

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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3 copies to District

Date 10/2/97

Surname

10/15/97

Contact Person:

Telephone Number:

In Reference to:

CP:E:EO:T:1

Date:

AUG 1 1997

[Redacted]

Employer Identification Number:

Key District:

Dear Applicant:

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

You are a part of the [Redacted] health care system. [Redacted] is part of the [Redacted] and was created to coordinate the [Redacted] non-profit, non-hospital based health care activities. [Redacted] was incorporated on [Redacted] corporation law. It is exempt from federal income tax under section 501(c)(3) of the Code and described as not a private foundation pursuant to section 509(a)(2). [Redacted] is the parent of the [Redacted] was incorporated under [Redacted] is exempt under section 501(c)(3) of the Code and is classified as not a private foundation pursuant to sections 509(a)(1) and 170(b)(1)(A)(vi).

You were incorporated in [Redacted] as a stock corporation on [Redacted] pursuant to [Redacted] "for the transaction of any or all lawful business not required to be specifically stated in these Articles of Incorporation for which corporations may be incorporated under [Redacted]" You provide care to persons "seeking urgent medical services at four non-hospital based locations in [Redacted] Your Articles provided for the distribution to shareholders of the net assets of the corporation upon dissolution. Effective [Redacted] you amended and restated your Articles of Incorporation pursuant to [Redacted] the Stock Corporation Statute. [Redacted] of the amended and restated Articles of Incorporation provides that the corporation is

[REDACTED]

organized exclusively for charitable, educational, and scientific purposes specified in section 501(c)(3) of the Internal Revenue Code. The purposes are more specifically defined as follows:

(a) To promote health, including providing services and support to assist in developing and delivering health care services to the community, through establishing, maintaining, and operating urgent care treatment centers; (b) To engage in any activity designed and conducted to promote the general health of the community; (c) To engage in any other lawful activity consistent with and as limited by section 501(c)(3) of the Code; and (d) To have and to exercise to the extent necessary or desirable for the accomplishment of the aforesaid purposes, and to the extent that they are not inconsistent with such purposes, any and all powers conferred upon stock corporations by [REDACTED]

[REDACTED] of the amended and restated Articles of Incorporation states that the aggregate number of shares which the Corporation shall have authority to issue shall be [REDACTED] of common stock without par value. Corporation stock shall be owned only by either [REDACTED], [REDACTED], [REDACTED], or any successor to either [REDACTED] or [REDACTED] that carries on the same functions and purposes of [REDACTED] or [REDACTED] or any other organization affiliated with [REDACTED] or [REDACTED] which is exempt from income taxation under section 501(c)(3) of the Code.

[REDACTED] provides for the terms, provisions, and limitations of the corporation. Section (a) states, in part, that all of the Corporation's net earnings shall be held, administered and disposed of solely by distribution to or for activities in support of [REDACTED] or any successor or other organization exempt from Federal income taxation under section 501(c)(3) of the Code carrying on the same functions and purpose.

[REDACTED] states that the corporation shall indemnify to the fullest extent all persons permitted to be indemnified by the [REDACTED] but shall not be required to purchase or maintain insurance on behalf of such persons.

[REDACTED] provides that to the maximum extent permitted by [REDACTED], no Director of the corporation shall have any liability for damages in any proceeding brought by or in the right of the corporation or by or on behalf of the Shareholders of the corporation.

There is no provision in the amended and restated Articles of Incorporation for the Board of Directors.

[REDACTED]

Your bylaws, dated [REDACTED] provide no evidence that they have been amended to conform to the amended and restated Articles of Incorporation.

[REDACTED] of the bylaws provides for meetings, notices, quorum, and voting of the shareholders. [REDACTED] provides for the Board of Directors. [REDACTED] states, in part, that the Board of Directors may exercise all the powers of the Corporation, except those conferred upon or reserved to the shareholders by statute, by the Articles of Incorporation, or by the bylaws. Section 2 provides that the number of Directors shall be not less than three and shall be elected annually by the shareholders. [REDACTED] states that certificates representing shares of the corporation shall be in such form as shall be determined by the Board of Directors and required by statute. [REDACTED] provides for dividends. It states that the corporation may from time to time declare, and the corporation may pay, dividends on its outstanding shares in the manner and upon the terms and conditions provided by law.

[REDACTED] provides that the salaries of the officers shall be determined by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he or she also is a Director of the Corporation.

You have no provisions for a conflicts of interest policy or an indigent-charity care policy in your Articles of Incorporation, your bylaws, or by resolutions of your Board of Directors.

Section 501(c)(3) of the Code describes as exempt from federal income tax, as provided under section 501(a), organizations organized and operated exclusively for charitable, educational or scientific 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)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under section 501(c)(3).

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that, in general, an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt

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purposes; and (b) do not empower the organization to engage, other than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). Further, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(5) of the regulations provides that the law of the State in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under State law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the State attorney-general, or other evidence of applicable State law.

Section 1.501(c)(3)-1(b)(6) of the regulations provides that a determination by the Commissioner or a district director that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959 (regardless of when the application is filed), unless such organization meets the organizational test prescribed by that paragraph.

Dillingham Transportation Building v. United States, 146 F. Supp. 953 (Ct.Cl. 1957), held that where a charitable, nonprofit, tax exempt hospital acquired all the stock and debts of a corporation organized for profit as a business corporation, and the charitable hospital placed its trustees in all positions of control in the corporation so that it was operating for the sole benefit of the owning charitable hospital, such corporation satisfies the requirement of being organized for a charitable purpose, and qualifies as a charitable corporation notwithstanding the fact that such corporation originally was organized for profit.

Colorado State Chiropractic Society v. Commissioner, 93 T.C. 487 (1989), held that an organization, organized under the nonprofit laws of the State of Colorado, satisfied the organizational test set forth in the regulations and was organized exclusively for exempt purposes under section 501(c)(3)

[REDACTED]

of the Code. The court found that when the organization's original articles of incorporation are read together with the contemporaneously enacted bylaws, the organization's purposes are limited to one or more exempt purposes within the meaning of section 501(c)(3).

University of Maryland Physicians, P.A. v. Commissioner, 41 T.C.M. (CCH) 732 (1981), gov't's appeal dismissed (4th Cir. 1981), held that an organization formed as a professional service corporation organized under the corporation laws of the State of Maryland, is organized exclusively for exempt purposes under section 501(c)(3) of the Code. Each of the stockholders are physicians on the clinical staff of the teaching hospital associated with the University of Maryland School of Medicine and full time faculty of the School of Medicine who devote all of their time to the medical school. The court noted that the organization is organized as a professional service corporation because that is the only corporate entity permitted to practice medicine in Maryland.

We have concluded that you are not organized exclusively for exempt purposes as described in section 501(c)(3) of the Code because you do not satisfy the organizational test of section 501(c)(3) and the regulations thereunder.

You are organized as a stock corporation under the laws of [REDACTED]. Therefore, the [REDACTED] is the statute controlling the interpretation of the terms of your articles. Under section 1.501(c)(3)-1(b)(1)(i) of the regulations, an organization only satisfies the organizational test if it is not empowered to engage in activities which in themselves are not in furtherance of an exempt purpose.

Your articles of incorporation empower you to issue stock. Stock is a vehicle for distributing ownership rights in a business enterprise. Because you have the power to issue stock, you have the power to distribute ownership interests in your organization to private individuals and for-profit organizations. You are thus expressly empowered to further nonexempt purposes by virtue of the statute under which you are incorporated. In this regard, your own bylaws acknowledge that the management of your business affairs is reserved to the shareholders by statute, the [REDACTED]; your Articles of Incorporation, as of [REDACTED] and your bylaws themselves. Further, as a stock corporation organized under the [REDACTED] rather than the non-stock laws, you are not subject to the oversight normally exercised over charitable corporations by the state attorney general.

[REDACTED]

You can be distinguished from the court cases cited. Dillingham Transportation Building v. United States, supra, although having facts similar to your situation, is unpersuasive because it was decided prior to the issuance of section 1.501(c)(3)-1(b)(6) of the regulations. Likewise, Colorado State Chiropractic Society v. Commissioner, supra, involved a nonprofit organization organized under the state nonprofit laws rather than a stock corporation such as yourself organized under the stock corporation laws. Also, while the Chiropractic Society's bylaws specifically restricted the Society to permissible activities within the meaning of section 501(c)(3) of the Code, your bylaws permit all powers under the stock corporation statutes.

Finally, you can also be distinguished from University of Maryland Physicians v. Commissioner, supra. Unlike the laws of the State of Maryland, which has a corporate practice of medicine statute, you are not required to be a stock corporation, and you could be organized as a non-stock organization if you had chosen to incorporate as such. In University of Maryland Physicians, the court determined that the organization's articles were not overly broad because they limited its activities to serving the interests of the Medical School and the Hospital. This was so by virtue of the fact that Maryland law, under the Professional Services Corporation Act, expressly limited the powers of the organization by requiring that a professional corporation may not engage in any business other than the performance of the professional service for which it was specifically incorporated, namely, the provision of medical services. There are no similar limitations or requirements under [REDACTED]. Further, you are neither a professional corporation nor a faculty group practice under the control of a university.

Accordingly, we conclude that you do not qualify for exemption from federal income tax as an organization described in section 501(c)(3) of the Code. You are, therefore, required to file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

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 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.

[REDACTED]

If you do not protest this 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)(2) 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 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: CP:E:EO:T:1 Room 6514
1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

(signed) Marvin Friedlander

Marvin Friedlander
Chief, Exempt Organizations
Technical Branch 1

cc: [REDACTED]
[REDACTED]
[REDACTED]