



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200742025**

Release Date: 10/19/07

Date: July 24, 2007

UIL Code: 501.27-00

Contact Person:

Identification Number:

Form Required To Be Filed:

Tax Years:

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(e). 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(e), 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 these deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosures: (1) Notice 437
(2) Redacted Proposed Adverse Determination Letter
(3) Redacted Final Adverse Determination Letter



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WASHINGTON, D.C. 20224

Date: July 24, 2007

UIL Code:
501.27-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

date a =

B =

date c =

D =

Dear :

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

On date a, you were incorporated as a nonprofit, public benefit corporation under the laws of the State of B. On date c, you filed Form 1023, *Application for Recognition of Exemption*, under section 501(e) of the Code.

Your purposes, as set forth in your Articles of Incorporation, are to assist public hospital districts and nonprofit corporations that operate critical access hospitals in the state of B to work collaboratively to improve the effectiveness, quality, performance, safety, timeliness, and accessibility of their health care services.

Your membership is available to any hospital that is owned or operated by a public hospital district in western B, has been designated by the Centers for Medicaid and Medicare Services as a "critical access hospital," and has been approved for membership by your members and board of directors. Currently, your membership consists of nine public hospital districts. Each of your members appoints a director to your board of directors. You state that you will allocate your annual net earnings to each of your members, based on the percentage of your services that you perform for each member.

Your activities will consist primarily of providing consulting services to your members. You state that you will develop and implement a quality assessment/performance improvement plan, a corporate compliance plan, patient satisfaction surveys, information system networks, and an electronic medical records network for your members. You will provide other consulting services to your members involving risk management, cardiac care support capability, business best practices, economic viability and service capacity, and corporate and legal compliance.

For instance, you will coach your members to prepare them for the state of B's D Survey. You will also assist your members with staff recruitment, training, and retention.

You will provide clinical training and education to your members using telehealth / telemedicine videoconferencing services. You will also provide this clinical training and education to several non-members, including other hospitals and health centers in your state.

Your revenues will be derived primarily from government grants and membership fees, which include new member assessments and annual dues.

LAW

Section 501(e) of the Code provides that an organization shall be treated as organized and operated exclusively for charitable purposes, if

- (1) such organization is organized and operated solely--
 - (A) to perform, on a centralized basis, one or more of the following services which, if performed on its own behalf by a 501(c)(3) hospital, would constitute activities in exercising or performing the purpose or function constituting the basis for its exemption: data processing, purchasing (including the purchasing of insurance on a group basis), warehousing, billing and collection, food, clinical, industrial engineering, laboratory, printing, communications, record center, and personnel (including selection, testing, training, and education of personnel) services; and
 - (B) to perform such services solely for two or more hospitals each of which is—
 - (i) a 501(c)(3) organization,
 - (ii) a constituent part of a 501(c)(3) organization and which, if organized and operated as a separate entity, would constitute a 501(c)(3) organization, or
 - (iii) owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing;
- (2) such organization is organized and operated on a cooperative basis and allocates or pays, within 8 1/2 months after the close of its taxable year, all net earnings to patrons on the basis of services performed for them; and
- (3) if such organization has capital stock, all of such stock outstanding is owned by its patrons.

Section 1.501(e)-1(a) of the regulations provides that section 501(e) of the Code is the exclusive and controlling section under which a cooperative hospital service organization can qualify as a charitable organization under section 501(c)(3) of the Code. In order to qualify for tax exempt status, a cooperative hospital service organization must—

- (1) Be organized and operated on a cooperative basis,
- (2) Perform, on a centralized basis, only one or more specifically enumerated services which, if performed directly by a tax exempt hospital, would constitute activities in the exercise or performance of the purpose or function constituting the basis for its exemption, and
- (3) Perform such service or services solely for two or more patron-hospitals as

described in section 1.501(e)-1(d).

Section 1.501(e)-1(d)(3) of the regulations provides that an organization does not meet the requirements of section 501(e) of the Code if, in addition to performing services for 501(c)(3) patron-hospitals, the organization performs any service for any other organization.

In HCSC Laundry v. United States, 450 U.S. 1 (1981), the Supreme Court held that section 501(e) of the Code was the exclusive and controlling section by which a cooperative hospital service organization could obtain federal tax exemption. An organization formed to operate a laundry service for 15 member nonprofit hospitals was held not entitled to exemption because laundry service is not a permitted service under section 501(e)(1)(A).

RATIONALE

A cooperative hospital service organization that provides services for more than one tax-exempt hospital may qualify for federal tax exemption under section 501 of the Code if it meets the requirements of section 501(e). Section 501(e) is the exclusive means by which a cooperative hospital service organization may qualify for tax exemption. See section 1.501(e)-1(a) of the regulations and HCSC-Laundry, supra.

The exemption applies only to hospital service organizations that provides the services specifically enumerated in the statute and the regulations, and that provides such services exclusively to tax-exempt hospitals. See sections 1.501(e)-1(a) and 1.501(e)-1(d)(3) of the regulations. Thus, a hospital service organization that either provides services other than those specifically enumerated in section 501(e) of the Code or that provides such services to any beneficiary other than a tax-exempt hospital does not qualify for exemption.

You provide to your tax-exempt hospital members some of the types of services enumerated under section 501(e) of the Code, including communications, personnel, and clinical services. However, the consulting services you provide to your members exceed the scope of permissible services enumerated in section 501(e). For instance, your consulting activities involving risk management, corporate and legal compliance, business best practices, and economic viability and service capacity are not consistent with section 501(e). Because you provide services other than those specifically enumerated in section 501(e), you are not organized and operated exclusively for charitable purposes under section 501(e).

Further, section 1.501(e)-1(d)(3) of the regulations provides that an organization does not meet the requirements of section 501(e) of the Code if, in addition to performing services for its 501(c)(3) patron-hospitals, the organization performs any service for any other organization. Because you will be providing telehealth/telemedicine videoconferencing services to several hospitals and health centers other than your members, you are not organized and operated exclusively for charitable purposes under section 501(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 contains all the relevant facts, and such facts are true, correct, and complete.

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. (PE-3Q2)
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