



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

E=

C=

X=

Y=

Z=

Dear _____ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Facts

You were incorporated as a non-profit organization in _____ to coordinate-the delivery of home health services. You conduct three major activities: home health management, hospital liaison, and physical home call. You currently provide your services to two for-profit home health agencies, two not for profit home health agencies and a tax-exempt hospital.

Management

Your management services involve providing traditional management and consulting services to structurally and financially unrelated home health organizations to help them achieve efficiencies and effective operations. Your staff provides these services.

The recital portion of the Consulting Services Agreement (Agreement) effective as of x between you and E, a for-profit corporation, states you provide to E management consulting services in

such areas as operations, Medicare and Medicaid regulatory, JCAHO compliance, quality improvement, staff development, and strategic planning and development. Section IIA of the Agreement states you “shall furnish qualified personnel to act as the President/General Manager of E and you “shall assist in the day-to-day operations of E.”

Financial information submitted with your application for exemption states the majority of your income is from the provision of management services.

Liaison

The hospital liaison services involve a program you have at C and other local section 501(c)(3) hospitals. Liaison services involve you finding home health agencies or home health providers to care for patients after discharge from C. You find appropriate providers to deliver follow-up home health care to patients of C.

Section 1a(8) the Home Care Liaison Professional Services Agreement (Contract) dated y between you and C states that you will not be a provider of health care services nor shall you be responsible for the actions of the home health care agencies providing the services. Section 1d(1) of the Contract provides you employ the liaison and are solely responsible for the proper payment of the liaison’s wages and benefits. Section 2(b) of the Contract states Hospital and the liaison will communicate involving the follow-up care.

In order to provide liaison services, you created a network agreement which creates a network of members who provide the home health care services. In section A of the recitals of the Network Agreement, dated z, between you and E, it states you were formed “to share expenses related to the provision of home health care liaison services when requested to do so by a limited number of local hospitals.” You state you and your members seek to obtain economic efficiencies through the pooling of resources and to provide services to C. Section 3(h) of the Network Agreement states the provider will pay you its pro rata share of expenses for hospital liaison services provided. Section 4(d) of the Network Agreement states you will “bill the provider for its pro rata share of expenses for hospital liaison services provided...” under the Network Agreement. Section 4(i) of the Network Agreement states you “shall have management responsibility of the liaison program, including, but not limited to, the daily operations of the liaison program.”

Financial information submitted with your application for exemption states your second largest source of income is from the provision of liaison services.

Home Call

You will provide physician house call services to patients who cannot leave their home or may not be able to afford transportation to the hospital. You state you hired a part time physician to coordinate care. The information submitted states presently the home call activity is an insubstantial part of your total activities.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of

organizations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order for an organization to be exempt as one described in section 501(c)(3) of the Code, it must be both organized and operated exclusively for one or more exempt purposes. Under section 1.501(c)(3)-1(d)(1)(i)(b) of the regulations, an exempt purpose includes a charitable purpose.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, sections 368, 372 (1959); 4A Scott and Fratcher, The Law of Trusts, sections 368, 372 (4th ed. 1989); Rev. Rul. 69-545, 1969-2 C.B. 117.

Section 1.501(c)(3)-1(b)(1) of the regulations 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 to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations 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 section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations states that an organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945), the Court stated that "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."

Rev. Rul. 72-209, 1972-1 C.B. 148, held that a nonprofit organization formed to provide low-cost home health care in a charitable manner qualifies for exemption because it is an actual provider of health care services under the direction and supervision of a physician.

Rev. Rul. 77-68, 1977-1 C.B. 142, held that a nonprofit organization formed to provide individual psychological and educational evaluations, as well as tutoring and therapy, for children and adolescents with learning disabilities qualified for exemption under section 501(c)(3) of the Code because it both promoted health and advanced education. Because it is an actual provider of medical services designed to relieve psychological tensions and thereby improve the mental health of the children and adolescents, it promotes health.

Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), involved an organization that operated restaurants and health food stores with the intention of furthering the religious work of the Seventh-Day Adventist Church as a health ministry. However, the Seventh Circuit held that these activities were primarily carried on for the purpose of conducting a commercial business enterprise. Therefore, the organization did not qualify for recognition of exemption under section 501(c)(3) of the Code.

Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8th Cir. 1980), held that while selling prescription pharmaceuticals promotes health, pharmacies cannot qualify for recognition of exemption under section 501(c)(3) on that basis alone.

Rev. Rul. 54-305, 1954-2 C.B. 127, involved an organization whose primary purpose was the operation and maintenance of a purchasing agency for the benefit of its otherwise unrelated members who are exempt as charitable organizations. This revenue ruling held that the organization did not qualify under section 101(6) of the Code (the predecessor to section 501(c)(3)) because its activities consisted primarily of the purchase of supplies and the performance of other related services. The revenue ruling stated that such activities in themselves cannot be termed charitable, but are ordinary business activities.

Rev. Rul. 69-528, 1969-2 C.B. 127, describes an organization formed to provide investment services on a fee basis only to organizations exempt under section 501(c)(3) of the Code. The organization invested funds received from participating tax-exempt organizations. The organization was not controlled by the participating organizations and had absolute and uncontrolled discretion over investment policies. The ruling held the organization did not qualify under section 501(c)(3) of the Code and stated that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Rev. Rul. 72-369, 1972-3 C.B. 245, deals with an organization formed to provide management and consulting services at cost to unrelated exempt organizations. This revenue ruling held that providing managerial and consulting services on a regular basis for a fee is a trade or business that is ordinarily carried on for profit. The fact that the services in this case were provided at cost and solely for exempt organizations was not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the organization entered into consultant-retainer relationships with five or six limited resource groups involved in the fields of health, housing, vocational skills and cooperative management. The organization's financing did not resemble that of the typical section 501(c)(3) organization. It had neither solicited nor received any voluntary contributions from the public. The court concluded that because its sole activity consisted of offering consulting services for a fee set at or close to cost to nonprofit, limited resource organizations, it did not qualify for exemption under section 501(c)(3) of the Code.

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978), a nonprofit corporation that assisted charitable organizations in their fund raising activities by providing financial planning advice on charitable giving and tax planning to wealthy individuals was held

not to qualify for exemption under section 501(c)(3) of the Code because its tax planning services were a substantial nonexempt activity enabling the corporation to provide commercially available services to wealthy individuals free of charge.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd in an unpub. opinion, 846 F.2d 78 (Fed. Cir. 1988), cert. den., 488 U.S. 907 (1988), the organization, in exchange for a fee, provided adoption services to parents seeking to adopt a child, including services to pregnant women who intended to place their newborns for adoption. These fees were the organization's sole source of income. The Claims Court concluded that the organization's business purpose of operating an adoption service, not the advancement of educational and charitable activities, was its primary goal. It competed with other commercial organizations providing similar services. Thus, "[p]laintiff's competition provides its activities with a commercial hue." 12 Cl. Ct. at 486. Accordingly, the organization did not qualify for exemption under section 501(c)(3) of the Code.

In Airlie Foundation v. I.R.S., 283 F. Supp. 2d 58 (D. D.C. 2003), the District Court found that that the organization was formed principally to organize, host, conduct and sponsor educational and other charitable functions on its facilities. The organization's patrons were not limited to tax-exempt entities, but included patrons of a private and corporate nature. The organization paid significant advertising and promotional expenses and derived substantial income from weddings and special event held at its conference center. The court determined that the organization's activities competed with a number of commercial, as well as non-commercial entities, which strongly evidenced a commercial nature and purpose. The court concluded that although the organization carried out a number of charitable and educational activities, these were incidental to its primary activity of operating a for-profit conference center. The court stated:

While plaintiff's organizational purpose is exempt and the foundation operates, in important respects, in an exempt fashion, there is a distinctive "commercial hue" to the way Airlie carries out its business. See 283 F. Supp. 2d at 65.

RATIONALE

Your primary activities consists of providing traditional management services to home health care agencies and home health care providers as well as managing and facilitating home health care services for your members. All of your services are provided to entities not structurally or financially related to you.

Your Agreement with E provides information about your services. The recital portion of the Agreement states that you provide to E management consulting services. Section IIA of the Agreement states you provide the personnel to act as the President/General Manager of E and assist in the day-to-day operations of E.

Your second primary activity consists of providing liaison services to home health care agencies, home health care providers and C. All of your services are provided to entities not structurally or financially related to you. The Contract with C and the Network Agreement with E provide information about these services. Section 1a(8) of a Contract states you will not be a provider of health care services. Section 1d(1) of the Contract provides you employ the liaison and are solely responsible for the proper payment of the liaison's wages and benefits. In section A of the recitals of the Network Agreement it states you were formed to share expenses related to the provision of home health care liaison services. Section 3(h) of the Network Agreement states the provider will pay you its pro rata share of expenses for hospital liaison services. Section 4(d) of the Network Agreement states you will bill the provider for its pro rata share of expenses for hospital liaison services provided. Section 4(i) of the Network Agreement states you have management responsibility of the liaison program, including, but not limited to, the daily operations of the liaison program.

By operating as a manager or facilitator for the provision of home health services in return for a fee, you operate in a commercial manner, similar to the organizations in Rev. Rul. 69-528, supra; Rev. Rul. 72-369, supra; and in B.S.W. Group, Inc. v. Commissioner, supra; Christian Stewardship Assistance, Inc. v. Commissioner, supra; Easter House v. U.S., supra; and Airlie Foundation v. I.R.S., supra. Thus, your activities are not charitable.

In particular, you are similar to the organization in Rev. Rul. 72-369, supra, that was formed to provide management and consulting services to unrelated exempt organizations. This revenue ruling held providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. Unlike you, the organization in Rev. Rul. 72-369 provided its services at cost and solely to exempt organizations which was still not sufficient to characterize the activity as charitable within the meaning of section 501(c)(3) of the Code.

Activities promoting health, without more, do not further a charitable purpose. Your activities are unlike those in Rev. Rul. 72-209, supra and Rev. Rul. 77-68, supra, where the Internal Revenue Service concluded these organization's activities promoted health in a charitable manner. Rather, you operate more like the commercial organization Federation Pharmacy Services, Inc. v. Commissioner, supra, where the courts concluded that although the organization's activities promoted health, their activities were primarily commercial in nature.

Therefore, you are not operated exclusively for charitable purposes under section 1.501(c)(3)-1(a)(1) of the regulations.

Conclusion

Based on all the facts and circumstances, we conclude your activities do not further an exempt purpose under section 1.501(c)(3)-1(a)(1) of the regulations. Therefore, you do not operate exclusively for an exempt purpose as required under section 1.501(c)(3)-1(c).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If it is convenient, you may fax your reply using the fax number shown in the heading of this letter.

Internal Revenue Service
TE/GE SE:T:EO:RA:T:1

1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437