



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200850036**
Release Date: 12/12/08
Date: 9/18/08

UIL Code: 501.03-00
501.03-05
501.03-25
501.03-30
501.03-31
501.32-00
501.33-00
501.04-00

Contact Person:

Identification Number:

Contact Number:

Employer 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(c)(3) or section 501(c)(4). 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.

Since 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.

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, you should 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.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

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,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: July 24, 2008

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

L = individuals
M = Ethnic type
N = City
O = Country
P = individuals
Q = items
x = \$amount

UIL Index:

501.03-00
501.03-05
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501.32-00
501.33-00
501.04-00

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3) or 501(c)(4). The basis for our conclusion is set forth below.

ISSUE:

Are you, the applicant organization, which provides medical, unemployment and death benefits to its membership, qualified for exemption under Internal Revenue Code section 501(c)(3) or 501(c)(4)?

FACTS:

Article Four of your Articles of Incorporation submitted with the Form 1023 states, in part, that:

...the Corporation's primary purpose and focus will be to provide medical help, medical treatment unemployment benefits when member is unemployed, death benefits which include

funeral and burial expenses, rent reimburse(r)sment (sic) when unemployed, travel expenses for self and/or family to visit their spouse or parents, exclusively to members of the Association of all ages at no charge or at a nominal fee..."

In the "Objective" attachment of the Form 1023 it indicates that your membership consists of M members who are currently employed as P in the N and surrounding areas. From monthly membership dues collected of \$x per member, you will use the funds as follows:

- Pay benefits to sick and unemployed members for up to three months,
- Pay utilities and rent for unemployed members for up to three months,
- Reimburse families for burial expenses of members,
- Provide full or partial reimbursement to members for air fare to O if a family member dies (e.g. wife, mother, father, mother-in-law or father-in-law).

Members must have made contributions to you for at least 90 days in order to qualify for the aforementioned benefits.

Membership funds are nonrefundable and disbursements of the aforementioned benefits are restricted to your members. The current membership total is unknown, but Item 9 of your May 12th response indicates that you plan to expand your membership to other communities.

Item 8 of your May 12th response indicates that you are not part of a labor union since most labor union members "have their own owner-operated 'Q.'"

Your response further states that:

Our benefits may not be offered to these members [of labor unions], as they may not be members of the Union and most of these members are "owner-operated". We are not aware of any of the Union's objects. Our members are exclusively—M Origin. I believe, this would make the major difference.

LAW:

Section 501(c)(3) of the Code describes certain organizations which are exempt from Federal income tax under section 501(a) of the Code and reads, in part, as follows:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social

welfare.

Section 1.501(c)(3) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt 501(c)(3) purpose if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section.

Section 1.501(c)(3)-1(d) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements, an organization must establish that it is not organized or operated for the benefit of private interests, such as those of its creator.

In Revenue Ruling 55-495 (1955-2 CB 259), section 501(c)(4) exemption was granted to a member supported organization that provided for the payment of life, sick, accident or other benefits to members or their dependents. Revenue Ruling 55-495 was modified by Revenue Ruling 75-199 (1975-1 CB 160), which removed the conclusion that the association was exempt under Section 501(c)(4) of the Code. Revenue Ruling 75-199 described an organization that restricted its membership to individuals of good moral character and health belonging to a particular ethnic group residing in a stated geographical area and provided sick benefits to members and death benefits to their beneficiaries. Like the organization described in Revenue Ruling 55-495, the primary source of revenues in the instant organization was derived from membership dues. Since this organization was a mutual, self-interest type of organization that provided direct economic benefits to its members and any community benefit was minor and incidental it was found that the organization was not exempt under 501(c)(4) of the Code.

In Revenue Ruling 55-656 (1955-2 C.B. 262), a community nursing bureau operated as a community project, which maintained a nonprofit register of qualified nursing personnel for the benefit of area medical service providers which received its support primarily from public contributions and community organizations, was found to be exempt under Section 501(c)(3) of the Code.

In Revenue Ruling 61-170 (1961-1 C.B. 112), an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

Better Business Bureau of Washington, DC, Inc. v. United States, 326 US 279, 283 (1945), holds that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

APPLICATION OF LAW:

501(c)(3)

Section 501(c)(3) of the Code describes certain organizations which are exempt from taxation under section 501(a) of the Code. Your provision of benefits to your membership does not exclusively serve any of the purposes listed in Section 501(c)(3).

Section 1.501(c)(3) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purpose if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. You are not operated for one or more exempt purposes because your net earnings inure to the benefit of your membership.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), the organization must be one that is both organized and operated exclusively for one or more of the purposes specified in that section. Although your organizing document contains sufficient language to comply with the organizational test, you are not operated exclusively for exempt purposes because you are a mutual organization that provides substantial private benefit to your membership.

Section 1.501(c)(3)-1(d) states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. You are not operated exclusively for exempt purposes because you serve the private interests of your membership.

You are not like the organization in Revenue Ruling 55-656 where a community nursing bureau operated as a community project and was funded primarily from public contributions and community organizations. You are member supported organization that provides benefits to a limited membership.

You are similar to the organization in Revenue Ruling 61-170 where an association composed of nurses supported and operated a nurses' registry primarily to afford greater employment opportunities themselves. Like the organization in the ruling, the primary beneficiary of your activity is not the general public, but the membership of your organization.

Like in Better Business Bureau of Washington, DC, Inc. v. United States, the presence of a single substantial non-exempt purpose destroys your claim for exemption. In this case your substantial non-exempt purpose is providing unemployment, medical and death benefits to your members on a mutual basis.

501(c)(4)

The promotion of social welfare is a recognized standard that enables an organization to obtain exemption under section 501(c)(4). Your provision of benefits exclusively to your membership on a mutual basis does not promote the social welfare of your community.

Furthermore, you are very similar to the organization described in Revenue Ruling 75-199

wherein section 501(c)(4) exemption was denied to an mutual organization that served the private interests of its members, which consisted of individuals of a certain ethnic group within a specific geographical area, by providing sick benefits to the members and death benefits to their beneficiaries.

ORGANIZATION'S POSITION:

In Item 9 of your May 12, 2008 response, it states:

The L are very diverse and are part of an underdeveloped county-Q. The Trustee plan (sic)to broad base (sic) the membership to other communities as well. The fund collected will go a long way to improve the M people in the USA and in Q. Although, restricted to people of M Origin, the association will provide aid and support as well as relief to the people of Q in the long run. Funds collected for relief and other natural calamities will also be utilized for the relief purposes.

Otherwise, you were unable to provide any legal citations to show that your activities of providing sick, unemployment, burial and/or bereavement benefits to your members serve any exempt purpose.

SERVICE'S POSITION:

You indicate that, sometime in the future, you will provide aid and relief to people in Q. You have given no evidence that this activity will provide a public benefit or that it is occurring or will occur in the near future. Even if you began to provide benefits to needy people in Q, the substantial non-exempt purpose of providing benefits to your membership would preclude exemption.

Expanding your membership to include L in other communities simply expands your membership base and does not provide benefits to the general public.

Your current activity is to provide sick, unemployment, burial and/or bereavement benefits to your members. These member benefits result in substantial private benefit that precludes exemption.

CONCLUSION:

Your organization was formed and is operated as a mutual benefit organization for the benefit of your membership. You do not serve any exempt purpose as defined in section 501(c)(3). You serve the private interests of your members and not any public interest.

You do not promote the social welfare interests of the community as defined in section 501(c)(4). On the contrary, you promote the personal interests of your membership.

Therefore, you do not qualify for exemption under Internal Revenue Code section 501(c)(3) or section 501(c)(4).

APPEAL RIGHTS:

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, Exempt Organization Appeal Procedures for Unagreed Issues.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, Power of Attorney and Declaration of Representative, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service
EODQA, Room 7008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EODQA, Room 7008
550 Main Street
Cincinnati, OH 45202

You may fax your statement using the fax number 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 or she 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, EO Rulings & Agreements

Cc: