

Office of Chief Counsel
Internal Revenue Service
memorandum

date: September 2, 1998

to: Director, Exempt Organizations Division CP:E:EO

from: Chief, Branch 4, Financial Institutions & Products
CC:DOM-EL&P-A

Madh...

subject:

[REDACTED]
FREV-110254-98

This memorandum supplements the response of Assistant Chief, Branch 6, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations, hereafter, "EBEO") regarding the above-referenced taxpayer. You asked EBEO whether [REDACTED] provides commercial-type insurance as a substantial part of its activities and is therefore precluded from exempt status by section 501(m) of the Internal Revenue Code. You also ask whether [REDACTED] precludes a [REDACTED] organization from forming an exempt entity. EBEO referred this issue to our office.

The facts are assumed to be as stated in Larry Brauer's (CC:E:EO:T:1) memorandum dated March 16, 1998 ("March 16 memorandum"). EBEO's July 27, 1998 memorandum concludes that [REDACTED] is described in section 501(c)(4) but that recognition of exempt status is precluded by section 501(m) because a substantial part of [REDACTED] activities consist of providing commercial-type insurance. EBEO concludes that [REDACTED] has not established that it will operate in a manner that will shift substantial risk. Accordingly, the section 501(m)(3)(B) exception to section 501(m)(1) does not apply.

EBEO asked Branch 4, FI&P to consider whether section 833 prevents a [REDACTED] organization from forming an exempt organization prospectively. The answer to this question is "no." There is nothing in [REDACTED] which prevents an existing [REDACTED] organization from changing its organizational structure so as to form an exempt organization. The March 16 memorandum states on page 32:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] does not establish a separate limitation in addition to section 501(m) that precludes an organization from qualifying for exemption under either section 501(c)(3) or 501(c)(4). However, we note one facet of the issue not heretofore explicitly stated: If a [REDACTED] organization attempts to restructure so as to create a new tax-exempt organization and fails, the organization in question may no longer be entitled to the provisions of [REDACTED] and may be subject to the provisions of the Internal Revenue Code generally applicable to property and casualty insurers or regular C corporations, depending on the specific facts of the case.

[REDACTED]

[REDACTED], if the reorganization results in a material change in the operations of the organization or its structure.

A reorganization along the lines suggested by [REDACTED] may well result in a material change in the operations and structure of the organization. It is not clear to us that the Service has sufficient information to determine whether this taxpayer will qualify as an "other organization" [REDACTED] We therefore suggest [REDACTED]



If you have any questions regarding this memorandum, please call Attorney Advisor Susan Seabrook at 2-4448.

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

By: _____

Mark S. Smith
Chief, Branch 4

CC: CC:EBEO:6