



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities
PO Box 2508
Cincinnati, OH 45201

Date:
02/08/2023
Employer ID number:

Tax years:

Person to contact:

Number: **202318021**
Release Date: 5/5/2023

UIL: 501.03-00, 501.36-00

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 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,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

Redacted Letter 4038



Department of the Treasury
Internal Revenue Service
PO Box 2508
Cincinnati, OH 45201

Date:
December 12, 2022
Employer ID number:

Person to contact:
Name:
ID number:
Telephone:
Fax:

Legend:

B = state
C = date
D = plan 1
F = plan 2
G = plan 3
h dollars = amount 1
j dollars = amount 2
k dollars = amount 3
l dollars = amount 4
m dollars = amount 5
n dollars = amount 6

UIL:

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 incorporated in B on C. According to your Articles of Incorporation, your purpose and essence is exclusively charitable, educational, and nonprofit as defined under IRC Section 501(c)(3) for healthcare and other related services. Upon dissolution, your assets would be distributed to an organization which is organized and operated exclusively for charitable or educational purposes and shall at the time qualify as an exempt organization under Section 501(c)(3).

Your Bylaws state that you are organized exclusively for the purpose and goals of providing membership-based health care sharing services and that this purpose meets all the IRS standards for seeking 501(c)(3) tax exempt status.

Your activities, as described in your application, are to provide health care services and to help , who can't afford major medical. You also stated healthcare services are only provided to members who can't afford any health care services at an open market price.

In response to our request for a detailed description of your activities, you replied that you aggregate health services vendors onto one platform and facilitate member-to-member health care sharing. You educate your members on how healthcare works and how to access the highest quality care at an affordable price. You help your members navigate the messy healthcare system and to negotiate large medical bills. Your membership relies on a cost-containment strategy that encourages members to mitigate their own healthcare expenses before relying on others to cover costs. You partner with direct primary care physicians, telehealth providers, discount lab and imaging services, and many other value-added components such as dental and vision discounts that are designed to save your members money without the expense of high insurance premiums. If a member experiences a serious medical need, you facilitate medical bill negotiation and then sharing to help cover large medical expenses such as surgery. You are not an insurance provider.

Membership is open to anyone that agrees to your statement of ethics: that they agree to live a healthy lifestyle, share each other's burdens, maintain a healthy diet, exercise regularly, and refrain from the use of tobacco and illicit drugs. To become a member, an individual reviews your program on your website and submits basic demographic information to begin the enrollment process. After being shown their monthly contribution amount, if they elect to continue, they provide detailed demographic data, health, and payment information. Members are shown their final bill once more before they electronically sign and submit their application. After they enroll, they are sent a receipt and a welcome email outlining their membership guidelines and related benefits.

Your monthly member contributions (fees) were put together based on different vendor prices and study of similar health share service providers in the market. Members who are older are typically in need of higher medical expenses than younger members, so you charge older members more to cover the higher average expenses. Part of the monthly fee is paid to vendors (telemedicine, discount services, healthcare navigation, medical bill negotiation, etc.) and the other portion goes to the member "Sharebox." You offer three tiers of Membership programs – D, F, and G – each with corresponding benefits, service fee amounts, and caps on sharing of medical bills.

The benefits of each Membership program are as follows:

1. D: offers unlimited access to telehealth services for a set co-payment consult fee, discount dental and vision, discount chiropractic, healthcare navigation, and medical bill negotiation services. The D Program also allows the sharing of medical bills up to h dollars every program year.
2. F: offers unlimited telehealth services for no fee per consult, unlimited Direct Primary Care for a set co-payment per visit, unlimited Urgent Care for a set co-payment per visit, discount dental and vision, discount chiropractic, healthcare navigation, and medical bill negotiation services. The F Program allows the sharing of medical bills up to j dollars per program year.
3. G: offers unlimited telehealth services for no fee per consult, unlimited Direct Primary Care for a set co-payment per visit, unlimited Urgent Care for a set co-payment per visit, discount dental and vision, discount chiropractic, healthcare navigation, and medical bill negotiation services. The G Program allows the sharing of medical bills up to k dollars per program year.

Once a member experiences a medical need, they will submit their bill for reimbursement. You will analyze the bill and determine how much of the expense will be paid out, based on the Member Responsibility Amount (MRA). The MRA is the out-of-pocket money a member must pay for their medical bills before sharing kicks in, similar to a major medical insurance deductible. For G, the member is responsible for l dollars per person per program year; F is m dollars; and D is n dollars. Once this limit is reached, money from the “Sharebox” will be used for the remaining balance.

You initially requested recognition of exemption under Section 501(c)(3) with public charity classification as a church under Sections 509(a)(1) and 170(b)(1)(A)(i); however, you reported that you don’t have a form of worship, regularly scheduled religious services, an established place of worship, or an established congregation. Later, you agreed that you would let the IRS choose your foundation classification.

While you anticipate receiving some gifts, grants, and contributions, most of your revenue will come from membership fees. Your primary expenditure will be disbursements for the benefit of your members, but you will also incur expenses for compensation, fundraising, occupancy, professional fees, and other program service costs.

Law

IRC Section 501(c)(3) provides for the recognition of exemption from federal income tax of 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.

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(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.

Revenue Ruling 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 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.

In Capital Gymnastics Booster Club, Inc. v. C.I.R., T.C. Memo. 2013-193 (2013), the tax court ruled that an organization that authorized members to raise funds for the benefit of their children served a private benefit. The contributions did not generally benefit all the child athletes in the program but rather benefitted only the children of the members who did the fundraising. Because the organization operated in a manner that promoted substantial private benefit and not public interests, the organization did not operate exclusively for an exempt purpose.

In Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (3rd Cir. 1993), the court applied the community benefit standard to find an HMO, which simply arranged for others to provide health care services but did not provide healthcare directly, to be not tax exempt under IRC Section 501(c)(3). The HMO was open for enrollment for anyone who could afford to pay and provided some subsidization of dues. However, because the organization arranged for the provision of medical services only to members that belonged, the court determined that it was not necessarily charitable. Under the community benefit test, the organization had to demonstrate that it benefited more than just its subscribers.

In IHC Health Plans, Inc. v. Commissioner, 325 F.3d 1188 (10th Cir. 2003), the court held that an 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 ruled 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.

In Bethel Conservative Mennonite Church v. Commissioner, 746 F.2d 388 (7th Cir. 1984), an organization, in addition to operating a church, operated a program to share healthcare costs of church members. The church collected contributions from church members which was used to pay the health care bills of other members of the church. Significantly, there was no requirement that a church member contributed or subscribe to the program in order to receive the benefits of the program. The court held that this healthcare sharing program was sufficiently linked to the church's religious belief that it was operated primarily for a religious and thus exempt purpose.

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 found that the organization did not operate for a religious purpose because it operated similar to an insurance business where the premiums paid were directly linked to benefits being received by the members.

In Nonprofits' Ins. Alliance of California v. U.S., 32 Fed. Cl. 277, 283 (1994), the court held that the corporation which administered a self-insurance risk and provided commercial insurance was not entitled to tax exempt status under IRC Section 501(c)(3) because it failed the operational test within Section 501(c)(3). Selling insurance was inherently a commercial activity ordinarily carried on by a for-profit company, and these commercial activities outweighed any nonexempt activity it offered to the public. The existence and amount of accumulated profits and how much below cost the corporation was providing its services also factored into the court's consideration. The court cited "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." Better Business Bureau of Washington, D.C. Inc. v. United States, 326 U.S. 279 (1945).

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 the operational test.

Based on the facts presented in your application, you serve a private rather than a public interest because you confer benefits primarily to your members. You operate a healthcare sharing program designed to provide healthcare benefits to subscribing members. Members pay a monthly fee to enroll, and in return, receive benefits including access to telemedicine, discount services, healthcare navigation, and medical bill negotiation. Fees also cover medical expenses that members incur. Like Capital Gymnastics Booster Club, your healthcare sharing plan does not provide substantial healthcare services to the public or members of a charitable class. Membership is open to anyone wishing to enroll and therefore, is not limited to a charitable class. Because your beneficiaries are your only members, you operate substantially for a private rather than a public interest. Consequently, you are providing a cooperative service for your members, like Rev. Rul. 69-175, and are not operating for exclusively exempt purposes as described in IRC Section 501(c)(3). See Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

Similar to the organizations in Geisinger and IHC Health Plans, you arrange healthcare services for your subscribers without providing any direct medical care. You arrange these healthcare services and cover health care costs only for your subscribing members and provide no discernable healthcare services to the public outside of your own subscribing members. Consequently, under the community benefit standard, you do not primarily operate for an exempt charitable purpose and therefore do not meet the requirements for tax exemption under IRC Section 501(c)(3).

In Bethel Conservative Mennonite Church, the organization, in addition to operating a church, operated a program to share healthcare costs of church members. The church collected contributions from church members which were used to pay the health care bills of other members of the church. Significantly, there was no requirement that a church member contribute or subscribe to the program in order to receive benefits from the program. The court held that this healthcare sharing program was sufficiently linked to the church's religious belief that it was operated primarily for a religious and thus exempt purpose. You are distinguishable from Bethel because you operate under a fee-based subscription model. You require members to pay a monthly subscription to enroll, and the receipt of health care sharing benefits is contingent on the payment of these fees. As such, you are similar to American Association, which was found to operate for nonexempt purposes because the healthcare benefits were closely linked to membership fees. Because more than an insubstantial part of your

operations are conducted in a commercial manner similar to Nonprofits' Ins. Alliance of California, you are not exclusively operated for a religious purpose.

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. Although health care services are being provided you are also serving substantial private interests.

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 are provided benefits, you are operating for a substantial non-exempt purpose. Your operations are not exclusively charitable and resemble those of a trade or business.

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 Determination 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
PO 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

cc: