



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201217018**  
Release Date: 4/27/2012  
Date: February 3, 2012  
Uniform Issue List Numbers

501.00-00  
501.03-00

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.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. 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,

Lois G. Lerner  
Director, Exempt Organizations

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



TAX EXEMPT AND  
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DIVISION

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

Date: November 21, 2011

Contact Person:

Uniform Issue List Numbers

Identification Number:

501.00-00

Contact Number:

501.03-00

FAX Number:

Employer Identification Number:

Legend:

B =

M =

N =

Date 1 =

Date 2 =

Letter 1 =

Letter 2 =

Letter 3 =

Letter 4 =

Dear

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code). Based on the written information exchanged between us, we have determined that you failed to establish your qualification for exemption under that section. Our reasons for this conclusion and the facts on which it is based are explained below.

Facts:

You were incorporated on Date 1 under state not-for-profit corporation law. You were organized for the purpose of "promot[ing] quality and efficient health care by these mechanisms:

- 1) "Facilitating transparent flow of electronic Health Information Technology among consumers, plans, payors, purchasers, and providers of health care;
- 2) "Measure and publish health quality and price information that will provide a scorecard of the performance of providers of health care;

- 3) "Provide guidelines and tools for health care consumers and providers to realize optimal health outcomes. Such tools for consumers will include predictive models to determine risk of heart disease, cancer, diabetes, and other health problems. Additional consumer tools will include electronic Personal Health Records and Secure Messaging for provider communication. Tools for providers will include electronic Practice Management programs and Electronic Health Records."

You describe yourself as a "collaboration of healthcare providers, plans, and purchasers or payors of healthcare." Your goal is "to improve healthcare outcomes, to foster a transition from rewarding process to rewarding value in healthcare, and to facilitate meaningful use of Health Information Technology ('HIT')."

Part IV of the application Form 1023 asks you to provide a thorough and accurate narrative description of your activities. You provided the following information about each part of your mission.

#### *Primary Care Advocacy*

You promote the medical home concept to patients, plans, and purchasers of health care. Your staff members meet with consumers, plans, and purchasers of healthcare to advise them of the financial and quality benefit of paying for a medical home for patients. You estimate that "approximately ten percent of total project time will be devoted to this task."

#### *Clinical Guidelines and PrCI*

Your staff will periodically update community physicians with the latest evidence-based "best practice" guidelines produced by government agencies and medical specialty societies. You will provide PrCI tools to increase compliance with these guidelines, such as flow sheets to increase delivery of preventive health services and written algorithms to encourage adherence to disease-specific clinical guidelines.

*Monitor and Reward Quality Health Outcomes and Process*

You represent that your CEO, B, is a consultant to the Center for Medicare and Medicaid Services ("CMS"), and is involved in developing and reviewing novel payment mechanisms such as Pay for Performance and Pay for Health that will create incentives to reward process and quality outcomes. You estimate that "approximately ten percent of total project time will be devoted to this task."

*Report Cards*

You state that "the primary function of a \_\_\_\_\_ is to collect data from database mining of claims, directly from EHRs that are subsidized by [you], chart reviews by mid-level providers, and clinician- or facility-completed questionnaires. Such data will be scalable to issue clinician and facility report cards available to consumers, plans, and purchasers of healthcare directly on [y]our web site." You estimate that "approximately \_\_\_\_\_ of total project time will be devoted to this task."

In Letter 1, you state that, for a service entitled "\_\_\_\_\_ of \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per hour for "clerical." These fees will be charged to government and for-profit entities, but that you will provide similar services to public health, advocacy, and non-profit entities for free or below costs.

In Letter 4 you state that "\_\_\_\_\_ There will not be a fee for use of clinician report cards." Furthermore, "fees for facility report cards will be based on cost of data mining plus \_\_\_\_%. Specifically, if [you] must pay \$ \_\_\_\_\_ to access data [you] will charge \$ \_\_\_\_\_. A consulting fee of \$ \_\_\_\_\_/hour will be added to cover research, preparation, and presentation costs."

*Toolkits*

You will provide health care consumers with online Personal Health Records with which to monitor preventive care, manage disease, and record pertinent health information such as medical reactions and advance directives. In Letter 4, you state that there will be no fee

You will also provide work-based wellness programs to promote consumer adherence to preventive health services. You have created a web site where validated computer models will be available to the public to calculate and reduce their risk of disease.

In Letter 1, you state that, for a service entitled "Group wellness programs," you will charge a fee of "\$ \_\_\_\_\_ / person plus 1.1x cost lab fees" to government and for-profit entities, but that you will provide similar services to public health, advocacy, and non-profit entities free or below costs. In Letter 2, you state that

at \_\_\_\_\_ % of

*Facilitate Meaningful Use of Health Information Technology*

You will encourage adoption of EHRs by clinicians, and will facilitate dissemination and meaningful use of this technology. You will provide clinicians with a subsidized EHR and PM system, and have partnered with N's PCIP project to provide EHRs to individual and small groups of clinicians. The program will be subsidized by M and various grants. You say that

In Letter 2, you state that you will not provide a network for the transmission of EHRs, but will facilitate such transmission through existing HIPAA compliant, secure networks. In Letter 3, you state that you will not provide transmission of electronic health records, but that

In Letter 4, you state that

*Management and Consulting Services*

In Letter 1, you state that you will provide management and consulting services to public health care entities, healthcare payors, providers, patient care advocacy groups and insurance plans. These services will be provided free or substantially below cost to public health entities, and patient care advocacy groups and at cost or below to other healthcare entities.

In Letter 1, you state that, for a service entitled " " you will " " For a service entitled "Medical Billing Consultation," you will charge a fee of " " of revenue." These fees will be charged to government and for-profit entities; you will provide similar services to public health, advocacy, and non-profit entities for free or below costs. In Letter 2, you state that " " and that

In Letter 3, you state that the fee charged to a " " for " " could be "from " to " of cost. To a deserving non profit or an incubating for profit entity, there will be a sliding scale fee ranging from no charge to " " of [y]our organizational cost."

In Letter 2, you state that you expect that consulting and other fee-based programs will require twenty percent of your time, provide " " or your income, and account for 20 percent of

your expenses. In Letter 4, you state that

### Law

Section 501(a) of the Code exempt from Federal income taxation organizations described in section 501(c).

Section 501(c)(3) of the Code describes organizations organized and operated exclusively for charitable, religious, educational, or other specified exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Rev. Rul. 72-369, 1972-2 C.B. 245, concerns an organization formed to provide managerial and consulting services to unrelated 501(c)(3) organizations. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The ruling states that 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 the services in this case are provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Accordingly, the ruling holds that the organization's activities are not charitable and, consequently, the organization does not qualify for exemption under section 501(c)(3).

Section 4.03 of Rev. Proc. 2011-9, 2011-2 I.R.B. 283, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

For an organization claiming the benefits of section 501(c)(3), "tax exemptions are matters of

legislative grace and taxpayers have the burden of establishing their entitlement to exemptions.” Christian Echoes Nat’l Ministry, Inc. v. United States, 470 F.2d 849, 854 (10<sup>th</sup> Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax exempt status under section 501(c)(3) has the burden of showing it “comes squarely within the terms of the law conferring the benefit sought.” Nelson v. Comm’r, 30 T.C. 1151, 1154 (1958).

The Tax Court has stated that an application for tax-exempt status “calls for open and candid disclosure of all facts bearing upon [an Applicant’s] organization, operations, and finances to assure [that there is not] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [Applicant] fails to meet the requirements of section 501(c)(3).” Bubbling Well Church of Universal Love, Inc. v. Comm’r, 74 T.C. 531 (1980). See also, Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 498, 412 F.2d 1197, 1201 (1969), cert. denied, 397 U.S. 1009 (1970). Furthermore, the courts have repeatedly upheld the Service’s determination that an organization has failed to establish exemption where the organization fails to provide requested information. “[Applicant] has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities....Such generalizations do not satisfy us that [applicant] qualifies for the exemption.” Peoples Prize v. Comm’r, T.C. Memo 2004-12 (2004).

### Analysis

You have asked us to recognize you as an organization described in section 501(c)(3) of the Code. But before we can conclude that you are organized and operated exclusively for one or more exempt purposes described in section 501(c)(3), we must have a clear and unambiguous understanding of your activities. Under the standard described in section 4.03 of Rev. Proc. 2011-9, we will recognize your exempt status only if you operations are described in sufficient detail to permit a conclusion that you will meet the requirements of section 501(c)(3). You have not described your activities clearly or unambiguously and, consequently, we are unable to conclude that you meet the requirements of section 501(c)(3).

You describe your activities under the rubric of a \_\_\_\_\_ The first part of your mission is \_\_\_\_\_ The only explanation of this activity is that you

\_\_\_\_\_ You give us no explanation of the \_\_\_\_\_ no description of the advice you offer, and no understanding of how or why “consumers, plans, and purchasers” would “pay for a medical home for patients.” This falls far short of the “open and candid disclosure of all facts” called for by the Tax Court in Bubbling Well Church of Universal Love, Inc. v. Comm’r, above.

Similarly you have not described the second part of your mission – \_\_\_\_\_ – in a way that shows those activities to be in furtherance of an exempt purpose. For all we can tell, you are merely repackaging various best-practice guidelines developed by, and readily available from, other sources, e.g., government agencies and specialty societies.

As for the third part of your mission – \_\_\_\_\_ you say only that B is working as a consultant to the CMS to



develop and review “novel payment mechanisms.” You have not described the terms of the consultation arrangement, nor have you explained why B’s private consultant activities should be attributed to you.

With the fourth part of your mission –

– things become truly confusing. First, you say that the primary function of a is to collect data from database mining of claims, EHRs, chart reviews and questionnaires. But you do not explain what a is, or give any information that would allow us to conclude that such a “primary function” furthers exempt purposes under section 501(c)(3). Nor have you submitted any evidence that you have been designated a Further, you have left us to wonder whether you will pursue these functions regardless of whether you are recognized as a

But even if you decide to pursue this function, you have not provided any information about the purpose, content, or use of the report cards that will be generated from your data collection that would enable us to determine whether such report cards serve primarily an exempt educational purpose or the private business purposes of the subjects of the report cards. Our doubts are intensified by the confusing, but obviously commercial nature of the fees you will charge in connection with this activity. For while your application implies that the report cards will be freely “available to consumers, plans, and purchasers of healthcare directly on [y]our web site,” in Letter 1 you say that you will charge “government and for-profit entities” \$ for “consulting” and \$ /hour for “clerical” with respect to an activity described cryptically as “collection/preparation and presentation of health provider data for ‘report cards’,” with lesser fees charged to “public health, advocacy, and non-profit entities.” Then, in Letter 4, you state that but that

and that “a

We are not told the

purpose or nature of the “consulting,” the “clerical,” or the fees, or why certain entities are charged for “preparation” and “presentation” of report cards on clinicians and facilities, nor is it our responsibility to deduce answers from unintelligible statements. Nevertheless, it appears to us that, rather than providing a service for the primary purpose of educating the general public – an exempt purpose under section 501(c)(3) of the Code – you are providing a commercial service that promotes the private business interests of specific fee-paying entities.

Under the fifth part of your mission – to

... – you propose, among other things, to that and

We are at a loss to decipher

the meaning of the phrase

Further, we think that “providing education and appropriate flow sheets” is a wholly inadequate explanation of your

Finally, your description of the sixth part of your mission – to

– suffers from the same

lacunae, vagueness, and inconsistencies that plague all your descriptions. Your application states merely that you ... by Clinicians

and will facilitate dissemination and meaningful use of this technology,” but you provide no other information about this activity. You say that

though you give no explanation of what “provide” or “system” entails. In Letter 2, you tell us that you will “facilitate ... transmission [of Electronic Health Records] through existing HIPAA compliant, secure networks” without explaining what “facilitate” entails. In Letter 3, we learn that “facilitate” means “enrolling affiliated health providers into existing Community Health Information Networks,” though we are not told what makes a health provider “affiliated,” why the health provider needs your facilitation to enroll, or why such facilitation furthers exempt purposes.

Your description of this part of your mission includes an ambiguous statement that

ambiguous because we wonder whether “optional” is meant to qualify “user fees” or “services.” Since you provided no information in the application about these “billings and other services in your application, we asked, in our letter of Date 2, whether you would provide management and or consulting services, and, if so, we asked you to explain. In Letter 1, you replied that you offered no explanation of those services. Then you provided inconsistent fee information about these services. In Letter 1, you said that

But in Letter 3, you said that “consulting and other services” would be provided at of ... cost to a proven solvent entity” and “from no charge to % of our organizational cost” to a deserving non-profit or an incubating for-profit entity.” We are left to wonder what criteria are used to determine whether an entity is “proven solvent,” “deserving”, or “incubating.” In Letter 4, you state that will be of total activities.” Insofar as management and consulting services are not activities that necessarily further an exempt purpose (see Rev. Rul. 72-369, above), your failure to disclose any facts about these services, or to provide a sound explanation of your fee arrangements, leads us to infer (following the reasoning of the Tax Court in Bubbling Well Church of Universal Love, Inc. v. Comm’r, above) that the facts, if disclosed, would show that these activities are not in furtherance of an exempt purpose. In that event, you fail the operational test under section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial amount of your activities is not in furtherance of exempt purposes. Consequently, you are not be entitled to exemption under section 501(c)(3).

While summary, uninformative statements about your mission might be food for conjecture about your activities, it is not for us to infer what your specific activities might be. See Peoples Prize v. Comm’r, above. Rather, it is your burden to provide us with a description of your activities sufficient to show that you unequivocally meet the requirements of section 501(c)(3) of the Code. See Christian Echoes Nat’l Ministry, Inc. v. United States; Nelson v. Comm’r, above. This burden you have not met despite our five attempts (Form 1023 and four follow-up letters) to procure the information.

### Conclusion

Therefore, it is our conclusion that you have not established that you are operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code.

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.

Your protest statement should be accompanied by the following declaration:

*Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

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](http://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  
TE/GE (SE:T:EO:RA:T:1)

1111 Constitution Ave, N.W.  
Washington, DC 20224

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