



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **200944055**

Release Date: 10/30/09

Date: 8/5/09

U.I.L.: 501.06-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

A =

M =

m =

Dear

This letter is in reference to the letter dated December 26, 2008, as supplemented by the letter dated February 12, 2009, from the authorized representative of M. M is requesting a ruling that contracting with a member of an exempt organization's Board of Directors for compensation for services provided, under duly negotiated contracts, does not constitute private inurement, create a conflict of interest, nor jeopardize the exempt status of the organization under section 501(c)(6) of the Internal Revenue Code.

M is an organization recognized by the Internal Revenue Service as exempt from federal income tax as a business league under section 501(c)(6) of the Code.

M's Articles of Incorporation state that M was organized for the purposes of education and as a professional trade association of m professionals including but not limited to establishing and maintaining a code of ethics, promoting continuing education, and establishing cooperation between members of the profession.

M states that its activities implement the above purposes, and that its major product is providing quality educational opportunities for its members and non-members in the m profession. Such professionals are required to obtain an established number of hours of continuing professional education each year to maintain their respective licensing status. M strives to provide the best quality product at locations convenient to the participants at the least cost as possible. M also publishes a monthly newsletter with the latest m issues, laws, regulations, and court cases. M also operates a website for member communications. M provides ten member newsletters annually and two client newsletters the members can send to their clients.

M states that it is operated by a seven (7) member elected Board of Directors. The Board elects a President, Vice-President, Secretary, and Treasurer from its ranks as provided in the bylaws of M.

M states that it contracts with one of its board members, A. A is M's Educational Director and is an instructor and course developer in order to provide quality educational opportunities. A researches the latest material and m changes to write and develop all educational and training material. The material must be finished and sent to the office staff camera ready no later than the end of September each year. Under M's contract with A, A is paid a royalty for each book sold as compensation for development of the material. A is required to provide supplementary material for any late passage legislation, for which A receives nothing. The contract provides for payment to A for each 8 hour presentation at prearranged educational sites. This fee includes payment for time spent in preparation and travel. All travel, meals, and lodging expenses are reimbursed at the standard federal rate.

M also operates an m hot line that allows m professional members to call in requesting assistance with m issues and concerns. M contracts with A to schedule and manage the hotline and assist members with their questions. A is compensated for each day of operation. A is responsible for scheduling days of operation and assignment of personnel to work the days of operation.

A receives no compensation as M's Educational Director except reimbursement for any out of pocket expenses. As Educational Director, A determines the schedule for all of the training, the sites, instructors, cities, and recommended facilities. A is responsible for hiring, training, and facilitating of an instructor cadre. A secures contracts from each instructor, and is required to facilitate an instructors meeting prior to the commencing of each training session.

The Code of Standards of M's Board of Directors states, in part, the following:

- (i) Members of the Board may be allowed to transact business with M.
- (ii) When a conflict of interest or potential for conflict of interest, real or perceived, arises, the affected Board members must disclose the facts of such conflict or potential conflict to the entire Board of Directors.
- (iii) Members of the Board must be excused from participation in any considerations determining compensation to the Board member and any affiliated entities which may receive compensation from M.
- (iv) A member of the Board who receives compensation from M may not participate in any deliberations or vote to determine compensation to the affected Board members and any affiliated entities which may receive compensation from M.

The Board's Policy Against Inurement, updated January 11, 2009, states, in part, the following:

- (i) The Board of Directors may contract with a Board member to render services for compensation for services in addition to the Board member's service as a Board member.

- (ii) All payments of compensation must be approved by a majority vote of the Board of Directors, excluding the Director to whom the compensation will be paid.
- (iii) The Director providing the service may not vote on the motion and must absent him/herself from the room during the discussion.
- (iv) The Board of Directors, or a committee appointed by the Board, will initiate the gathering of data from the marketplace and/or objective third parties. This data must be secured prior to the establishment of the amount of compensation. The data must be used to determine market rates for such services, taking into account the qualifications of the provider.
- (v) The Board of Directors or its committee must have adequately documented the basis for its decision the time it was made.
- (vi) It is the duty and prerogative of the Board to make the final determination of the compensation to be authorized; however, the Board of Directors must review the market data prior to the establishment of the rate and terms of compensation and give the market data due consideration.

M states that in contracting with A, it follows its Policy Against Inurement, exactly as it is stated. M also states that its compensation paid to A is determined based upon market comparables obtained from available like-kind organizations and the Department of Labor, Bureau of Labor Statistics, and it is considered to be reasonable by its Board of Directors.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players) 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, in part, 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 regulation business of a kind ordinarily carried on for profit. The regulation provides that organizations otherwise exempt from tax under this section are taxable on their unrelated business taxable income.

Rev. Rul. 66-151, 1966-1 C.B. 152, holds that the management of health and welfare plans for a fee by a business league exempt under section 501(c)(6) of the Code is an unrelated business within the meaning of section 513. The organization is composed of firms in a particular industry, and its purpose and principal activity is to represent such firms in all matters pertaining to their relations with labor and labor unions. The organization also regularly manages health and welfare plans for its members, and receives a fixed fee for each employee covered by the plan; significant amounts of the organization's income and expenses are attributable to the management of these plans. The revenue ruling concludes that the management of the plans by the organization constitutes the conduct of unrelated trade or business.

Rev. Rul. 67-251, 1967-2 C.B. 196, holds that a business league which extends financial aid and welfare services to its members does not qualify for exemption under section 501(c)(6) of the Code since part of its net earnings is inuring to the benefit of private individuals, even

though its financial aid to members is minor in relation to its other activities which are directed to improvement of business conditions in a line of business.

Rev. Rul. 69-383, 1969-2 C.B. 113, holds that the exempt status of a hospital will not be jeopardized where, after arm's length negotiations, it enters into an agreement with a hospital based radiologist to compensate him on the basis of a fixed percentage of the departmental income. The revenue ruling states that under the written agreement with the radiologist, the hospital provided space, equipment, and supplies, and made nonmedical personnel available to the department of radiology. The radiologist agreed to manage the department, participate in the hospital's educational program, and perform all radiological services required by hospital patients, employees, and students. While the radiologist serves as the professional and administrative head of the hospital's department of radiology, he has no control over, or management authority with respect to, the hospital itself. The revenue ruling states that the amount received by the radiologist under the written agreement is not excessive when compared to the amounts received by radiologists having similar responsibilities and handling a comparable patient volume at other similar hospitals. The revenue ruling concludes that since the radiologist (1) did not control the organization, (2) the agreement was negotiated at arm's length, and (3) the amount the radiologist received was reasonable in terms of the responsibilities and activities that he assumed under the contract, the arrangement does not constitute inurement of net earnings to a private individual within the meaning of section 1.501(c)(3)-1(c)(2) of the regulations. Accordingly, the organization does not jeopardize its exemption under section 501(c)(3) of the Code.

In World Family Corporation v. Commissioner of Internal Revenue, 81 T.C. 958, 968, the Tax Court stated that it is well established that an exempt organization is entitled to pay reasonable compensation for services without endangering its exemption. Such payments are permissible even though they are made to the organization's trustees, officers, or founders; the issue is whether the payments are reasonable. See Saint Germain Foundation v. Commissioner, 26 T.C. 648, 658-659 (1956)

The cited precedent shows that a member of an exempt organization may provide services to that organization and may be compensated for the provision of such services. As stated in World Family Corporation, supra, it does not matter whether the individual receiving the reasonable compensation is the exempt organization's trustee, officer, or founder. Such a determination would include an exempt organization's Board member. Such compensation is not considered to be financial aid as described in Rev. Rul. 67-251, supra, and thus is not considered to be inurement to the benefit of private individuals within the meaning of section 501(c)(6) of the Code. In this case, the services being provided by A relate directly to M's exempt purpose under section 501(c)(6), and thus are not considered to be the conduct of unrelated trade or business as discussed in Rev. Rul. 66-151, supra.

As discussed in Rev. Rul. 69-383, supra, exemption from federal income tax of an organization is not jeopardized where agreements on compensation are entered into through negotiations conducted at arm's length and are not considered to be excessive based on persons having similar responsibilities and comparable duties. In this case, M states that it follows its Policy Against Inurement, and states that the compensation paid to A is based upon market comparables obtained from available like-kind organizations and the Department of

Labor, Bureau of Labor Statistics, and it is considered to be reasonable by its Board of Directors.

Accordingly, based on the facts and circumstances discussed above, we rule as follows:

M's contract for services with A does not violate prohibitions against private inurement or jeopardize M's tax-exempt status under section 501(c)(6) of the Code.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any changes that may have a bearing upon M's tax status should be reported to the Service. Because it could help resolve questions concerning M's federal income tax status, this ruling should be kept in M's permanent records. Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to M's authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, 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, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Enclosure  
Notice 437

Sincerely yours,

Manager, Exempt Organizations  
Technical Group 2