



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

PO Box 2508
Cincinnati, OH 45201

Number: **202046010**
Release Date: 11/13/2020

Date:
August 18, 2020
Employer ID number:

Form you must file:

Tax years:

Person to contact:
Name:
ID number:
Telephone:

UIL: 501.00-00, 501.03-05, 501.33-00, 501.35-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. 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 the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4034

Redacted Letter 4038



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

Date:
June 16, 2020
Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

B = Individual
C = Date
D = Date
E = Corporation
F = State
g dollars = Amount
H = Number

UIL:

501.00-00
501.03-05
501.33-00
501.35-00

Dear _____ :

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 IRC Section 501(c)(3)? No, for the reasons stated below.

Facts

You submitted Form 1023-EZ, Streamline Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

You attest that you were incorporated on C in the state of F. You attest that you are organized and operated exclusively to further charitable purposes. You attest that you have not conducted and will not conduct prohibited activities under IRC Section 501(c)(3). Specifically, you attest you will:

- Refrain from supporting or opposing candidates in political campaigns in any way
- Ensure that your net earnings do not inure in whole or in part to the benefit of private shareholders or individuals
- Not further non-exempt purposes (such as purposes that benefit private interests) more than insubstantially

- Not be organized or operated for the primary purpose of conducting a trade or business that is not related to your exempt purpose(s)
- Not devote more than an insubstantial part of your activities attempting to influence legislation or, if you made a Section 501(h) election, not normally make expenditures in excess of expenditure limitations outlined in Section 501(h)
- Not provide commercial-type insurance as a substantial part of your activities

Your mission or most significant activities on Form 1023-EZ states that you provide

During review of your Form 1023-EZ, detailed information regarding your activities was requested supplemental to the above attestations. Your original Articles of Incorporation state that you were formed as an entity named E to provide loans, educational training, technical assistance, and essential business services to small, minority, and underserved entrepreneurial businesses throughout a specific region. Although, you explained that you are a “successor” to E, you are the same legal entity. You amended your Articles of Incorporation on D to change your name and purpose. Your Amended Articles of Incorporation modifies your purpose to

You provide education to your members and the public about health share ministries and their value as a reasonable alternative to traditional health insurance. You have subscribers who pay into a pool that is actively managed for the benefit of all subscribers. Those subscribers, in turn, will be reimbursed by you for covered medical expenses that they may incur for themselves and their family.

Anyone who subscribes to your list of _____ and abides by these principles can become a member. Your only membership requirements are that the prospective member sign a statement of faith, pay a monthly fee, and pay an annual subscription fee of g dollars. The subscribers pay a monthly fee for the right to be a part of the subscriber pool and have their medical expenses eligible for reimbursement. The monthly fee is based upon the age of the principal subscriber, the number of dependents that are a part of the principal subscriber’s immediate family, the level of coverage selected, and the desired level of expense sharing.

Prospective members who are age H and older are eligible for coverage according to your alternative sharing schedule. In all cases, the participation for members H years of age and older is in excess of amounts collectible under Medicare and other elder care health insurance alternatives. No other fees other than the annual subscription fee and monthly participation fee will be charged.

Your activities will be conducted on a continual basis during normal business hours throughout the calendar year. You are not affiliated with any church or association of churches. Currently there are no employees, independent contractors, advisors or any other personnel associated with you except B. B is your sole officer and organizer. As you grow, you will have the flexibility to hire employees who will perform functions such as reviewing subscriber claims and reimbursement, accounting and bookkeeping, and communications with provider organizations such as doctors, hospitals, pharmacies, and other medical establishments.

You cover all medical, doctor, and prescription care expenses that a member and their covered dependents incur during a calendar year. Your members pay a monthly sharing amount that is credited to an account set up

exclusively for each member and subsequently used to pay the eligible medical expenses of other members as they arise.

Law

IRC Section 501(c)(3) provides for the recognition of exemption of organizations that are organized and operated exclusively for religious, charitable or other purposes as specified in the statute. No part of the net earnings may inure to the benefit of any private shareholder or individual.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) states that, in order to be exempt as an organization described in IRC Section 501(c)(3), 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 which accomplish one or more of such exempt purposes specified in IRC Section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) states that an organization is not operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term “charitable” is used in IRC Section 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.

Revenue Ruling 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 IRC Section 501(c)(3).

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

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 IRC Section 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 IRC 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

In order to qualify for exemption under IRC Section 501(c)(3) you must be both organized and operated exclusively for exempt purposes as described in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail the operational test as described in Treas. Reg. Section 1.501(c)(3)-1(c)(1) because you are primarily operated for the private benefit of your members and not exclusively for exempt purposes.

In order to qualify for exemption under IRC Section 501(c)(3) you must serve a public, rather than a private, interest as described in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii). You are similar to the organization described in Rev. Rul. 69-175 because your activities serve to benefit the private interests of your members rather than the public. Therefore, you do not qualify for exemption under Section 501(c)(3).

You serve the substantial private interests of your members by providing them a fee-based health care cooperative. Any charitable or educational benefits the public may derive from your services are merely incidental to your principal purpose of benefiting your members. Like the organization described in Better Business Bureau of Washington D.C., Inc., you have a substantial non-exempt purpose, which precludes you from exemption under IRC Section 501(c)(3).

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 IRC Section 501(c)(3), as explained in Federation Pharmacy Services, Inc. You are similar to the organization described in Geisinger Health Plan because you are operating for the benefit of your subscribers and not the community as a whole. Under the community benefit standard, an organization must benefit the community as a whole to be recognized as promoting health in the charitable sense of IRC Section 501(c)(3). As explained in IHC Health Plans, Inc., you are formed for the benefit of your members, and not the community in general. Therefore, you are not exempt under Section 501(c)(3).

Conclusion

You are not operated exclusively for charitable or educational purposes under IRC Section 501(c)(3). Rather, you are operated for the substantial non-exempt purpose of providing a private benefit to your members. Therefore, you do not qualify for exemption under Section 501(c)(3).

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.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements