

Internal Revenue Service
Appeals Office
4330 Watt Avenue SA 7890
Sacramento, CA 95821-7012

Department of the Treasury

Employer Identification Number:

Date: JAN 16 2020

Person to Contact:

Number: 202015035
Release Date: 4/10/2020

Employee ID Number:
Tel:
Fax:

UIL: 501.03-00

Certified Mail

Dear Sir:

This is a final adverse determination that you do not qualify for exemption from federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in Section 501(c)(3) of the Code.

We made the adverse determination for the following reason(s):

Organizations described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) must be both organized and operated exclusively for exempt purposes. Your specific purpose to provide healthcare insurance and healthcare for a fee indicates that a substantial part of your activities involves providing commercial-type insurance and services to subscribers. Providing health insurance and healthcare for a fee to your members does not exclusively benefit the community and further charitable purposes. Your organization is not organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Code.

You're required to file Federal income tax returns on Forms 1120, U.S. Corporation Income Tax Return. Mail your form to the appropriate Internal Revenue Service Center per the form's instructions. You can get forms and instructions by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676).

We'll make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in either:

- United States Tax Court,
- The United States Court of Federal Claims,
- The United States District Court for the District of Columbia.

You must file a petition or complaint in one of these three courts within 90 days from the date we mailed this determination letter to you. Contact the clerk of the appropriate court for rules and the appropriate forms for filing petitions for declaratory judgment. You can write to the courts at the following addresses:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

US Court of Federal Claims
717 Madison Place, NW
Washington, DC 20005

U. S. District Court for the District of Columbia
333 Constitution Ave., N.W.
Washington, DC 20001

Note: We will not delay processing income tax returns and assessing any taxes due even if you file petition for declaratory judgment under section 7428 of the Code.

Please refer to the enclosed Publication 892, How to Appeals an IRS Determination on Tax -Exempt Status, for more information about the Appeals process.

You also have the right to contact the Taxpayer Advocate Service (TAS). TAS is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or you've tried but haven't been able to resolve your problem with the IRS. Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You If you qualify for TAS assistance, which is always free. TAX will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

TAS assistance is not a substitute for established IRS procedures, such as the formal appeals process. TAS cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court.

If you have any questions, contact the person at the top of this letter.

Sincerely,

Appeals Team Manager

Enclosure: Publication 892



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: MAY 22 2019

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Date

C = State

d dollars = Amount

UIL:

501.00-00

501.03-00

501.36-01

Dear Applicant:

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

Do you qualify for exemption under Section 501(c)(3) of the Code? No, for the reasons stated below.

Facts

You were formed on B in the State of C. Your Articles of Incorporation state that you are organized exclusively for charitable purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code. Your specific purpose is "to create insurance company that provides HealthCare, with plans to ultimately open a facility for affordable healthcare to all."

You plan to provide healthcare insurance and healthcare. You provided the following overview of your activities:

1. Create the legal non-profit parent corporation (you). As such, create all necessary policies and procedures.
2. Understand the requirements for state certification and licensure to become a healthcare insurance provider.
3. Once you have achieved legal status, begin fundraising for marketing (website, social media, conferences, seminars, etc.). You will also implement the infrastructure for your support.
4. Create the insurance company and start providing healthcare insurance.
5. Once insurance is being provided, create and implement a plan to develop, own and operate various healthcare facilities.

You provided a breakdown of your activities as follows:

Activities	Year 1	Year 2	Year 3	Year 4	Year 5
Marketing and Soliciting Donations	40 %	20 %	10 %	10 %	5 %
Strategic Relationships	15 %	10 %	10 %	10 %	5 %
Creation of Insurance Program	45 %				
Operation of Insurance Program		50 %	50 %	50 %	30 %
Planning for Potential Facilities		20 %			
Development of Facilities			30 %	30 %	
Operation of Facilities					60 %
Total	100 %	100 %	100 %	100 %	100 %

You will provide full and complete healthcare insurance coverage for anyone and everyone in the State of C based on the terms of the contract. The insured pays a monthly premium of d dollars per month and their healthcare costs are covered. There are no deductibles and no payments after payment of the premium..

As you grow, you will create healthcare facilities to provide healthcare services partially funded via various insurance reimbursable fees. You plan to set aside 75 percent of excess funds to develop your own healthcare facilities based on the needs of the communities. You expect that your healthcare facility will offer medical, mental, dental, and vision services. Your facilities will be open to the public and you will offer emergency services regardless of ability to pay. The rates for your medical services will be cost plus 15 percent. You will accept Medicaid and Medicare payments along with other forms of insurance.

Initially, your officers will conduct your activities. Once you are operational, your CEO will dedicate 100 percent of his time to your management and oversight. As you grow, you anticipate having compensated employees. Your activities will be advertised via web-based solicitations and marketing. You are currently advertising your services word of mouth.

You will be supported by donations and sales. You will solicit donations via online web-based and various fundraising activities. Approximately 94 percent of your total projected income is sales income from insurance premiums. Likewise, 94 percent of your expenses are for the medical payments for those participating in your healthcare program. Other expenditures include fundraising, rent, professional fees, and miscellaneous expenses.

Law

Section 501(c)(3) of the Code describes corporations organized and operated exclusively for charitable purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(m)(1) of the Code provides that an organization described in Section 501(c)(3) or (4) shall be exempt from tax under Section 501(a) only if no substantial part of its activities consists of providing commercial-type insurance.

Section 501(m)(3)(A) of the Code provides that for purposes of this subsection, the term “commercial-type insurance” shall not include insurance provided at substantially below cost to a class of charitable recipients.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that 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.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as “operated exclusively” for one or more exempt purposes only if it engages primarily in activities that 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. 80-287, 1980-2 C.B. 185, provides that a nonprofit lawyer referral service does not qualify for exemption under Section 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. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single nonexempt purpose, if substantial in nature, will destroy the 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 organization sold consulting services to various tax-exempt and non-profit organizations. The court concluded that those activities are not inherently charitable because they are of the type typically conducted by for-profit organizations. While the court noted that organizations providing services to Section 501(c)(3) organizations which they would otherwise have to provide for themselves may qualify for exemption, the applicant was distinguished from those because the organization did not limit its clientele to organizations exempt under Section 501(c)(3) of the Code.

In Federation Pharmacy Services, Inc. v. Commissioner, 625 F.2d 804 (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 on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under Section 501(c)(3) of the Code.

In Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (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 Section 501(c)(3).

In Florida Hospital Trust Fund v. Commissioner, 103 T.C. 140 (1994), the Court stated that whether an organization seeking exempt status happens to be competing with a commercial insurer at any point in time simply begs the question whether granting exempt status will tend to provide the organization with an unfair competitive advantage over commercial insurers. Focusing on Congress' obvious desire to provide a level playing field for commercial insurers, the Court held that Section 501(m) applies to deny petitioners exempt status. In employing the term “commercial-type” insurance, we understand that Congress intended for Section 501(m) to apply to those organizations providing any “type of insurance that can be purchased in the

commercial market.” Accordingly, the Court found that the petitioners were providing commercial-type insurance within the meaning of Section 501(m) and precluded from exemption under Section 501(c)(3).

In Nonprofits' Insurance Alliance of California v. United States, 32 Fed. Cl. 277 (1994), the Court considered whether a group self-insurance risk pool with membership consisting of 487 unrelated nonprofit corporations qualified as a tax-exempt organization. The organization was formed to provide reasonably priced liability coverage to its members at stable prices not available from commercial insurers. Noting that the sale of insurance is an inherently commercial activity ordinarily carried on by commercial for-profit companies, the Court found the plaintiff's activities to be commercial in nature because plaintiff was engaged in the actual underwriting of insurance policies and contracts with other firms to secure reinsurance for claims in excess of a certain amount. The court found that plaintiff's activities possessed many of the attributes of a mutual insurance company, such as accumulated profits that inure to the benefit of members. Further, noting that competition with commercial firms is strong evidence of the predominance of a nonexempt commercial purpose, the court said that, by providing insurance coverage and charging premiums, the plaintiff placed itself in competition with other commercial insurance firms. Accordingly, the court held that the plaintiff had failed the operational test under Section 501(c)(3) because of the existence of a substantial nonexempt, commercial purpose. The court then said that, even assuming that plaintiff qualified as an organization described in Section 501(c)(3) of the Code, plaintiff, serving as a group self-insurance risk pool, must demonstrate that Section 501(m)(1) of the Code does not preclude its exempt status.

In Airlie Foundation v. IRS, 283 F. Supp. 2d 58 (2003), the court held that the organization did not meet the requirements as described in Section 501(c)(3) of the Code because its operation of a conference facility was a commercial activity. Thirty to forty percent of the organization's revenue came from clients that were of a private or corporate nature. The Court concluded that the income from clients of a private or corporate nature was a substantial amount.

The case IHC Health Plans, Inc. v. Comm'r, 325 F.3d 1188 (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 Section 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.

Application of law

You are not exempt under Section 501(c)(3) of the Code because you are not operated exclusively for charitable purposes. Your stated purpose is to provide healthcare insurance and healthcare for a fee. You fail the operational test required by Treas. Reg. 1.501(c)(3)-1(a)(1) and described in Treas. Reg. 1.501(c)(3)-1(c)(1) because a substantial part of your activities includes providing commercial-type insurance, as discussed below.

Because you are offering insurance, we must consider whether your insurance offering violates the provision of Section 501(m) of the Code. Section 501(m)(1) requires us to make two findings to determine if you are precluded from exempt status under Section 501(c)(3). First, we must find that you provide “commercial-type insurance.” Second, we must find that your activity of providing commercial-type insurance is a substantial part of your total activities. The finding that you provide commercial-type insurance is not difficult. Your Articles of

Incorporation and the description of your activities both indicate that your purpose is to provide healthcare insurance. Your services are offered to anyone in the State of C willing to pay your stated fee of d dollars per month in exchange for your absorption of their healthcare expenses. You do not meet any of the exceptions to commercial-type insurance described in Section 501(m)(3), including Section 501(m)(3)(A), because you do not provide insurance substantially below cost or limit the insured to a “class of charitable recipients.” Thus, we must conclude that you provide commercial-type insurance described in Section 501(m).

Next, we consider whether your provision of commercial-type insurance is substantial. You will devote 100 percent of your efforts towards establishing and marketing your insurance program in your first year of operations. In your second through fourth years of operation, you anticipate 50 percent of your total activities will consist of operating your insurance program. Even once your healthcare facility is established in your fifth year, you plan to spend 30 percent of your total activities on your insurance program. Based on the ruling in Airlie Foundation, these amounts are substantial. Moreover, 94 percent of your revenue comes from insurance sales and 94 percent of your expenses are for payments for the healthcare expenses of your insured. Therefore, your provision of commercial-type insurance is substantial and precludes you from exemption under Section 501(c)(3) of the Code.

Providing health insurance for a fee to your members does not promote health or benefit the community in a charitable manner. Selling a financial product, such as insurance, is an activity normally conducted by a for-profit entity, as described in B.S.W. Group, Inc. 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, as explained in Rev. Rul. 80-287. The sale of healthcare insurance does not exclusively further charitable purposes because such activities serve a substantial non-exempt purpose.

Although you have some planned future activities, such as operating a healthcare clinic, which may further exempt purposes, you have a substantial non-exempt purpose of providing healthcare insurance to your members for a fee. As explained in Better Business Bureau of Washington, D.C., because you have a substantial non-exempt purpose, you fail to qualify for exemption regardless of the number or importance of truly exempt purposes.

You are similar to the organization described in Nonprofits' Insurance Alliance of California because you provide insurance coverage for your members, which is an inherently commercial activity ordinarily carried on by for-profit insurance companies. In Florida Hospital Trust Fund, the Court said that in employing the term ‘commercial-type’ insurance, we understand that Congress intended for Section 501(m) to apply to those corporations providing any type of insurance that can be purchased in the commercial market. As you provide any interested person in the state of C the opportunity to purchase healthcare insurance for a stated monthly fee, you are providing a type of insurance that can be purchased in the commercial market. This activity is one that is ordinarily carried on for a profit and not one that is exempt under Section 501(c)(3) of the Code.

Providing healthcare-related activities for the public is not, in and of itself, a basis for exemption. 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 Section 501(c)(3) of the Code. For example, selling prescription pharmaceuticals promotes health, but pharmacies cannot qualify for recognition of exemption under Section 501(c)(3) on that basis alone, as explained in Federation Pharmacy Services, Inc.

You are like the organization described in IHC Health Plans, Inc. because you are operated primarily for the purpose of benefiting your paying subscribers. In this case, the Court found that the organization did not qualify for exemption under Section 501(c)(3) of the Code solely because the community also derives health benefits from its activities. Your activities benefit your members, like the organization described in Geisinger Health Plan and not the community as a whole. This precludes you from exemption under Section 501(c)(3).

Conclusion

You are operated for the substantial non-exempt purpose of providing commercial-type healthcare insurance as described in Section 501(m)(3) which benefits your members. Therefore, you do not qualify for exemption under Section 501(c)(3) of the Code.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis

for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements