



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201409012**
Release Date: 2/28/2014
Date: December 5, 2013
UIL Code: 501.33-00

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,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: October 30, 2013

UIL Code: 501.33-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

Year 1 =

Year 2 =

School =

\$x1 =

x1 =

x2 =

City =

State =

Group1 =

Group2 =

Management Company =

\$x2 =

\$x3 =

Dear :

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

Facts

You were incorporated in Year 1 as a nonprofit corporation under state law. You amended and restated your Articles of Incorporation in Year 2 to state that you are formed "...for charitable purposes to assure the availability and quality of medical care for senior members of the community and the making of distributions to organizations that qualify as exempt organizations under Sections 501(c)(3) and 170(c)(2) of the...Code...." Your Bylaws also state that you intend to enter into contracts on behalf of your members with health care providers to assure the quality and availability of services to your membership.

Your Articles state that you will have members, a group defined in your bylaws as consisting "...solely of persons who are age forty years or older."

You currently have five board members, three of whom are a father and his two sons.

You state you were initially formed to operate free medical clinics in donated office space and health care providers, where you "sought to determine the basic structure and costs of the non-profit association or cooperative." The clinics were operated in donated space with donated supplies. Doctors and nurse practitioners donated their time and the School sent student nurses to assist with patients. You state that this activity generates no income or expenses. You further state that you still conduct this activity in two clinics, which comprises approximately 30% of your resources, "even though almost all of the medical care by physicians and nurses is donated." You state that because of this activity:

We realized that people who were below the poverty line could still afford primary health care so we asked other physicians to see patients in the cooperative on a monthly payment plan and so far 99 offices have agreed. That expansion and cooperation made it possible [sic] attach more people to the coop model.

Beginning in Year 2, you began signing up members for a "cooperative health care system," which you describe as:

Through the concept of cooperative purchasing, the members function as a group to obtain access to health care at affordable prices. Primary or basic medical care services are provided to members with no copayments or with a [\$x1] office visit copayment and no health qualifications. Currently, members may select from [x1] primary care physicians in the greater City area. Each member signs a monthly payment plan agreement with a primary care provider through which the availability of the physician and his or her services are paid in full.

You state that you select your cooperative physician providers through a contract with Group1, a physician and credentialing company that lists your cooperative health care system as a program choice for Group1 members. Your contract with Group 1 describes you as a "state licensed health maintenance organization." Your obligations under the contract are performing or arranging for claims processing, marketing, quality improvement, utilization review and other functions appropriate for administering benefit plans. The contract also provides that Group 1's physicians will provide medical services to your members at Medicare rates.

In your agreement for primary care physician services between your members and participating physicians, you state that the purposes of the agreement are as follows:

*WHEREAS Patient wishes to be billed a preferred rate for the Physician's services;
WHEREAS Physician wishes to have a predictable source of monthly income;
WHEREAS Physician currently pays overhead for the submission of claims for payment and for efforts to collect payments not received at the time of services; WHEREAS
physicians have traditionally accepted fees for parties who pay under preferred terms
such as insurance and managed care companies...*

You charge a one-time household enrollment fee to join your cooperative. Members then pay mandatory monthly membership dues, which allow them access to "discounted fees for medical,

dental, and vision" services. Members may also elect to purchase a monthly "retainer plan for primary care." The primary care retainer fees vary based on the amount of services included ("Primary Care Physician Services" or an additional "Diagnostic Facility Physician Services") and age of each individual member.

In Year 2, you negotiated an agreement with an insurer to provide a group health plan option for your members. The group plan options offer additional coverage beyond what is offered at the clinics within your "cooperative health care system." As part of the agreement, the insurer will pay a performance bonus to physicians "able to manage the patient's health so that the group policy has a surplus..."

Your monthly physician health care access plan does not cover conditions that require hospitalization or surgery. To cover such costs, you also offer four separate insurance options (Group Hospital, Critical Illness, Supplemental Accident, and Catastrophic Health) with rates based on each individual member's age and tobacco use.

You project that virtually all of your revenue will come from membership fees, and your largest expenses will be made for the benefit of your members in the form of "payments to medical providers" and payments for members' health insurance premiums.

Your Bylaws set forth the terms of payment for your membership dues, and provide in pertinent part as follows:

[You] contract with Group 2 and participating member physicians of Group1 which have certain availability and service obligations. Each member head of household is a limited guarantor of those obligations up to \$x2. If the member resigns his or her membership or defaults on payment of his or her dues, then the guarantee amount of \$x2 becomes due and is payable monthly at a rate of \$x3 per month over a period of 12 months.

You state that your membership dues cover your administrative costs, such as data entry, bookkeeping and telephone support for members who need medical care.

Your Bylaws also include the following language regarding payments for the "Agreement for Primary Care Physician Services Payment Plan" and "Diagnostic Facility Physician Services Payment Plan:"

The term of this Agreement is one (1) year and it will automatically renew each year unless either party gives written notice by U.S. certified mail return receipt requested, before the end of the current term. Either party may terminate this Agreement at will with proper written notice at any time. If this Agreement is terminated by Physician, the outstanding balance of the yearly fee for the current term will be waived unless the Physician is terminating for failure of Patient to pay fees or charges owing under this agreement. If this Agreement is terminated by Patient, the outstanding balance of the yearly fee for the current term will continue to be owed.

Your website provides physician-specific information promoting Group1, stating that it has the staff expertise and resources in the following areas:

-
-
-
-
-

Your website also indicates that your group health plan is exclusive for Group1 physicians and should result in about x2 new patients for Group1 providers. The website also states that:

From the information submitted, it appears that substantially all of the physicians that your members contract with are part of Group1. Your Manager and board member is President of the company that manages Group1. He also owns an interest in the company as does his son, who is also one of your board members. The management company handles your payroll, billing, collections and accounting although you stated that you have no agreements with the management company.

You have expanded services beyond your initial City. A medical practice in another State also requested to join your system, and you in turn filed an application with that State's insurance department and were approved for a group health policy issued to you. The policy enables the practice's patients "who were uninsured to have a policy that would pay for their health care when they [have] to go to a specialist or a hospital."

Law

Section 501(c)(3) provides that for an organization to be described in § 501(c)(3) it must be organized and operated exclusively for exempt purposes, including charitable, scientific and educational purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax 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 § 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) states that an organization is not organized or operated exclusively for one or more tax-exempt purposes unless it serves a public rather than a private interest. To meet this requirement, an organization must 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.

Section 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in § 501(c)(3) in its generally accepted legal sense and includes such purposes as relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; and lessening of the burdens of Government. In addition, the promotion of health has long been recognized as a charitable purpose. See *Restatement (Third) of Trusts*, § 28 (2012); 4A Austin W. Scott and William F. Fratcher, *The Law of Trusts* §§ 368, 372 (4th ed. 1989).

Section 1.501(c)(3)-1(e) provides that an organization may meet the requirements of §501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in § 513.

Rev. Rul. 69-545, 1969-2 C.B. 117, holds that a non-profit hospital that benefits a broad cross section of its community by having an open medical staff and a board of trustees broadly representative of the community, operating a full-time emergency room open to all regardless of ability to pay, and otherwise admitting all patients able to pay (either themselves, or through third party payers such as private health insurance or government programs such as Medicare) may qualify as an organization described in § 501(c)(3).

Rev. Rul. 69-175, 1969-1 C.B. 149, states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. By providing bus transportation for school children the organization is enabling the participating parents to fulfill their individual responsibility of transporting their children to school. Thus, the organization serves a private rather than a public interest. Accordingly, it was not exempt from federal income tax under § 501(c)(3).

Rev. Rul. 72-124, 1972-1 C.B. 145, provides that an organization, otherwise qualified for charitable status under § 501(c)(3), which devotes its resources to the operation of a home for the aged will qualify for charitable status for purposes of Federal tax law if it operates in a manner designed to satisfy the three primary needs of aged persons. These are the need for housing, the need for health care, and the need for financial security.

Rev. Rul. 76-244, 1976-1 C.B. 155, provides that an organization that provides home delivery of meals to elderly and handicapped people by volunteers, for a fee insufficient to cover the cost of operations but approximating the cost of the meals provided, or for a reduced fee or no fee depending on the recipient's ability to pay, is operated for charitable purposes and qualifies for exemption under § 501(c)(3).

Rev. Rul. 79-18, 1979-1 C.B. 194, provides that an organization that provides specially designed housing to elderly persons at the lowest feasible cost and maintains in residence those tenants who subsequently become unable to pay its monthly fees is an organization operating for charitable purposes within the meaning of § 501(c)(3).

Rev. Rul. 80-287, 1980-2 C.B. 185, provides that a nonprofit lawyer referral service does not qualify for exemption under § 501(c)(3). The organization aided persons who did not have an attorney by helping them select one, in exchange for a nominal service charge. Any attorney who was a member of a local bar association could apply for placement on the referral list, in exchange for an application fee. Because a substantial purpose of the organization was aiding the legal profession, the organization was not organized or operated exclusively for charitable purposes, even though its lawyer referral service did provide some public benefit.

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 the exemption regardless of the number or importance of truly exempt purposes. The Court found that a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), a non-profit hospital with an independent board of directors executed a contract with a medical partnership composed of seven physicians. The contract gave the physicians control over care of the hospital's patients and the stream of income generated by the patients while also guaranteeing the physicians thousands of dollars in payment for various supervisory activities. The court held that the benefits derived from the contract constituted sufficient private benefit to preclude exemption.

In B.S.W. Group, Incorporated v. Commissioner, 70 T.C. 352 (1978), the Tax Court considered the qualification for exemption under § 501(c)(3) of an organization formed to provide consulting services for a fee to nonprofit and tax exempt organizations in the areas of health and health delivery systems, housing, vocational skills, and cooperative management. In concluding that the organization did not qualify for exemption, the court noted that:

[T]he critical inquiry is whether petitioner's primary purpose for engaging in its sole activity is an exempt purpose, or whether its primary purpose is the nonexempt one of operating a commercial business producing net profits for petitioner. . . . Factors such as the particular manner in which an organization's activities are conducted, the commercial hue of those activities, and the existence and amount of annual or accumulated profits are relevant evidence of a forbidden predominant purpose.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980), the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under § 501(c)(3) on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under § 501(c)(3).

In Columbia Park & Recreation Association v. Commissioner, 88 T.C. 1 (1987), aff'd. without published opinion, 838 F.2nd 465 (4th Cir. 1988), the court held that an association formed in a private real estate development to operate parks, swimming pools, boat docks and other recreational facilities did not qualify as a § 501(c)(3) organization. Although the organization

provided some benefit to the general public, the primary intended beneficiaries were the residents and property owners of the private development. The organization did not solicit or receive voluntary contributions from the public.

Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), involved an organization established by the Seventh Day Adventist Church to carry out its "health ministry" through operation of two vegetarian restaurants and health food stores. The court sustained the IRS's denial of tax exemption under § 501(c)(3) because the organization was operated for a substantial non-exempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (3rd Cir. 1993), the court held that a pre-paid health care organization that arranges for the provision of health care services only for its members, benefits its members, not the community as a whole. Under the community benefit standard, the organization must benefit the community as a whole to be recognized as promoting health in the charitable sense of § 501(c)(3).

IHC Health Plans, Inc. v. Commissioner, 325 F.3d 1188 (10th Cir. 2003), involved an operator of health maintenance organizations that served approximately one-quarter of Utah's residents and approximately one-half of its Medicaid population. The court held that the organization failed to meet the community benefit standard to qualify for exemption under § 501(c)(3) because its sole activity was arranging for health care services for its members, in exchange for a fee. The court said that providing health-care products or services to all in the community is necessary but not sufficient to meet the community benefit standard. Rather, the organization must provide some additional benefit that likely would not be provided in the community but for the tax exemption, and that this public benefit must be the primary purpose for which the organization operates.

Analysis

We have concluded that you are not operated exclusively to promote health under § 501(c)(3), or to further any other tax-exempt purpose within the meaning of § 501(c)(3) and § 1.501(c)(3)-1(d). Rather, you are operated primarily for a non-exempt purpose, *i.e.*, to operate a commercial business and a cooperative enterprise primarily for the benefit of your members. Any public purposes for which you may operate are only incidental to this primary non-exempt purpose. In addition, you are operated primarily to provide substantial private benefit to your members, which is prohibited by § 1.501(c)(3)-1(d)(1)(ii). Therefore, we cannot recognize you as an exempt organization under § 501(c)(3).

Tax-Exempt Purpose

Promotion of Health

The promotion of health has long been recognized as a charitable purpose under common law. However, not every activity that generally promotes health furthers exclusively charitable purposes under § 501(c)(3). For example, selling prescription pharmaceuticals promotes

health, but pharmacies cannot qualify for recognition of exemption under § 501(c)(3) on that basis alone. Federation Pharmacy Services, Inc., supra. Nor does a hospital primarily further a charitable purpose solely by offering health care services to the public in exchange for a fee. See Rev. Rul. 69-545, supra. Rather, a hospital must be organized and operated primarily for the benefit of the community, as evidenced by such factors as a board that represents the community, operation of an emergency room, provision of charity care, medical training, or medical research. For example, a health maintenance organization that is operated primarily for the purpose of benefiting its paying subscribers does not qualify for exemption solely because the community also derives health benefits from its activities. See Geisinger Health Plan, supra; and IHC Health Plans, Inc., supra.

Although you state approximately 30% of your resources are dedicated to operate free medical clinics in donated office space and health care providers, the balance of your activities consist of arranging health care provider and insurance group purchasing options for your members. Such activities do not provide healthcare services directly to patients, unlike the hospital in Rev. Rul. 69-545. In essence, you are merely providing purchasing options to your members so that they can reduce their health-care related costs.

Furthermore, your primary activities directly and substantially benefit your members. To the extent the community may realize benefits from this activity, in the form of reduced healthcare costs, this would be similar to the benefits a community derives when healthcare providers use more effective and efficient medical supplies, equipment, and current health information to diagnose illnesses and diseases and treat their patients. The provision of such tools to healthcare providers generally does not serve exclusively tax-exempt purposes. As the court noted in IHC Health Plans, Inc., supra at 1197:

In giving form to the community-benefit standard, we stress that 'not every activity that promotes health supports tax exemption under § 501(c)(3). For example, selling prescription pharmaceuticals certainly promotes health, but pharmacies cannot qualify for . . . exemption under § 501(c)(3) on that basis alone.' Rev. Rul. 98-15. In other words, engaging in an activity that promotes health, *standing alone*, offers an insufficient indicium of an organization's purpose. Numerous for-profit enterprises offer products or services that promote health.

Therefore, although some of your activities may promote health in a general sense, your primary activities do not promote health in a charitable manner within the meaning of § 501(c)(3) and § 1.501(c)(3)-1(d)(2).

Relief of the Poor and Distressed

Section 1.501(c)(3)-1(d)(2) states that the term "charitable" includes relief to the poor and distressed. Providing for the special needs of the elderly has long been recognized as a charitable activity for federal tax purposes. See Rev. Rul. 72-124, supra. The elderly, as a class, are highly susceptible to distress other than financial, in that they have special needs because of their advanced years. The three primary needs of aged persons are the need for housing, the need for health care, and the need for financial security. See id.

Your amended governing documents state that you are formed "...to assure the availability and quality of medical care for senior members of the community..." and that your members are defined in your bylaws as consisting "...solely of persons who are age forty years or older." While different federal statutes define elderly at different ages, none set the threshold as low as 40. Your members are not limited to elderly persons. In addition, you have not shown that you screen or limit your members to those 40 or older, and in fact advertise to doctors your ability to provide "non-geriatric" patients.

While you do facilitate some free health care through your free clinics, you have not provided information regarding whether such services are provided to a charitable class. Actually, you indicate that such activity was conducted to "determine the basic structure and costs of the non-profit association or cooperative," so that you could develop your current fee-based cooperative health care structure. Additionally, if any member cancels his or her membership or defaults on dues, the member is nevertheless liable for the entire annual dues amount of \$x2.

You do not have a financial assistance policy to assist persons who cannot afford your membership dues. In fact, you state that through your free clinics, you realized that "people who were below the poverty line could still afford primary health care," hence your current cooperative structure.

You have not provided any information indicating that you screen your members for financial need to offer medical services for free or reduced rates. Thus, you are not providing for the needs of the elderly and are not relieving the poor and distressed within the meaning of § 1.501(c)(3)-1(d)(2).

Substantial Non-Exempt Purpose

An organization is 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 § 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. See § 1.501(c)(3)-1(c)(1).

Providing services of an ordinary commercial nature, regardless of whether the undertaking is conducted on a nonprofit basis and is beneficial to the community, does not further a charitable purpose, unless the service directly accomplishes a tax-exempt purpose. See § 1.501(c)(3)-1(e)(1), Rev. Rul. 80-287, supra. The sale of health-related goods and services (*e.g.*, laboratory services, pharmaceuticals, HMO services, consulting services) does not exclusively further charitable purposes because such activities serve a substantial non-exempt, commercial purpose. See, e.g., Federation Pharmacy Services, supra (sale of pharmaceuticals to senior citizens was presumptively commercial, because such activity was normally pursued by commercial enterprises); Geisinger Health Plan, supra.

As stated above, you do not serve the elderly, nor do you screen your members for financial need to serve the poor.

Thus, your activities are neither inherently charitable, nor in furtherance of a charitable purpose, but resemble activities carried on by for-profit businesses, a factor that supports the commercial nature of your activities. See, e.g., Living Faith, Inc., supra (organization's health food stores

and restaurants were in competition with for-profit organizations); and IHC Health Plans, supra (health plans resembled and competed with commercial insurance providers).

Your relationship with members is conducted as an ordinary business. You advertise to the community as a whole, charge market-rate enrollment and monthly fees in addition to the payments to doctors, and require an entire year's payments even if a person terminates membership. Your relationship with the doctors and insurance companies is also on a commercial basis. You executed an agreement with Group 1, as a "state licensed health maintenance organization" to acquire the services of Group 1's physicians in the provider network to treat your members. Your obligations under the agreement are to "perform or arrange for the provision of claims processing, marketing, Quality Improvement, Utilization Review and other functions as are necessary or appropriate for administration of [your] Benefit Agreements." You have not established any distinction between your operations and those of a commercial health plan operator.

Any charitable or educational benefits the public may derive from your services are merely incidental to your principal purpose of benefiting your members. Thus, your activities do not primarily further an exempt purpose. Therefore, you are not "operated exclusively" for one more exempt purpose under § 501(c)(3). See § 1.501(c)(3)-1(c)(1) (an organization will not be regarded as "operated exclusively" for one or more exempt purposes under § 501(c)(3) if more than an insubstantial part of its activities is not in furtherance of an exempt purpose). Better Business Bureau of Washington D.C., Inc., supra.

Substantial Private Benefit

An exempt organization must be organized and operated exclusively for exempt purposes pursuant to § 1.501(c)(3)-1(a). An entity that is organized or operated to serve private rather than public interests cannot be recognized as operating exclusively for exempt purposes. See § 1.501(c)(3)-1(d)(1)(ii)

Your activities confer impermissible private benefit to at least three parties: your members, the members of Group1, and your officer. Like the organization in Rev. Rul. 69-175, you serve the private interests of your members by providing access to a fee-based health care cooperative.

In addition, your activities provide substantial private benefit to the members of Group1 through attracting a new population of patients (the uninsured) and providing a guaranteed stream of income to its members. Also, your website touts that your contracts with insurers consistently result in bonuses for participating physicians, and provide a younger (non-geriatric) patient population with "exclusivity and bonus agreements."

Your officer and director is also the President, and part owner, of a medical Management Company. It manages the Group1, and appears to provide the administrative services to you and through you for the administration of the benefits provided to your members. By attracting significant additional patients for the doctors in Group1, and thus increasing business for Management Company, you provide a private financial benefit to your officer and director.

Therefore, because you are operated primarily to serve private interests contrary to the prohibition in § 1.501(c)(3)-1(d)(1)(ii), you are not operated exclusively for exempt purposes under § 501(c)(3).

Conclusion

You are not operated exclusively for one or more exempt purposes within the meaning of § 501(c)(3) and § 1.501(c)(3)-1(d). Rather, you are operated primarily for a non-exempt purpose, *i.e.*, to operate a commercial business and a cooperative enterprise primarily for the benefit of private interests. Any public purposes for which you may operate are only incidental to this primary non-exempt purpose. In addition, you are operated primarily to provide substantial private benefit of private interests, which is prohibited by § 1.501(c)(3)-1(d)(1)(ii). Therefore, you do not qualify for recognition of exemption under § 501(a) as an organization described in § 501(c)(3).

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, 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 § 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

1111 Constitution Ave., NW
Washington, DC 20224-0002

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,

Karen Schiller
Acting Director, Rulings and Agreements