00

Legend:

L =

M =

N =

O =

P =

R =

S =

T =

U =

Y =

a =

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Date x =

Date y =

Year z =

Dear :

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

Facts

You were formed as a non-profit corporation under state law as a non-membership organization. Your mission, as stated in your amended Articles of Incorporation, is:

The specific purpose of this Corporation is dedicated to a philosophy of excellence in providing affordable access to high quality health care services, information and referral services and educating the public on matters that promote healthy communities and improve the quality of life.

In your application, you describe your activities as:

- Healthcare Services (40 percent). You state that this activity consists of two components: Under L, you help address the growing crisis in your state where a large number of people are living without affordable healthcare insurance. The purpose of this program is to provide opportunities to assist the uninsured to obtain medical treatment including screenings, routine and preventive care and emergency care to eliminate the health crisis in your state.

Under M, you state that you provide services to assist under-represented children in your state and families to qualify for health care coverage under state-sponsored plans.

- Health, Wellness & Education (40 percent). You state this activity consists of two components: Under N, this program is designed as an online resource center of healthcare information and resources designed to keep communities informed of acute, chronic diseases and illnesses that have clustered in low-income, poverty stricken or underserved communities throughout the state.

Under O, you intend to establish a scholarship program for deserving high school seniors seeking financial aid for undergraduate study at accredited colleges and universities in the U.S.

- Information and Referral Services (20 percent). You state you intend to become an online resource center for information and referral services that are vital to empowering underserved communities to understand how, when and where to seek medical treatment and other healthcare services.

Based on the information in your application and in subsequent correspondence, it appears that your principal activity is arranging for the sale of health insurance, either through an employer or directly, to low-income individuals who do not qualify for the state Medicaid program, who may or may not be employed, who do not have health insurance and who cannot afford to purchase health insurance on their own.

On your website, Y, you state that your commitment is:

- To improve access to healthcare.
- To improve the health and wellbeing of underserved communities.
- To help health insurance better serve vulnerable populations.
- To encourage education among our youth.

In addition, you provide information on your website about various types of health insurance programs that you have available. The website informs people that they can contact you by either phone or email to buy health insurance

You state that you currently have two directors: R, Chairman, and S, who are father and son. You state that once you receive recognition of exemption, they will resign and be replaced by outside individuals. According to action taken by your board of directors on Date x, your President is S, your Secretaries are T and S, and your Chief Financial Officer is S. T and R are related by marriage. You state that once you receive recognition of exemption, an unrelated third party will serve as your President. You have adopted a conflicts of interest policy.

U is a for-profit corporation that holds an insurance agent's license issued by the State of X. U is in the business of selling insurance. R owns a percent of U's stock and S owns b percent of its stock. U's Chairman is R, its President is S, and its Secretary and Treasurer is T.

Both you and U have nearly identical names. In addition, you and U use the same stationery and share the same office and telephone number.

Effective Date y, you and U entered into a Management Agreement under which U serves as your manager and performs various services for you, including researching and investigating resources for health insurance plans that are affordable for low-income uninsured populations; qualifying, screening and proposing healthcare providers, subject to approval of your directors; administering affordable health insurance plans; managing the provider agreement with P; managing claims; managing billing and collections services; and providing monthly reports. According to the Management Agreement, in return for these services, you pay U a fee of \$c per month. (You state that currently, this fee is \$d per month, but you have not submitted an amendment to the Management Agreement reflecting this change.)

For Year z, you paid management fees of \$e to U. You also paid approximately \$f to P for subscribers' life insurance benefits; \$g to physicians and hospitals for covered services; and \$h to a third-party administrator for claims handling and administrative services. You incurred no other expenses relating to providing healthcare or community education.

You state that your future plans include offering additional benefits, such as legal services, mortgages, banking, debt consolidation and additional life insurance options.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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.

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). 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(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 71-529, 1971-2 C.B. 234, held that a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, involved an organization formed to provide managerial and consulting services on a cost basis for unrelated organizations exempt under section 501(c)(3) of the Code to improve the administration of their charitable programs. This revenue ruling concluded that the organization did not qualify for exemption under section 501(c)(3) because providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that it provided services at cost and solely for exempt organizations was insufficient to characterize this activity as charitable within the meaning of section 501(c)(3). Furnishing the services at cost lacked the donative element necessary to establish this activity as charitable.

In Better Business Bureau of Washington, D.C., Inc. v. U.S., 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under section 501(c)(3) of the Code because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the Claims Court concluded that an organization's business purpose of operating an adoption service, and not the advancement of educational and charitable activities, was its primary goal. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code. The organization competed with other commercial organizations providing similar services. The organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income.

In Airlie Foundation v. I.R.S., 283 F. Supp. 2d 58 (D. D.C. 2003), the District Court found that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special events held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court concluded that, when an organization operates for the benefit of private interests, it does not operate exclusively for exempt purposes. Prohibited private benefits may include an "advantage, profit, fruit; privilege; gain; [or] interest." Occasional economic benefits flowing to persons as an incidental consequence of an organization pursuing exempt charitable purposes will not generally constitute prohibited private benefits. Thus, should the organization be shown to benefit private interests more than incidentally, it will be deemed to further a nonexempt purpose under section 1.501(c)(3)-1(d)(1)(ii) of the regulations. This nonexempt purpose will prevent the organization from operating primarily for exempt purposes absent a showing that no more than an insubstantial part of its activities furthers a private interest or any other nonexempt purpose.

Rationale

Notwithstanding the statements in your application and on your website, your principal activity is arranging for the sale of health insurance, either directly or through an employer, to low-income individuals who do not qualify for the state Medicaid program, who do not have health insurance and who cannot afford to purchase health insurance on their own. You have not demonstrated that you carry on any type of meaningful charitable or educational activities. You are controlled and operated by the same persons who own, control and operate U, a for-profit licensed insurance agency. Thus, you are operated as an adjunct to U, for the purposes of assisting U in attracting new healthcare insurance clients and facilitating U's sale of healthcare insurance to these individuals.

In addition, you do not provide services to your subscribers at substantially below cost, similar to the organization in Rev. Rul. 71-529, supra. Even if you provided these services at cost, that would be insufficient to characterize your activities as charitable within the meaning of section 501(c)(3). See Rev. Rul. 72-369, supra.

Although some of your activities further a charitable or educational purpose, under Better Business Bureau of Washington, D.C., Inc. v. U.S., supra, the presence of the substantial non-exempt purposes described above prevents you from qualifying for exemption under section 501(c)(3) of the Code.

Furthermore, you are operated primarily for the private benefit of U, a for-profit licensed insurance agency that is owned, operated and controlled by the same related individuals who control and operate you. Thus, you are operated primarily for a private purpose, rather than for a public purpose, as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. See American Campaign Academy v. Commissioner, supra.

Finally, you are primarily engaged in carrying on a commercial activity, the sale of insurance, rather than a charitable or educational activity. Thus, under B.S.W. Group, Inc. v. Commissioner, supra, you do not qualify for exemption under section 501(c)(3) of the Code. See also Easter House, Inc. v. U.S., supra; and Airlie Foundation v. I.R.S., supra.

Therefore, you have failed to establish that you are organized and operated exclusively for one or more exempt purpose, as required by section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations.

Conclusion

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.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
SE:T:EO:RA:T:1
1111 Constitution Ave, N.W.
Washington, DC 20224
Fax: 202-283-8937

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 21, 2007

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter