



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

Box 2508
Cincinnati, OH 45201

Release Number: **202213009**
Release Date: 4/1/2022
UIL: 501.03-00, 501.36-00

Date:
January 4, 2022
Employer ID number:

Form you must file:

Tax years:

Person to contact:

Name:

ID number:

Telephone:

☒ Check if 501(c)(3) denial

☐ Check if valid POA

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 Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 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,

Director, Exempt Organizations
Rulings and Agreements

Enclosures:
Letter 437



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

Date: October 26, 2021

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

UIL.

B = Date

C = State

D = Name

F = Agreement

G = Name

H = Name

J = Name

K = Name

L = Date

M = Date

p percent = Number

q percent = Number

r percent = Number

s percent = Number

v dollars = Amount

w dollars = Amount

x dollars = Amount

y dollars = Amount

z dollars = Amount

501.03-00

501.36-00

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 formed as a corporation on B in the state of C. Your Articles of Incorporation provide that you are organized exclusively for charitable, religious, educational, and scientific purposes as specified in IRC Section 501(c)(3). It states your specific purpose is to (a) provide a health care sharing ministry program as described in 26 U.S.C. § 5000A(d)(2)(B)(ii) and applicable state laws on behalf of members who have a common set of ethical or religious beliefs and have agreed to share their medical expenses in accordance with their beliefs; and/or (b) establish and maintain a church, based on the Gospel of Jesus Christ, to minister to believers and seekers (following Luke 5:31 et seq), and/or (c) any operation for the benefit of the association that is allowed under the law. Your Articles provide that upon dissolution, remaining assets will be refunded to the sponsoring members.

According to your application, you will form and operate a health care sharing ministry in accordance with federal law and will do business under the trade name D. You spent a year studying and consulting with other health share organizations and feel you can build a better organization, with more innovative products, cutting-edge technology, better personal service, and a completely different go-to-market strategy, all of which will drive value to your members. Your primary activity will consist of members paying a monthly “share” to a “shared resource”, that each member can access to help pay for their own qualified medical expenses when needed. You facilitate this exchange by collecting and combining the monthly shares, providing an accounting for each member, negotiating with healthcare providers, paying the provider the agreed upon amount from the resource, and supporting the member (emotionally and spiritually) through their medical issue.

You state that this sharing of medical expenses is not contractual, and you are not an insurance company; rather, the relationship is covenantal – a promise made to and between members to help each other. Since you are not an insurance company, you are not allowed to use actuaries to determine the amount of a monthly share. Therefore, you have done market research, comparing what other health care sharing ministries depend on.

Neither you nor any other member, individually, is contractually required to pay for anyone else’s medical care. At your core, you are a Christian organization that believes you can faithfully serve as a true ambassador for Christ in reaching not just believers, but also those who are still searching for something to believe in. Your membership is built on a foundation of like ideals agreed upon by members.

Individuals become a member by contacting you and letting you know what program they want and certify that they will accept the F. They then make their first payment and a z dollars initiation fee. There is not an “official” application other than that shown on your website.

The F states that you do not require members to certify their beliefs in order to join but ask them to make a commitment to a healthy lifestyle. Examples of unhealthy lifestyles include but are not limited to: use of tobacco; use of illegal drugs; abuse of alcohol; and abuse of food.

Applicants need to have abstained from the use of tobacco or illegal drugs for at least months prior to application in order to be eligible for membership. Applicants also must attest they have not abused legal drugs, such as prescriptions or over-the-counter medication, or alcohol for months prior to application. Members also attest that they do not abuse food and that they will aspire to healthier eating habits and a healthy lifestyle.

Currently you have three primary sharing programs:

- G: your flagship program that uses virtual Direct Primary Care (a virtual doctor) to keep pricing down

- H: allows members to go to their own doctors
- J: allows someone to use sharing to fill in the gap between their company-provided insurance deductible and what they'd like to have to be responsible for

The average price for a family of four for G is y dollars a month; for H is x dollars a month; and J would be about w dollars (for approximately v dollars worth of sharing possible).

You will outsource your marketing, sales, and customer service function to independent contractors. Your marketing will be done by K, individuals who help others not just by marketing your products but advocating and supporting them through any health issue that they have.

Your products will be available across the United States where allowed by law. Once established, you will be self-sustaining. Your goal is that p percent of all funds will be used in support of members and expect that number to rise to nearly q percent as the business matures.

Your objective is to support members who are in need of help in paying their medical bills, not just financially, but emotionally and spiritually. Operations will take approximately r percent of your time while support of your members will take up s percent.

Law

IRC Section 501(c)(3) provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

IRC Section 5000(A)(d)(2)(B)(ii) provides that the term “health care sharing ministry” means an organization:

- (I) which is described in section 501(c)(3) and is exempt from taxation under section 501(a),
- (II) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed,
- (III) members of which retain membership even after they develop a medical condition,
- (IV) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999, and
- (V) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides 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(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and

- (b) Do not expressly empower the organization engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(iv) provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in IRC Section 501(c)(3).

Treas. Reg. Section 1.501(c)(3)-1(b)(4) holds that that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private purpose. To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Treas. Reg. Section 1.5000A-3(b)(2) Health care sharing ministry. For purposes of this section, health care sharing ministry means an organization—

- (i) That is described in section 501(c)(3) and is exempt from tax under section 501(a);
- (ii) Members of which share a common set of ethical or religious beliefs and share medical expenses among themselves in accordance with those beliefs and without regard to the state in which a member resides or is employed;
- (iii) Members of which retain membership even after they develop a medical condition;
- (iv) That (or a predecessor of which) has been in existence at all times since December 31, 1999;
- (v) Members of which have shared medical expenses continuously and without interruption since at least December 31, 1999; and
- (vi) That conducts an annual audit performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and makes the annual audit report available to the public upon request.

Rev. Rul. 69-175 held that a nonprofit organization, formed by parents of pupils attending a private school, that provides school bus transportation for its members' children, serves a private rather than a public interest and does not qualify for exemption under IRC Section 501(c)(3). When a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. The organization enables 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 is not exempt from federal income tax under Section 501(c)(3).

In United States v. Ballard, 322 U.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148 (1944), the Supreme Court held that whether a religious belief is true or false is irrelevant to a judicial determination, as long as the belief is sincerely held.

In Better Business Bureau of Washington D.C. Inc. v. United States, 326 U.S. 279, 66 S. Ct. 112, 90 L. Ed. 67, 1945 C.B. 375 (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 the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

The Court in United States v. Seeger, 380 U.S. 163, 85 S. Ct. 850, 13 L. Ed. 2d 733 (1965), held that the test for determining whether a conscientious objector's beliefs are religious under the Universal Military Training and Service Act, 50 U.S.C.S. Section 456(j), might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition.

In Welsh v. United States, 398 U.S. 333, 90 S. Ct. 1792, 26 L. Ed. 2d 308 (1970), the Court stated that if an individual deeply and sincerely holds beliefs that are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs certainly occupy in the life of that individual "a place parallel to that filled by . . . God" in traditionally religious persons. The Court stated that conscientious objector status was not reserved to individuals of a traditional religious background.

In B.S.W. Group, Inc. v. Commissioner of Internal Revenue, 70 T.C. 352 (1978), the Tax Court held that an organization did not qualify for exemption under IRC Section 501(c)(3) because it was primarily engaged in an activity that was characteristic of a trade or business and ordinarily carried on by for-profit commercial businesses. The Tax Court stated, "We must agree with the Commissioner that petitioner's activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit . . .".

In Bethel Conservative Mennonite Church v. Commissioner, 746 F.2d 388 (7th Cir. 1984), nonacq. AOD CC-1986-004, the court held that the church's medical aid plan, funded by contributions and available to all members of the congregation in good standing and their dependents, furthered the religious purposes of the organization.

In Mutual Aid Association of Church of the Brethren v. U.S., ("Mutual Aid Association") 759 F.2d 792 (10th Cir. 1985), the Court of Appeals held that an organization providing property and casualty insurance for members of the Church of the Brethren on the basis of assessed premiums is not primarily engaged in the promotion of the social welfare for exemption under IRC Section 501(c)(4). The organization argued that its activities advance the religious principles of the Church of the Brethren and that it carries out only the historical and doctrinal practice of mutual aid, a practice fundamental to the concepts of the Brethren Church. The court addressed this contention thus, "Certainly MAA was formed and promoted by church members and limits its policy sales to church members. But MAA does not give succor to souls; it sells insurance coverage." The court concluded that the presence of a substantial non-exempt purpose, insurance for its members in return for premiums, precluded the organization's exempt status.

In American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. U.S., 850 F.2d 1510 (11th Cir. 1988), the American Association of Christian Schools, Inc., a tax-exempt association of churches, formed a trust to provide health, hospital, disability, life, accidental death and

dismemberment, dental and prescription drug insurance to employees of members' schools and their dependents and beneficiaries. Citing *Mutual Aid*, supra., the Court of Appeals concluded that the Trust was not exempt under IRC Section 501(c)(3) because it was not operated exclusively for religious purposes; it had a substantial private, nonexempt purpose of providing insurance protection to participating employees.

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 religious purposes in keeping with the doctrines of the Seventh-day Adventist Church, including its "health ministry" through operation of two vegetarian restaurants and health food stores. The Court of Appeals sustained the Service's denial of tax exemption under IRC Section 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.

Application of law

IRC Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(a)(1) set forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3). Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Organizational Test:

Treas. Reg. Sections 1.501(c)(3)-1(b)(i) and (iv) provides (in part) that to meet the organizational test an organization's articles of organization must limit its purposes to, and not be broader than, one or more exempt purposes. Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that assets must be dedicated to an exempt purpose.

One of the listed purposes in your Articles of Incorporation is to conduct any operation for the benefit of the association that is allowed under the law. Your Articles provide that upon dissolution, remaining assets will be refunded to the sponsoring members. Conducting any operation for your benefit is not an exempt purpose described in IRC Section 501(c)(3). Your assets are also not dedicated to an exempt purpose on dissolution. Accordingly, you do not meet the organizational test described in Treas. Reg. Section 1.501(c)(3)-1(b).

Operational Test:

Your primary purpose is to collect monthly fees from members, negotiate fees with healthcare providers, pay the providers the agreed upon amount, and provide an accounting for each member.

You provide these benefits in return for a stated monthly fee. You conducted market research to determine what fees you should charge that would allow you to be self-sustaining. While you promote yourself as a Christian organization, your members are not required to be of any faith. These facts are distinguishable from Bethel Conservative Mennonite Church, where the court held that a Mennonite church was organized and operated exclusively for religious purposes under IRC Section 501(c)(3) notwithstanding the fact that the church developed its own medical insurance plan for congregation members. The church in Bethel established this voluntary program as a part of its belief that its members must bear one another's burdens. Although you state you were formed with the same principles in mind, you operate as a mutual aid organization available to anyone across the nation, not just a church congregation. In addition, the health care expenses you pay are not directed towards a charitable class, but rather those individuals who have paid their monthly shares. Your services are

available to anyone regardless of economic status. You are providing a cooperative service for your members, like Rev. Rul. 69-175.

Your primary purpose is to operate a trade or business, a health care sharing ministry which directly competes with commercial insurance companies. This is evident not only in the conduct of your activities but by the fact prices were set based on market research and prevailing rates. In return for a monthly fee, members have access to resources intended to pay for their health care expenses. In Bethel Conservative Mennonite Church, the court held that the church's medical aid plan, which was funded by contributions rather than premiums, furthered the religious purposes of the organization. However, as noted above, the Service has indicated that it will not follow the Court's decision. In any event, your activities are distinguishable from those of Bethel since you are funded by income generated by your operation of a trade or business rather than by voluntary contributions.

The Eleventh Circuit held in American Association a trust formed to provide insurance to employees of members' schools was not exempt under IRC Section 501(c)(3) because it was not operated exclusively for religious purposes; it had a substantial private, non-exempt purpose of providing insurance protection to participating employees. See also, Mutual Aid Association, in which the Tenth Circuit upheld the Service's denial of Section 501(c)(4) status to an organization providing the equivalent of property insurance protection available only to members of the church. In Mutual Aid Association the organization argued that the provision of mutual aid was fundamental to the concepts of the church. Like the organizations described in American Association and Mutual Aid Association, although you were created with religious principles in mind, your primary purpose is the operation of a trade or business. See also Living Faith, Inc., B.S.W. Group.

Qualification for exemption under IRC Section 501(c)(3) requires that an organization operate exclusively for exempt purposes. Exclusivity with respect to Section 501(c)(3) does not mean "solely" or "without exception," but rather contemplates that any non-exempt activities be only incidental and less than substantial. See Treas. Reg. Section 1.501(c)(3)-1(c)(1). This requirement is affirmed in Better Business Bureau, Inc., where the court held that the presence of a single non-exempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance of truly exempt purposes. Thus, if an organization engages in a substantial non-exempt activity, it does not meet the operational test of Section 501(c)(3), regardless of how substantial its religious or other exempt activities are.

We have concluded that you are not operated exclusively to promote religion under IRC Section 501(c)(3), or to further any other tax-exempt purpose within the meaning of Section 501(c)(3) and Treas. Reg. Section 1.501(c)(3)-1(d). You were formed primarily for the non-exempt purpose of operating a health care expense sharing entity for the benefit of your members, similar to a trade or business of the type ordinarily carried on for profit. You were formed for the private interests of your members rather than a public interest. See Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are not described in Treas. Reg. Section 1.5000A-3(b)(2) since you have not been in existence at all times since December 31, 1999 and your members have not been sharing medical expenses continuously and without interruption since at least December 31, 1999.

Your position

You amended your Articles of Incorporation to include proper purpose and dissolution clauses in order to meet the organizational test under Treas. Reg. Sections 1.501(c)(3)-1(b)(i) and (iv) and 1.501(c)(3)-1(b)(4). Therefore, you indicated that you no longer fail to qualify based on the organizational test.

With respect to the operational test, you state that the Service is challenging your claim to exemption on two issues:

- A. First, that you are not operating “exclusively to promote religion” and that you were formed primarily for the “non-exempt purpose to operate a health share expense sharing entity for the benefit of members” and
- B. Second, that you do not meet the “pre 1999” requirement of health care sharing ministries.

With respect to the first point, you argue that you were in fact formed for a religious purpose since your Articles of Incorporation state that you were founded “on behalf of members who have a common set of ethical and religious beliefs as per 26 USC § 5000A(d)(B)(ii).” You have also made positive declarations to this contention in your “Covenant of Grace”, that you were founded upon the idea of Christian charity. To be able to do this, you state it is logical that you must be inherently Christian in foundation. Even so, you admit that being founded upon Judeo-Christian traditions does not mean that everyone who is a Member is in fact a Christian. You contend that the only person who knows what is in one’s heart is the person themselves.

In support of these statements, you cite United State v. Ballard, in which you state that the U.S. Supreme Court ruled that a court could not rule on the veracity of someone’s belief, but only whether a person believes such to be true. You also cited Welsh v. United and United States v. Seeger, in which you state a belief does not have to be in traditional form to fall under First Amendment protections. You indicate the Supreme Court, in these cases, has deliberately avoided an exact definition of religion. Instead, the Court has defined freedom of religion broadly as a dynamic guarantee that was written in a manner to ensure flexibility and responsiveness to the passage of time.

You go on to say that your members share medical expenses in a cooperative manner. There is no contractual arrangement for this joint benevolence, and you make this clear in all documentation. Instead, the promise to share expenses is covenantal in nature – in other words, a solemn promise. That promise, you make clear, is based on a Judeo-Christian tradition. Without that tradition, a member can’t depend on the membership community for help. And if there is no help, there is no you.

You use an analogy for a prospective member to understand what is meant by this Christianity-based covenant, to wit: The Constitution of the United States bestows rights upon its citizens. No citizen alive has signed the Constitution. Indeed, any individual who is actively conspiring against the United States still is provided Constitutional-based rights. In the same vein, you are based on the Christian act of sharing your brother’s burdens. You recognize that one might not believe in God in the same manner that another person might, and furthermore, you might actually be anti-religion. However, all are still guaranteed rights, a place under the Covenant of Grace. There is a reason for your attitude for this – it is what Jesus instructed us all to do. Your activities are not about gathering believers – they are about gathering anyone so that they can witness the goodness of being part of a community that really cares about one another.

You were built for “seekers” or someone who is looking for something, for God, yet has not found it. Seeker sensitive organizations “act as missionaries” to bring people to God. You want to appeal to seekers, the unchurched, the people who are looking for something and have not yet found it. You admittedly are using healthcare sharing to attract members and once in, the members will experience something that they might never had before – people who demonstrate the love of Christ.

You contend through these arguments that you have more than disclosed and proven that you meet the test of promoting religion by its formation, intent, and action.

With respect to the second point, you recognize that Treas. Reg. Section 1.5000A-3(b)(2) mandates a history of sharing of medical expenses since December 31, 1999. You indicate that the Service surely recognizes that there is nothing magical about 1999 and in fact most of the recognized healthcare sharing ministries do not actually fit this description literally, but instead, "bought" their way into pre-99 by aligning themselves with some church or organization that actually had been in existence. You provided the name of one organization you state was formed in _____ and the name of another that you state was formed after 1999 but advertise that they are non-profit.

You state that while you could argue that pre-99 is an unrestraint of trade, that it does not do what it was intended to do as mandated by the Affordable Care Act (that is, to keep bad actors out of the business), and that many states are changing their health care sharing ministries safe harbor laws to eliminate the pre-99 rule, you argue that finding a partner church is not something that can be done quickly as required by the Service's position. Nevertheless, you are pursuing a partnership with a church with over a century of history and therefore, if you meet all other qualifications and fail only on pre-99, you ask forbearance and that you should either (a) be granted qualified approval of 501(c)(3) status as long as pre-99 is met by L or (b) an extension of time to fulfill pre-99 with the ability for you to prove to the Service that this qualification is met.

You also indicated that the Service's opinion provides that by "providing means by which your members pay a monthly fee and you in turn negotiate and pay providers an agreed upon sum, you are operating for a substantial non-exempt purpose." You indicated that you are confused by this argument because that is the very definition of a healthcare sharing ministry as per the Affordable Care Act. How else are members to share expenses if they are not paying into the shared resource (in insurance language, that would be the 'pool')? Every single HCSM works in this way- the members pay a monthly "share," an amount which is standardized based on their member's program (insurance compatible term is "plan"), which goes into a "resource" in order to pay for other member's medical expenses. So, if the Service is finding that a HCSM can operate by members paying a "fee" (the Service term), then the Service must revoke every HCSM non-profit status immediately.

In conclusion, you indicate that the reasons for the Service's rejection of your application appear to be:

- a misreading (or extremely limited) reading of your Articles of Incorporation,
- the misunderstanding of the clear purpose of your Christian foundation,
- a prejudicial application of pre-99 requirements (somehow others have slipped through the Service while also not meeting this requirement and you would argue that the requirement is an unnecessary restraint of trade and religion), and finally,
- a seemingly random misunderstanding of what every single HCSM does.

You speculate that the unreasonable delay for a ruling and then weak reasoning supporting rejection suggests that you are subject to an unreasonable and prejudicial ruling on the Service's part.

Nevertheless, all matters considered, you ask that the Service reconsider its rejection of your non-profit application and approve it without delay. In the alternative, to give you either qualified approval in order to fulfill the pre-99 obligation, or an extension of time for appeal so that the pre-99 requirement may be fulfilled without refiling.

Our response to your position

After we shared your Articles of Incorporation with you that we obtained from your state of incorporation's website, you agreed that they didn't meet the organizational test and amended them to include the necessary language. We now agree with you that you meet the organizational test per the regulations.

In response to your argument that the Service can't define your religious beliefs, we agree with you and don't propose to deny your application for failure to further religious purposes. Instead, we argue that the activities of an organization can further both exempt and non-exempt purposes, and if the non-exempt purposes are being furthered to a substantial degree, they can prohibit qualification under IRC Section 501(c)(3). For example, in Living Faith, Inc. v. Commissioner, while the organization's claim to exemption was based on the argument that they were furthering their religious principles, the Court found that they also operated in a substantial commercial manner and exemption was denied. The fact that an organization's activity constitutes a trade or business does not, in itself, disqualify that organization; rather, it is whether an activity encompasses a substantial nonexempt purpose irrespective of the presence of other exempt purposes. See also Better Business Bureau, where the 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. You are charging a set fee for individuals to be able to participate in the sharing of medical expenses. If members do not pay a fee, they are not entitled to benefits, similar to commercial insurance. For this reason, you are operating for a substantial non-exempt purpose.

You also do not meet IRC Section 5000(A)(d)(2)(B)(ii), specifically the "pre-99" obligation. We fail to see how partnering with another exempt organization will cause you to have been in existence at all times since December 31, 1999. You were formed on B, which is after 1999.

Conclusion

Based on the facts and circumstances presented, you do not qualify for exemption from federal income tax as an organization described in IRC Section 501(c)(3). You are not operated exclusively for exempt purposes as set forth in Section 501(c)(3). By providing a means by which your members pay a monthly fee and you in turn negotiate and pay providers an agreed upon sum, you are operating for a substantial non-exempt purpose. Your operations are not exclusively charitable and resemble those of a trade or business.

This letter supersedes our previous letter dated M

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