

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

OCT 18 1993

Employer Identification Number: [REDACTED]  
Form: 1120  
Tax Years: [REDACTED]-Present

Dear Applicant:

This is a final adverse ruling as to your exempt status as an organization described in section 501(c)(3) of the Internal Revenue Code.

This ruling is made for the following reason(s):

You have failed to establish that you are organized and operated exclusively for charitable purposes within section 501(c)(3) of the Code. Your Articles of Incorporation do not meet the organizational test of section 501(c)(3). In addition, you have failed to demonstrate that your primary purpose is the promotion of health under section 501(c)(3) and that your activities do not benefit the private interests of your members more than incidentally. Accordingly, you are not an organization described in section 501(c)(3).

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the tax years shown above. You should file these returns with your key District Director for exempt organization matters within 30 days from the date of this letter, unless a request for an extension of time is granted. Returns for later tax years should be filed with the appropriate service center as indicated in the instructions for those returns.

If you decide to contest this ruling 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

[REDACTED]

States for the District of Columbia before the 91st day after the date that this ruling was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment.

Processing of income tax returns and assessment of any taxes due will not be delayed because a declaratory judgment suit has been filed under section 7428.

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown above.

Sincerely,

(signed) [REDACTED]

[REDACTED]  
Director, Exempt Organizations  
Technical Division

[REDACTED]

cc: [REDACTED]

10/14/93

cc: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10-15-93

10/15/93

[REDACTED]

JUN 12 1987

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

Your Articles of Incorporation indicate, among other things, that your purpose shall be the unification of physicians to maintain and enhance the quality of health care in [redacted] and in the surrounding area. Your By-Laws state that your activities will include the negotiation with insurance companies, health maintenance organizations, preferred provider organizations, and other related companies for the entire group. Other endeavors may include educating the public about the superior health care and cost savings present in your community, and a further objective is to influence the direction of future health care delivery.

Membership in your organization is limited to physicians or oral surgeons duly licensed by [redacted] and who maintain a full-time medical or surgical practice and staffed office in [redacted] of [redacted] Counties of [redacted].

Your By-Laws further provide that as a material part of the consideration and benefits for becoming a member of the Cooperative, all members agree that they will not negotiate independently with or participate in any way with any prepaid plan (capitation and/or negotiated fee-for-service) or program proposed or offered in the [redacted] area by any insurance company, HMO, PPO, or any other related group that has not been officially approved by the corporation membership.

Information provided indicates that you currently have [redacted] members. You represent that your sources of financial support will be membership dues, and proceeds from the possible sale of durable medical equipment in association with local non-profit hospitals. You do not anticipate having any other fund-raising activities and expect your membership to provide the necessary financial support through the payment of annual dues, which are \$[redacted] per member.

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

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

Section 1.501(c)(3)-1(b) of the regulations provides that an organization is organized exclusively for exempt purposes only if its articles of organization: (a) limit the purposes to exempt purposes; and (b) do not expressly empower the organization to engage in activities which in themselves are not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides 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 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)(1) of the regulations provides 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 of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creators, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization is not exempt under section 501(c)(3) of the code if its primary purpose and activity is the carrying on of unrelated trade or business as defined in section 513.

Rev. Rul. 54-305, 1954-2 C.B. 127, describes an organization whose primary purpose is the operation and maintenance of a purchasing agency for the benefit of its otherwise unrelated members who are exempt as charitable organizations. The ruling held that the organization did not qualify under section 101(b) of the Code (predecessor to 501(c)(3)), because its activities consisted primarily of the purchase of supplies and the performance of other related services. The ruling stated that such activities in themselves cannot be termed charitable, but are ordinary business activities.

Revenue Ruling 69-258, 1969-2 C.B. 127, describes an organization formed to provide investment services on a fee basis only to organizations exempt under section 501(c)(3) of the Code. The organization invested funds received from participating tax-exempt organizations. They were free

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from the control of the participants and had absolute and uncontrolled discretion over investment policies. The ruling held that the organization did not qualify under section 501(c)(3) of the Code and stated that providing investment services on a regular basis for a fee is a trade or business ordinarily carried on for profit.

Rev. Rul. 70-539, 1970-2 C.B. 117, describes an organization formed to provide managerial, developmental and consultative services for low and moderate income housing projects for a fee. The ruling held that the organization did not qualify under section 501(c)(4) of the Code. The ruling stated that "Since the organization's primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for profit, the organization is not operated primarily for the promotion of social welfare."

Rev. Rul. 72-369, 1972-3 C.B. 245, describes an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations. The ruling held that the organization did not qualify for exemption under section 501(c)(3) of the Code. The ruling states that "An organization is not exempt merely because its operations are not conducted for the purpose of producing a profit ... providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit."

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court concluded that an organization whose sole activity consists of offering consulting services for a fee set at or close to cost to nonprofit, limited resource organizations, does not qualify for exemption under section 501(c)(3) of the Code. The organization entered into consultant-retainer relationships with five or six limited resource groups involved in the fields of health, housing, vocational skills, and cooperative management. The organization's services are tailored to small groups or institutions which need structured methods for dealing with their problems. The organization's sole source of income was from its consulting services. The court stated that the organization's financing does not resemble that of the typical section 501(c)(3) organization. They had not solicited, nor received, any voluntary contributions from the public.

In Consumer-Farmer Milk Cooperative, Inc. v. Commissioner of Internal Revenue, 186 F.2d 68 (1950) the Court held an exemption under the predecessor to section 501(c) of the Code because the organization's purpose is primarily to benefit its members economically and only incidentally to further larger public welfare.

In Better Business Bureau v. U.S., 348 U.S. 306 (1955), 1945 C.B. 375, the Supreme Court determined that while the activities of the organization under consideration were educational, the organization operated in a manner quite similar to a for-profit entity. Information showed that a substantial purpose of the organization was to promote business. Consequently, the Court held that the organization was not operating exclusively for educational purposes.

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Although some of your activities may contribute indirectly to the achievement of purposes described in section 501(c)(3) of the Code, their overall thrust is to promote business and private interests rather than to accomplish exclusively charitable objectives.

Your primary activity of providing a pool of physicians or oral surgeons that practice in a particular geographic area and who have negotiated collectively with insurance companies, health maintenance organizations, preferred provider organizations, and other related companies, for the entire group is carrying on a trade or business with the general public in a manner similar to organizations which are conducted for profit such as those described in the cases cited above. See section 1.501(c)(3)-1(e) of the regulations.

Finally, your primary activity confers economic benefits on your member physicians and oral surgeons in a manner precluded under section 501(c)(3) of the Code and section 1.501(c)(3)-1(d)(11) of the regulations. Thus, you are promoting the business and private interests of your members.

Accordingly, since you are neither organized nor operated exclusively for exempt purposes, you do not qualify for exemption under section 501(c)(3) of the Code. Therefore, you are required to file federal income tax returns. Contributions to you are not deductible to donors under sections 170(c)(2), 2055, 2106, and 2522.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted in duplicate 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 you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(12) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

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[Redacted]

If you direct further correspondence to us concerning this matter, please include the following symbols on the envelope as part of our address: [Redacted]. These symbols do not refer to your case but rather to its location.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Cincinnati, Ohio. Thereafter, if you have any questions about your federal income tax status, including questions concerning requirements, please contact your key District Director.

Sincerely yours,

(signed) [Redacted]

[Redacted]  
Chief, Exempt Organizations  
Rulings Branch

cc: [Redacted]

cc: [Redacted]

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