



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200544020**
Release Date: 11/4/05
SE:T:EO:RA:T:1

Date: August 10, 2005

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

UIL#: 501.04-06

You or W =

X =

Y =

Z =

V =

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)(4). 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

In _____, you were incorporated as a non-stock corporation to establish an agency for home health care services in the X communities. Your May 20, 2005 letter states that you work exclusively for the residents of X's facilities. The number of people potentially served is approximately 1000, in five facilities in four locations. According to correspondence of May 20, 2005, you were created by Y: its CEO made the decision, its corporate attorney prepared the paperwork, the originators were employees of Y, and a start-up loan was provided by one of the X organizations.

You are closely integrated with other X organizations. You share two board members and an officer with other X organizations. Y appears to manage you in return for a fee. Z provides office space, in return for a fee. You provide services exclusively for residents of X's facilities.

In your application, you described your activities as follows:

Provid[ing] home care to residents who need assistance with the activities of daily living. These services include medical care, bathing, feeding, toileting, shopping and house keeping....W acts as a liaison and arranges for independent contractors, via registry, to be hired by independent and assisted living residents. Services are performed in the resident's home or unit.

In correspondence of May 20, 2005, you described your activities as follows:

When W receives a phone call asking for assistance, a representative of W will collect all the pertinent information, assess the need for care and then match a service provider from the W registry to the client. A representative of W will speak with a family member, inform them of the policies concerning services/care and discuss the financial responsibilities. W will then secure signatures for paperwork and set up a schedule to begin services at the clients' apartment.

Revenue is derived entirely from the fees that you charge for your services. In response to our inquiry about your budgeted excess of revenue over expenses, you stated that your

goal...has been to establish a foundation/endowment for the benefit of the approximately 1,000 people who reside in the X communities. W will provide for extra, subsidized services, either in the resident's apartment or at V, the assisted living facility. Two of our facilities are HUD facilities...also...making funds available to make it possible for residents of limited financial means to transfer to an assisted living facility.

LAW

Section 501(c)(4) of the Internal Revenue Code states that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare will be recognized as exempt under subsection 501(a) if no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-2 of the Income Tax Regulations states that an organization will be regarded as operating exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community, because it is operated primarily to bring about civic betterments and social improvements.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations that are operated for profit.

Rev. Rul. 61-170, 1961-2 C.B. 112 held that an association of professional nurses that operated a registry was operating a regular business of a kind ordinarily carried on for profit and primarily benefiting its members.

Rev. Rul. 70-535, 1970-2 C.B. 117 provided that a nonprofit organization formed to manage low and moderate income housing projects for a fee does not qualify for exemption under section 501(c)(4) of the Code. It provided managerial, developmental, and consultative services, and all of its revenue was derived from management fees. The Service found that the fact that the services were performed for tax-exempt corporations did not change the business nature of the activity.

Rev. Rul. 72-209, 1972-1 C.B. 148 provided that an organization formed to provide low-cost home health care services to elderly Medicare patients does qualify for exemption under section 501(c)(3) of the Code. It promotes health in a charitable manner by serving low-income people and providing free services for those who cannot afford to pay.

Rev. Rul. 73-306, 1973-2 C.B. 179 provided that a nonprofit organization formed to protect the rights of tenants in one rental complex did not benefit the community in general, but rather a select group of individuals. Therefore, exemption under 501(c)(4) was denied.

Rev. Rul. 74-99, 1974-1 C.B. 132 clarified the definition of community as it applies to homeowners associations. A mere aggregation of homeowners in a real estate subdivision is not a community. It must be a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit thereof. Further, the revenue ruling distinguished between maintenance for exterior walls and roofs of member's homes and maintenance of such areas as roadways and parklands, sidewalks and street lights, which may be used by members of the broader community or general public.

Rev. Rul. 77-273, 1977-2 C.B. 195 concerned an organization that provides security services for residents and property owners of a particular community whose residents donate money at a specified hourly rate to pay for the services. The Service found that an entity that provided private security services, such as emergency rescue, guards for homes, businesses and construction projects, on a regular basis in return for certain compensation was carrying on a business with the general public in a manner similar to organizations operated for profit. The fact that the organization occasionally provided free services did not satisfy the requirements of the regulations.

Rev. Rul. 80-206, 180-2 C.B. 185 provided that a nonprofit organization formed to protect the legal rights of all the tenants in a community does qualify as a social welfare organization.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. The court found that the corporation had

completely failed to demonstrate that its services were not in competition with commercial businesses. The court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs, and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation had failed to limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Church By Mail, Inc. v. Commissioner, T.C. Memo 1984-349, *aff'd* 765 F. 2d 1387 (9th Cir. 1985) the Tax Court found that a church was operated with a substantial purpose of providing a market for an advertising and mailing company owned by the same people who controlled the church. The church argued that the contracts between the two were reasonable, but the Court of Appeals pointed out that "the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

RATIONALE

Civic leagues and organizations not organized for profit, but operated exclusively for the promotion of social welfare are recognized as exempt under section 501(c)(4) of the Code. An organization will be regarded as operating exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people in the community. (Section 1.501(c)(4)-1(a)(2)(i) of the regulations.)

One crucial element for section 501(c)(4) exemption is promotion of social welfare for the people of a community. The Service granted exempt status to an organization that defended tenants' rights for a whole community, which is considered an exempt activity. Rev. Rul. 80-206, *supra*. In comparison, the organization in Rev. Rul. 73-306, *supra*, was denied exempt status because it only benefited the tenants in one rental complex. It did not benefit the community in general, but rather a select group of individuals.

The concept of social welfare depends upon a definition of community. Rev. Rul. 74-99, *supra*, states that "a community is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision..." The ruling states that though an exact delineation of the parameters of "community" is not possible, "the term as used in [section 501(c)(4)] has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof."

The information that you submitted indicates that your services will be provided to the residents of five facilities in four locations. Nothing in your file supports a finding that the recipients of the services constitute a governmental subdivision. Accordingly, you have failed to establish a key element of exempt status under section 501(c)(4): the promotion of the common good and general welfare of all the people in the community.

Businesses primarily benefit their owners, so conducting a business cannot be the primary purpose of an organization exempt under section 501(c)(4) of the Code. For example, the Service ruled that an organization that only provided security services to residents of a community in return for fees was a business, and not eligible for exempt status under section 501(c)(4). See Rev. Rul. 77-273, *supra*. The fact that the organization occasionally provided free services did not distinguish the activity from that carried on by a for-profit organization.

Your primary activity is to act as a liaison: maintaining a registry that matches independent contractors to be hired by residents in return for a fee. This is a traditional business activity, carried out by for-profit organizations. In Rev. Rul. 61-170, *supra*, the Service held that a registry operated by nurses was a regular business of the kind ordinarily carried on for profit, and thus not eligible to be regarded as an exempt activity. You have provided no information showing that you conduct your activity differently from a commercial entity. Your sole source of income is the fees that you charge for your services from the recipients of the services. Although you provide some services to residents of "HUD buildings" who may or may not be a charitable class, this is not enough to make your activity exempt. See Rev. Rul. 70-535, *supra*. Your activities are not charitable home health care services because you are an arranger of services and not a provider of charitable services as described in Rev. Rul. 72-209, *supra*.

Even if your services were offered only to exempt organizations, they would still be regarded as a business. See BSW Group, Inc. and Rev. Rul. 70-535, *supra*. Section 1.501(c)(4)-1(a)(2)(i) of the regulations states that an organization will not be recognized as exempt under section 501(c)(4) if its primary activity is carrying on a business in a manner similar to an organization operated for profit. Because your primary activity is to act as a liaison for a fee paid by the recipients you fail to meet a requirement for section 501(c)(4). You are primarily engaged in operating a business in a commercial manner rather than primarily promoting the common good and general welfare of the people of the community.

Lastly, the registry provides substantial benefit to the independent contractors, for whom you find potential clients. Like the organization in Rev. Rul. 61-170, *supra*, the financial benefit provided to the independent contractors listed on your registry is not merely incidental to an exempt activity.

We find that your primary purpose is operating a business rather than promoting the general welfare of the people in the community. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(4) of the Code and you must file federal income tax returns.

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 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.

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. If you fax your reply, please contact the person identified in the heading of this letter by telephone to confirm that your fax was received.

Internal Revenue Service
TE/GE (SE:T:EO:RA:T)

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