



OFFICE OF
CHIEF COUNSEL

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

CC:PA:APJP
CPNachman

MEMORANDUM FOR SUSAN E. GILBERT
MANAGER, GRANTS ADMINISTRATION PROGRAM (SPEC)

FROM: Deborah A. Butler *Deborah Butler*
Associate Chief Counsel (Procedure & Administration)

SUBJECT: Tax-Exempt Applicants—Section 501(c)(4)

This responds to your inquiry about the qualification of a Low Income Taxpayer Clinic (LITC) grantee that represented it was exempt from taxation under I.R.C. § 501(c). The LITC supplied no evidence of tax-exempt status but stated in its application that it is a section 501(c) organization. You asked us to address any responsibility the Grants Administration Office (GA) may have in approving an application that did not include a tax-exempt determination letter.

ISSUE:

Whether organizations that purport to be tax-exempt under I.R.C. § 501(c), but have not obtained a determination letter attesting to their status, are clinics under section 7526(b)(2)(B).

CONCLUSION:

In concert with our August 5, 2002, memorandum to you, we believe that tax-exempt organizations (nonprofits) need not be exempt under section 501(c)(3) to qualify for an LITC grant, assuming they otherwise qualify under section 7526. Although organizations that claim 501(c)(3) status must apply for a determination letter to receive that status, other nonprofits are not required to do so. Thus, GA was not remiss in granting LITC funds to an organization that appeared to have section 501(c)(4) status but did not submit a tax-exempt determination letter with its application. [REDACTED]

DP

DISCUSSION:

Background

The organization about which you inquired (the Clinic) defines itself as "a non-profit 501(c)" clinic. It provides educational services to taxpayers, specifically, individuals for whom English is a second language and low-income taxpayers. Although the Clinic's application did not include a determination letter addressing its tax-exempt status, you are assuming that it is exempt under section 501(c)(4) because it appears to be a social welfare organization. Generally, section 501(c)(4) nonprofits that are social welfare organizations would qualify as clinics under section 7526. Your concern about the Clinic's status arose because of its director's alleged misappropriation of grant funds. The Treasury Inspector General for Tax Administration's office is currently investigating the alleged misappropriation.

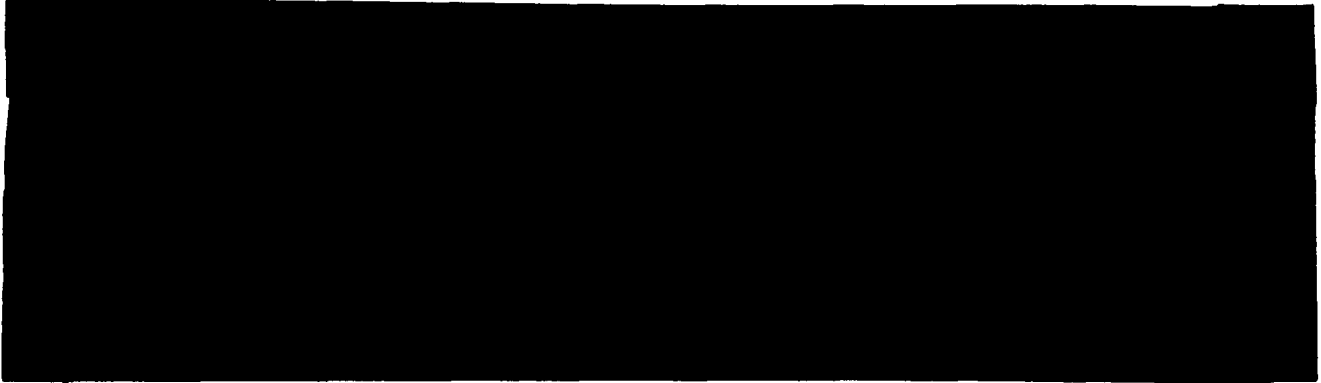
Tax-Exempt Status

Section 501(c)(4) provides exemption from income tax for, among others, nonprofit organizations that operate exclusively to promote social welfare; further, no part of the nonprofit's net earnings can inure to the benefit of any individual or private shareholder.

Section 7526 defines a clinic as including academic clinics and "an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the [other relevant] requirements" of section 7526. Section 7526(b)(2)(B). Nonprofit LTCs traditionally have been section 501(c)(3) organizations; section 7526, however, is nonexclusive and provides that an organization can be a clinic if it is described in section 501(c). The statute does not mention section 501(c)(3), nor have we found any legislative history that indicates Congress intended qualifying nonprofits to be exclusively section 501(c)(3) organizations. Thus, assuming you find an applicant otherwise qualified to receive a grant, its section 501(c)(4) status should not prevent it from becoming an LTC grantee.

Although the Clinic did not submit a determination letter with its application, its failure to do so should not reflect on its qualifying for section 501(c) status. Through coordination with CC:TEGE, we learned that the only 501(c) organizations that must apply for tax-exempt status are 501(c)(3) organizations. Thus, nonprofits other than 501(c)(3)'s may self-certify their status. (As such, we make no comment about whether 501(c)(4) status is appropriate for the Clinic.) CC:TEGE also advised that, as a practical matter, most 501(c) organizations do have to apply for tax-exempt status, because the Service Centers generally will not process Forms 990 (Return of Organization Exempt From Income Tax) without a determination letter attached.

CC:TEGE reviewed its internal data base and did not find an application for tax-exempt status from the Clinic. In addition, there is no record of its having filed a Form 990; because the Clinic was a new organization in 2002, it would not yet have filed a return.



cc: Kirsten Wjelobob CC:W&I
David Ingold CC:GLS:PCTL