



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200941038**
Release Date: 10/9/2009

Date: July 14, 2009

UIL Code:
501.03-30
501.03-33

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 under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) because you are not organized and operated exclusively for one or more exempt purposes within the meaning of section 501(c)(3) and section 1.501(c)(3)-1 of the Income Tax Regulations.

In addition, you do not qualify for exemption from Federal income tax under section 501(a) of the Code as an organization organized and operated exclusively for charitable purposes under section 501(n) because you do not meet all the requirements for a charitable risk pool described in section 501(n)(2) of the Code.

In addition, you are precluded from qualifying as an organization described in section 501(c)(3) of the Code because more than a substantial part of your activities consists of providing commercial-type insurance within the meaning of section 501(m).

Because you do not qualify for exemption as an organization described in section 501(c)(3) of the Code, donors may not deduct contributions to you under 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.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under section 6110 of the Code, 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 section 6104(c) of the Code, 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.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Robert 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: May 27, 2008

UIL Code:
501.03-30
501.03-33

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

L =

M =

a =

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). The basis for our conclusion is set forth below.

You are a corporation organized under the nonprofit laws of the State of L for the purpose of seeking the prevention or lessening of casualty and property losses for your members and injuries to persons and employees which might result in claims being made against your members. You will operate for the benefit of institutions of higher learning or educational organizations in the State of L.

According to your Articles of Incorporation, you are a not-for-profit corporation organized pursuant to M (the "Statute"), which states:

Your members consist of a L colleges and universities that are tax-exempt as organizations described in section 501(c)(3) of the Code. Your activities consist of establishing a risk management pool for your members and utilizing the funds you receive from your members to defend and protect any member of the pool against liability for a covered loss, such as property, casualty, workers compensation and fleet automobiles. Thus, you will provide insurance for your members by assuming some insurance risk yourself. You will also purchase insurance from third party insurance companies on behalf of your members, which you can do more economically for your members than each member can do for itself. You received all of your initial funding directly from your members, not from any party outside of your membership.

You have entered into an agreement ("The Cooperative Agreement") with your members that describes the services you provide to them. Under this agreement, you administer group insurance policies for your members, and supervise the claims adjustment processes and activities of your third party administrator. You also provide to or arrange for your members

various risk management services, such as property appraisals, risk analysis studies, mitigation projects, investment management services, proofs of insurance, and you generally act as the group's risk management office where no such office exists, or augment the activities of a member institution's risk management office. The Cooperative Agreement also constitutes your Bylaws.

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax for corporations organized and operated exclusively for charitable, scientific or educational purposes, provided no part of the corporation's net earnings inures to the benefit of any private shareholder or individual.

Section 501(m)(1) of the Code states that an organization described in section 501(c)(3) or (4) shall be exempt only if no substantial part of its activities consists of providing "commercial-type insurance."

Section 501(n)(1) of the Code states that a qualified charitable risk pool shall be treated as an organization operated exclusively for charitable purposes and not subject to section 501(m).

Section 501(n)(2) Code states that the term "qualified charitable risk pool" means any organization, comprised of section 501(c)(3) members, which is organized and operated solely to pool insurance risks of its members (other than risks related to medical malpractice) and to provide information to its members with respect to loss control and risk management, and satisfies the organizational requirements of section 501(n)(3).

Section 501(n)(3) of the Code states that an organization will be organized as a qualified charitable risk pool if the risk pool is organized as a non-profit organization under state law provisions authorizing risk pooling arrangements for charitable organizations, the risk pool is exempt from any state income tax (or will be so exempt after such pool qualifies as an organization exempt from federal income tax), the risk pool receives at least \$1,000,000 in startup capital from nonmember charitable organizations; such risk pool is controlled by a board of directors elected by its members; and the organizational documents require that each member of the risk pool be described in section 501(c)(3), any member no longer described in section 501(c)(3) shall notify the pool of its determination, and each policy of insurance issued by the risk pool will not cover the insured with respect to events occurring after the effective date of the determination.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations states that 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(d)(2) of the regulations, states in part, that the term "charitable" in section 501(c)(3) of the Code includes lessening the burdens of government.

Rev. Rul. 54-305, 1954-2 C.B. 127, provides that a corporation organized and operated for the primary purpose of operating and maintaining a purchasing agency for the benefit of its otherwise unrelated members who are exempt from federal income tax as charitable organizations, is engaged in business activities which would be unrelated activities if carried on by any one of the tax-exempt organizations served. Therefore, the corporation is not entitled to exemption under section 501(c)(3) of the Code.

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

Rev. Rul. 81-276, 1981-2 C.B. 128, describes a professional standards review organization ("PSRO") established pursuant to a federal statute to review health care practitioners' and institutions' provision of health care services and items for which payment is made under Medicare and Medicaid, and determine whether the quality of services met professionally recognized standards of care. No payments under Medicare or Medicaid could be made before the services were reviewed and approved by the organization. By taking on the government's burden of reviewing the quality of services provided under Medicare and Medicaid, the organization lessened the burdens of government and promoted health in a charitable manner. Any benefit to members of the medical profession from such activities was incidental to the benefit the organization provided in promoting health and lessening the burdens of government. Therefore, the organization qualified for exemption under section 501(c)(3) of the Code.

Rev. Rul. 85-1, 1985-1 C.B. 177, applied the criteria set out in Rev. Rul. 85-2, *infra*, for determining whether an organization's activities are lessening the burdens of government. In this ruling, the organization was created to assist a county's law enforcement agencies in policing illegal narcotics traffic more effectively. The organization provides funds that allowed the county's agents to engage in certain activities for which funds were not otherwise available. This ruling concluded that by funding activities that the county treats as an integral part of its program to prevent the trafficking of illegal narcotics, the county demonstrates that these activities are a part of its burden. Thus, the organization is lessening the burdens of the county by enabling it to augment its law enforcement activities.

Rev. Rul. 85-2, 1985-1 C.B. 178, states that to determine whether an activity is a burden of government, the question is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden. To determine whether the organization is actually lessening the burdens of government, all the relevant facts and circumstances must be

considered. A favorable working relationship between the government and the organization is strong evidence that the organization is actually lessening the burdens of the government.

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."

In Virginia Professional Standards Review Foundation v. Blumenthal, 466 F. Supp. 1164 (D.C. D.C. 1979) ("Virginia PSRO"), two organizations were formed to pursuant to a federal law that provided for the establishment of professional standards review organizations to ensure the effective, efficient and economic delivery of health care services to Medicare and Medicaid beneficiaries. The district court concluded that these organizations operated exclusively for charitable purposes under section 501(c)(3) of the Code.

In Professional Standards Review Organization of Queens County, Inc. v. Commissioner, 74 T.C. 240 (1980), acq., 1980-2 C.B. 2 ("Queens County PSRO"), the Tax Court held that an organization created pursuant to a federal statute, that reviewed the appropriateness and quality of healthcare services provided to Medicare and Medicaid recipients was exempt under section 501(c)(3) of the Code because it lessened the burdens of government and promoted the health of persons eligible for Medicare and Medicaid.

In Columbia Park and Recreation Assoc. v. Commissioner, 88 T.C. 1 (1987), aff'd without published opinion, 838 F.2d 465 (4th Cir. 1998) ("Columbia Park"), the court of appeals upheld the decision of the Tax Court that the organization did not lessen any burden of government and thus, was not exempt under section 501(c)(3) of the Code. The organization provided a wide range of services and facilities to the residents of Columbia, Maryland. The organization contended that if it did not provide these services and facilities the local or state government would have to provide them. The Tax Court stated that this assertion does not mean that the organization's activities are, in fact, a burden of government. Instead, the organization must demonstrate that the State of Maryland and/or the county accept the organization's activities as their responsibility and recognize the organization as acting on their behalf. In addition, the organization must further establish that its activities actually lessen the burden of the state or local government.

In Paratransit Insurance Corporation v. Commissioner, 102 T.C. 745 (1994) ("Paratransit"), the Tax Court held that an organization formed under a state statute by 74 unrelated section 501(c)(3) organizations to provide them with automobile insurance for the paratransit vehicles they operate as part of their charitable activities constituted insurance for purposes of section 501(m) of the Code because its purpose was to shift the risk of potential liability of each member to the organization and the organization diversified these assumed risks by collecting premiums from multiple members.

The Tax Court further held in Paratransit that: " 'commercial-type insurance,' as used in section 501(m) of the Code, encompasses every type of insurance that can be purchased in the commercial market." The Tax Court concluded that the organization's insurance was commercial-type insurance because it was of the same type that commercial insurance carriers offered, it was not offered to members based on need or a uniform charge and premiums were

determined using the same risk and actuarial factors as commercial insurers. The fact that the organization insured its members only up to \$100,000 and effected coverage above that amount through reinsurance or "stop-loss policies" it obtained in the commercial market was a further indication to the court of the "commercial hue" of its insurance arrangements. The fact that the insurance was not available to the general public did not affect the commercial nature of the insurance offered.

In Nonprofits' Insurance Alliance of California v. U. S., 32 Fed. Cl. 277 (Ct. of Fed. Cl. 1994), although the court did not expressly address whether the organization was engaged in commercial-type insurance under section 501(m), it concluded that the organization, which was formed under a state statute, did not qualify for exemption under section 501(c)(3) because of the existence of a substantial non-exempt, commercial purpose, principally because its insurance activities resembled closely the insurance activities carried on by commercial insurance companies.

Rationale

Lessening the Burdens of Government

An organization is described in section 501(c)(3) of the Code if it is organized and operated exclusively for one or more charitable, scientific or educational purposes and no part of its net earnings inures to the benefit of any private person. The term "charitable" includes lessening the burdens of government. Section 501(c)(3)-1(d)(2) of the regulations.

In Rev. Rul. 85-1, supra, and in Rev. Rul. 85-2, supra, an organization's activities lessen the burdens of government, within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations, if the government considers the activities to be its burdens and the activities actually lessen the government's burden. An activity is a burden of the government if there is an objective manifestation by a government unit that it considers the activities of the organization to be its burden. Such consideration may be evidenced by the interrelationship between the government unit and the organization. An organization's performance of activities that a government unit treats as an integral part of its programs is evidence that the organization is lessening the burdens of government. See also Rev. Rul. 81-276, supra (organization took on the government's burden of reviewing the quality of services provided under Medicare and Medicaid and thus lessened the government's burden of performing this task); Queens County PSRO, supra (organization that reviewed the propriety of hospital treatment provided to Medicare and Medicaid recipients lessened the burdens of government); Columbia Park, supra (civic organization that operates utilities, systems, services, and facilities for a private real estate development did not lessen the burdens of government because no government unit accepted the organization's activities as its responsibility).

You were formed on a voluntary basis to operate a self-insurance fund to pool and spread liabilities of your college and university members in any property or casualty risk or surety risk. You were formed to comply with the requirements of the Statute and you operate in compliance with the requirements of the Statute. However, the Statute merely permits your formation; it does not mandate it. The Statute does not require the State of L to be represented on your governing body, nor does the State provide you with any funding. The only State oversight the Statute requires is that you must annually submit audited financial statements. Therefore, you

have demonstrated no objective manifestation by the State recognizing that your activities are its burden or its responsibility, as required by Rev. Rul. 85-1 and 85-2, supra. See also Columbia Park, supra. In addition, unlike the organizations described in Rev. Rul. 81-276, supra, Virginia PSRO, supra, and Queens County PSRO, supra, which were created pursuant to a federal statute to take on some of the federal government's burden relating to Medicare and Medicaid, you have not established that your activities constitute a burden of the State that you have assumed and that the State has acknowledged.

Therefore, you do not lessen governmental burdens within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations.

Operating for Exempt Purposes

An organization is "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. If more than an insubstantial part of an organization's activities is not in furtherance of an exempt purpose, it does not satisfy this requirement. Section 1.501(c)(3)-1(c)(1) of the regulations.

Your activities are similar to the organizations described in Rev. Ruls. 54-305, supra, and 72-369, supra, and Nonprofits' Insurance Alliance of California, supra, in that a substantial part of your activities consists of purchasing insurance for an unrelated group of section 501(c)(3) organizations. Providing these services for section 501(c)(3) organizations does not convert otherwise commercial activities to tax-exempt activities. See Better Business Bureau of Washington, DC, supra. Therefore, you are not operated exclusively for one or more exempt purposes, within the meaning of section 501(c)(3) of the Code.

Commercial Type Insurance

Section 501(m)(1) of the Code states that an organization that otherwise qualifies for exemption under section 501(c)(3) of the Code is precluded from qualifying for exemption if a substantial part of its activities consists of providing "commercial-type insurance."

Even if you otherwise qualified for exemption under section 501(c)(3) of the Code, you would be precluded from qualifying for exemption as an organization described in section 501(c)(3) because you are providing for your section 501(c)(3) members as a substantial part of your activities "commercial-type insurance" within the meaning of section 501(m). You operate similar to the organization described in Paratransit, supra, because this organization was also formed to provide insurance under a state law for its exempt members. Paratransit held that even though this activity was for the benefit of section 501(c)(3) organizations, the activity consisted of providing commercial-type insurance within the meaning of section 501(m).

Charitable Risk Pool

An organization may be described in section 501(c)(3) of the Code if it is a "qualified charitable risk pool" as described in section 501(n). To qualify as a charitable risk pool, an organization must meet all the organizational requirements specified in section 501(n)(3). One requirement, in section 501(n)(3)(C), states that the organization must receive at least \$1,000,000 in startup capital from nonmember charitable organizations.

You received startup funding only from your members and did not receive at least \$1,000,000 in startup capital from nonmember charitable organizations. Thus, because you do not meet the requirement of section 501(n)(3)(C) of the Code, you do not satisfy all of the organizational requirements in section 501(n)(3). Consequently, you are not a charitable risk pool within the meaning of section 501(n) and thus are not described in section 501(c)(3) of the Code.

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 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

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also 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, Exempt Organizations
Rulings & Agreements