



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200742023**
Release Date: 10/19/07
Date: July 31, 2007

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
Tax Years:

UIL 501.03-11

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

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Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosures:

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



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

Date: July 31, 2007

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

C =

F =

G =

H =

J =

K =

M =

N =

Date A =

Date B =

Year D =

Date E =

Year I =

Date L =

Dear _____ :

This letter supersedes and replaces our letter to you dated Date A.

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code ("Code") sections 501(a) and 501(c)(3). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

On Date B, you were incorporated as a not-for-profit corporation under the laws of the State of C. You began operations in Year D. On Date E, you filed Form 1023, *Application for Recognition of Exemption*, under section 501(c)(3) of the Code.

You were dormant until Year D, when you established the F, which you describe as "a self-insurance mechanism to offer limited medical-reimbursement type benefits to persons who would join F." You indicate that F was developed to provide "modest medical coverage" to uninsured or underinsured persons in the community who became F members. Anyone in the community could become a member and participate in the F reimbursement program in

exchange for an annual \$G membership fee. You indicated that this fee was "far below the estimated 'market value' of the rights received" by E members. Members included a cross-section of the community, including the mayor of N and various providers of health care services. You targeted promotion of E primarily to those whom you determined to be "medically challenged, disenfranchised or disadvantaged," particularly those without health insurance, and awarded H free memberships to persons who demonstrated an inability to pay the annual membership fee.

E members qualified for reimbursement of various medical and health-related expenses. Interest-free loans were available for members who incurred significant dental expenses. Members also qualified for discounts on various services and goods, primarily health-related services, from private, for-profit "Practitioner Members" of E who provided health-care related services in the community. Practitioner Members qualified for discounts and coupons from area businesses. Between Year D and Year I, J of E's K members were Practitioner Members. You promoted E's Practitioner Members by distributing a list of these members, and discounts for their services available to E members, to other E members and community groups. Practitioner Members included dentists, physical therapists, chiropractors, massage therapists, energy healers, acupuncturists, feng shui practitioners, veterinarians, clairvoyants, tarot card readers, psychic readers, and other providers. You indicated that most Practitioner Members operated small freelance businesses, and many of them were uninsured or underinsured.

You indicated that you also published E newsletters and sponsored periodic workshops and educational events through E dealing with public health-oriented themes and issues. You also organized an event in which E-member massage therapists provided massages to members of the community.

In Date L, you transferred E and its associated assets, fund balances and membership to M, an organization that has applied for recognition of its tax exemption. Since that time, you have been inactive. You state that you are hoping to provide financial support and advice to organizations that "engage in worthwhile endeavors for the community & the public at large," and are "awaiting another brilliant idea to emerge in the N community for how such a successful & beneficial model can be designed."

Law

Operational Test

An organization described in section 501(c)(3) of the Code must be, among other requirements, organized and operated exclusively for certain purposes. Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states:

In order to be exempt as an organization described in 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.

Section 1.501(c)(3)-1(c)(1) of the regulations states:

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). 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(d)(1)(i) of the regulations states:

An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes: . . . (b) Charitable, . . . (f) Educational

Section 1.501(c)(3)-1(d)(2) of the regulations states that the term "charitable" is used in Section 501(c)(3) of the Code in its generally accepted legal sense, and includes:

Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations states that the term "educational" relates to:

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- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. An organization that serves a private interest, other than incidentally, is not entitled to exemption under section 501(c)(3) of the Code. Thus, although an organization's operations may be deemed to be beneficial to the public, if it also serves private interests other than incidentally it is not entitled to exemption.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court held that an organization that as its primary activity operated a school to train individuals for careers as political campaign professionals was not operated exclusively for exempt purposes as described in section 501(c)(3) of the Code because the school's activities conferred impermissible private benefit. The court defined "private benefit" as "nonincidental benefits conferred on disinterested persons [that] serve private interests." *Id.* at 1069.

In Rev. Rul. 60-143, 1960-1 C.B. 192, the social and recreational activities carried on by an alumni association of a university were merely incidental to the association's basic purpose of advancing the interests of the university and thus, did not preclude the association from being described in section 501(c)(3) of the Code. This revenue ruling noted that "an activity which is

in fact incidental, secondary or subservient to an organization's exempt purpose or purposes and which, when weighed against the whole of the activities of the organization, is less than a substantial part of the total, will not ordinarily operate to deny exemption."

In Rev. Rul. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses supported and operated a nurses' registry to help make the nurses' services more readily available to the general public. The association was operated primarily for the benefit of its members, and only incidentally for the benefit of the general public. Thus, the association was not organized or operated exclusively for exempt purposes as described in section 501(c)(3) of the Code.

Rev. Rul. 80-287, 1980-2 C.B. 185 provides that a nonprofit lawyer referral service organization does not qualify for exemption under section 501(c)(3) of the Code. The organization was created by several bar associations in a metropolitan area to provide a lawyer referral service. The organization aided persons who did not have an attorney by helping them select one, in exchange for a nominal service charge. Any member of the public could visit or call the organization. Each individual was screened to determine the area of law involved. From the list of attorneys maintained by the organization, an attorney specializing in the appropriate area of law was selected from within the geographical area selected by the client. The organization arranged an appointment for the individual with the attorney and the individual was asked to pay a nominal fee, substantially less than the normal fee charged for a half-hour appointment. Any attorney who was a member of a local bar association could apply for placement on the referral list. Attorney applicants were required to pay an application fee.

Although the referral service described in Rev. Rul. 80-287 provided some public benefit, a substantial purpose of the program was promotion of the legal profession. Accordingly, the organization did not qualify for exemption as a charitable organization described in section 501(c)(3) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (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.

Effective Date

Section 508(a) of the Code provides that an organization shall not be treated as an organization described in section 501(c)(3) unless it has given notice to the Service that it is applying for recognition of exempt status.

Section 1.508-1(a)(2)(i) of the regulations requires an organization seeking exemption from taxation under section 501(c)(3) of the Code to file the notice described in section 508(a) within 15 months from the end of the month in which the organization was organized, subject to certain exceptions. Such notice must be filed by submitting a properly completed and executed Form 1023 exemption application with the Service. If this notice is timely made, tax exemption is normally retroactive to the applicant's date of organization. Otherwise, exemption is effective the date the Form 1023 is filed.

Section 1.508-1(a)(3)(i)(b) of the regulations provides exceptions to this notice requirement that include an organization that is not a private foundation and the gross receipts of which are normally not more than \$5,000 in each taxable year. For purposes of this \$5,000 gross receipts exception, an organization must file the required notice within 90 days after the end of the first taxable year in which it does not qualify for the exception. See section 1.508-1(a)(3)(ii) of the regulations.

Section 301.9100-2(a)(2)(iv) of the regulations provides an automatic 12-month extension of the 15-month Form 1023 filing deadline.

Burden of Proof

Rev. Proc. 90-27, 1990-1 C.B. 514, requires an applicant to submit sufficient information during the application process for the Service to conclude that the organization is in compliance with the organizational and operational requirements of section 501(c)(3) before it must issue a ruling. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests. An organization that serves a private interest other than incidentally is not entitled to exemption under section 501(c)(3). Thus, although an organization's operations may be deemed to be beneficial to the public, if it also serves private interests other than incidentally it is not entitled to exemption. See American Campaign Academy v. Commissioner, supra.

RATIONALE

Organizations described in section 501(c)(3) of the Code must be organized and operated exclusively for one or more exempt purposes specified in the regulations, which include charitable or educational purposes. See section 1.501(c)(3)-1(d)(1)(i) of the regulations.

Operational Test

To be operated exclusively for one or more exempt purposes, an organization must engage primarily in activities that accomplish one or more of these exempt purposes. However, if more than an insubstantial part of the organization's activities is not in furtherance of an exempt purpose, it is not engaged primarily in activities that accomplish an exempt purpose. See section 1.501(c)(3)-1(c)(1) of the regulations.

You indicate that your E program is promoted primarily to individuals and families who are "medically challenged, disenfranchised, or disadvantaged," particularly those without health insurance. However, your E services are not restricted to these individuals or families, but are open to any member of the community who is able to pay an annual fee. You have not provided any demographic or other studies showing that your E members are exclusively or primarily low-income individuals or families who are financially unable to purchase adequate health insurance. Therefore, you have failed to establish that your E program primarily serves charitable purposes. See sections 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(d)(2) of the regulations; see also Rev. Proc. 90-27, supra.

The E program serves a substantial non-exempt purpose: to promote your E members' interests, in particular the interests of your E "Practitioner Members" who are private, for-profit health care providers. In exchange for a fee, you promote each of your Practitioner Members' services to other E members and the community, and provide Practitioner Members with various discounts and coupons for community businesses. You also provide E members with insurance-type benefits, shifting and distributing their health cost risks among other paying members, and provide reimbursements for their health-related expenses. You also provide the opportunity for some E members to apply for interest-free loans for their dental care expenses.

You promote your Practitioner Members and their services through various publications distributed to your other E members and to community groups. In this way, you are similar to the organizations described in Revenue Rulings 80-287 and 61-170, supra, which promoted their associates' services and thereby served a substantial, non-exempt private purpose. Thus, you have failed to establish that you are not serving private interests pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. See American Campaign Academy, supra; see also Rev. Proc. 90-27, supra.

Furthermore, your activities are not primarily "educational" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. Although you have engaged in some community educational and outreach activities, your principal activity has been operation of the E health care reimbursement and discount program.

Because your non-exempt activities demonstrate the presence of a substantial non-exempt purpose and represent more than an insubstantial portion of your total activities, and because you have failed to establish that you are not organized or operated for the benefit of private interests, you do not qualify for recognition of exemption under section 501(c)(3) of the Code. See sections 1.501(c)(3)-1(c)(1) and 1.501(c)(3)-1(d)(1)(ii) of the regulations; Better Business Bureau, supra.

Effective Date

Even if you were to qualify for recognition of exemption under section 501(c)(3) of the Code, the effective date of exemption would not be earlier than Date E.

Sections 1.508-1(a)(2)(i) and 301.9100-2(a)(2)(iv) of the regulations provide that for the effective date for exemption under section 501(c)(3) to be the date an organization was organized, it normally must file its application for exemption within 27 months (15 months plus an automatic 12-month extension) from the end of the month in which it was organized, or meet one of the exceptions to this 27-month filing rule. You did not file the Form 1023 until Date E, over 27 months after your date of incorporation (Date B).

You qualified for an exception from this 27-month filing requirement for the first several years of your existence because your annual receipts during that period were less than \$5,000 annually. See section 1.508-1(a)(3)(i)(b) of the regulations. However, you failed to file the Form 1023 within 90 days after the end of your taxable year, Year D, the first taxable year in which you had gross receipts over \$5,000, as required by section 1.508-1(a)(3)(ii). Therefore, under section 1.508-1(a)(2)(i) the effective date of your exemption would not be the date on which you were organized.

Therefore, even if you were to qualify for recognition of exemption under section 501(c)(3) of the Code, the effective date of your exemption would not be earlier than Date E.

Accordingly, contributions to you are not deductible under section 170 of the Code, and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:1)
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement to the person whose name and fax number are shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements