DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 19, 2015

Number: **201538027**
Release Date: 9/18/2015

UIL Code: 501.03-00

Taxpayer Identification Number:

Person to Contact:

Employee Identification Number:

Employee Telephone Number:
(Phone)
(Fax)

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated August 5, 19XX is hereby revoked and you are no longer exempt under section 501(c)(3) of the Code effective August 1, 20XX. As of August 1, 20XX, you are exempt under section 501(c)(4) of the Code.

The revocation of your exempt status under section 501(c)(3) of the Code was made for the following reason(s):

Organizations described in Code Section 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. On August 1, 20XX, you merged with another . Prior to this merger, 100% of your enrollees were recipients. After the merger, a substantial portion of your premiums were paid by commercial enrollees. This income from commercial enrollees caused you to no longer be operated exclusively for exempt purposes under Section 501(c)(3) of the Code. You voluntarily filed Form 1024 and were recognized as exempt under Code Section 501(c)(4) effective on August 1, 20XX.

Contributions to your organization are no longer deductible under IRC §170 after July 31, 20XX.

You are still required to file information returns on Form 990.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Telephone:

We will notify the appropriate State Officials of this action, as required by Code section 6104(c). You should contact your State officials if you have any questions about how this final determination may affect your State responsibilities and requirements.

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

Sincerely,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Publication 892

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
1100 Commerce Street MS 4900 DAL
Dallas, TX 75242-1100

Department of the Treasury

Date: March 20, 2014

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:
Telephone:
Fax:
Manager's name/ID number:

Manager's contact number:

Response due date:

Certified Mail – Return Receipt Requested

Dear:

Why you are receiving this letter
We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree
If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you
If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status
If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation
If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter.
The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status,* and page six of the enclosed Publication 3498, *The Examination Process.* Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right
You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information
If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

A. ISSUE

Should Federal income tax exemption be revoked?

B. FACTS

was originally incorporated in 19XX and commenced operations as a for-profit corporation in 19XX. Effective on May 18, 20XX, the original articles of incorporation, as amended, were restated with reorganized as a nonprofit membership corporation and [in 20XX] as tax exempt under Section 501(c)(4) of the Internal Revenue Code (Code), whose sole member is , a nonprofit corporation tax exempt under Section 501(c)(3) of the Code, a holding company of various entities.

is a state licensed health maintenance organization and arranges for the provision of comprehensive medical services to persons in specific counties who subscribe as recipients of state or federal health benefits. As of January 1, 20XX, also arranges for the provision of various commercial healthcare coverage to individuals and group subscribers. arranges healthcare services to subscribers through contracts with various physician groups, hospitals, and other healthcare providers.[1] has not indicated it requested [from the IRS] a ruling on the tax implications for its newly instituted commercial line.

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[1] From the audited financial statements prepared by the accounting firm of .

From promotion material, " covers businesses and residents in 26 counties throughout northern, southeast, and mid- . The health plan's provider network includes more than 42 hospitals; 8,500 physicians; and other health care providers."

On August 1 20XX, , a nonprofit membership organization, entered into a membership interest transfer agreement with . , whereby purchased , a nonprofit membership organization for $ from , which was the sole corporate member of . In accordance with this agreement, became the sole corporate member of . is also an arranger granted tax exempt status as a Section 501(c)(3) organization in 19XX.

Subsequent to the purchase, and also effective August 1, 20XX, merged into . Effective with this merger, the corporate entity of ceased to exist. Effective August 1, 20XX, restated its Articles of Incorporation and Bylaws, renaming as and as the sole corporate member of the Plan.[2] has not indicated it requested [from the IRS] a ruling on the affect, if any, as to its former Section 501(c)(4) tax exempt status or the Section 501(c)(3) tax exempt status of the entity it merged into.

In calendar year [CY] 20XX, had total enrollment [individuals, groups, and Medicaid] of , of which were individuals. In CY 20XX, out of in total

[2] Id.

enrollment, were individuals. In CY 20XX, out of in total enrollment, were individuals.

In CY 20XX, total commercial premiums amounted to % [÷] of overall premiums; % [÷] of overall expenses; and % [÷] of overall enrollees. In CY 20XX, total commercial premiums amounted to % [÷]; % [÷] of expenses; and % [÷] of enrollees. In CY 20XX, the newly converted total commercial premiums amounted to %, [$ ÷ $]; % [$ ÷ $] of expenses, and % [÷] of enrollees.[3]

shows the following information for the audited period [CYs 20XX-20XX]:

- *Average gross receipts of $;*
- *Average net income [almost entirely from the program] of $;*
- *Average net surplus of $;*
- *Average compensation, including fringe benefits, paid to officers, directors, trustees, key employees and highly compensated employees of $;*
- *Average commissions paid to the sales force of $; and*

[3] Per State of Annual Statements.

- *No contributions received.*[4]

Excerpts from Board of Directors meetings:

February 16, 20XX

stated initiatives include an email blast that went out to 1,200 agents informing them of joining commercial network. Sales staff are receiving quote requests from larger employer groups (over employees). added he expects significant membership growth with SO [State of] employees due to the State increasing employee contribution percentage to %. Other potential business includes seeking approval from the UAW to facilitate opportunities with UAW represented employer groups.

April 20, 20XX

stated that is financially healthy, has the lowest administrative cost of any in the State.

stated the new , Community , originally anticipated [a State of agency] approval by March 31, 20XX. is still conducting their review of application. Staff is anxious to receive approval to minimize the Use Tax being levied on the commercial premium.

[4] Filed Forms 990 and filed Annual Statements with the State of .

stated [ ] has indicated they are impressed with performance and are interested in a partnership.

June 15, 20XX

stated initiatives are in place to lower medical and administrative costs, as well as increasing membership.

stated the Sales Department is delighted with the newest addition to Sales. , Business Development Specialist, was hired May 24, 20XX to handle general sales and communications with employer groups. stated experience and education will have a strong impact on increasing commercial membership.

August 17, 20XX

stated we are at the final stages of receiving our Certificate of Authority. However, new information has come to light that is resulting in a change of plans. The Federal Reform changes, effective March 23, 20XX, will adversely impact the new from being a "grandfathered" plan and tax exempt. Additionally, the new will have to pay a higher rate of Federal Reform tax. Therefore, the Board supported keeping commercial and members in the single current at this time. An appeal will be made to the Department of Treasury for a declarative ruling whether the Use Tax is applicable on commercial premium. Legal counsel has issued an *opinion to and believes it is not taxable. This position varies from the Department of Community Health. Staff recommend finalizing the new commercial application process, but leaving it as a "shell" company with no membership or premium. This will allow us the greatest flexibility if the Use Tax appeal is lost or Federal Reform makes other changes that would support our activating this second*

.

described the new initiatives being undertaken by staff in an effort to expand- business and market growth.

reviewed strategic opportunities and an analysis of major competitors.

stated and the Department of Technology, Management and Budget (DTMB) released an RFP in June to participate in the new Federal Reform high risk pool Participants eligible for this program must be non-elderly people younger than 65 who are not insured and who have been rejected for health insurance because of a chronic health problem. The policies are to provide coverage until 20XX, when most major health overhauls, including state-run insurance exchanges, are to begin. After careful review, declined to bid. The financial risk was deemed to great and could not answer many questions because Health and Human Services had not yet defined the program parameters. Only two *bid, and . Our understanding is has since rescinded their bid.*

October 20, 20XX

stated the Sales department has been restructured to get more of the staff involved in selling commercial product. Marketing initiatives include targeting larger employer groups and doing a media blitz. stated membership is growing in County and new enrollment prospects for January 1, 20XX include 3,200 members of the School Employees Retirement System ( ) and City of employees.

August 16, 20XX

reviewed FY 20XX, budget, highlighting projections of membership, operating margins, and revenue for commercial, Medicaid, and fully insured products.

February 14, 20XX

stated has the opportunity to lease building space in SE . stated expanding operations in SE will support its business growth in the SE region.

stated lighted signage will be atop the building, which will effectively advertise and be seen clearly from 1- .

stated prospective business groups include the City of and County. A follow up meeting with is scheduled this week. stated he is confident growing reputation, cost-effective and flexible benefit plans will begin to attract large employer groups.

<u>April 17, 20XX</u>

stated the "Clean Opinion" audit results, by , are the highest opinions offered. stated balance sheet is in terrific shape, has the lowest administrative cost of any in the State, and has done a terrific job in maintaining and controlling operating expenses.

stated 3 new sales executives have been hired, trained, and in the field meeting with prospective employer groups. The sales team is providing quotes on a daily basis, with many of the requests coming from large employer groups in the S.E. region. stated he is confident the branding of name and its growing reputation will begin to attract large employer groups. stated the City of announced they will continue to offer but discontinue offering . New business prospects include , County (including city and school employees), and . A meeting is scheduled next week with the city of East , which has over employees and approximately covered lives.

June 19, 20XX

reviewed a health plan performance comparison of . and all other , showing membership, revenue, expenses, etc. in both Medicaid and commercial lines of business.

stated the enterprise branding initiative has helped increase commercial membership, with new members enrolled. stated there are 4 sales representatives currently out in the field, and with quotes submitted, he expects commercial membership to exceed by July. The State of open enrollment begins in August. stated the City of and Public Schools have renewed their contracts. New business prospects include the (5,000 in the state of), , firm in , and .

October 16, 20XX

reviewed FY XX Draft Budget, highlighting projections of membership, operating margins, and revenue for commercial, Medicaid, and fully insured products.

reviewed 20XX-20XX strategic measurements and achievements, highlighting plans to increase market growth, network expansion, financial performance, member and provider satisfaction, quality/utilization benchmarks, and employee engagement.

December 18, 20XX

stated one of the goals for 20XX is to reinvest a relationship with Local to offer commercial product at the SO [State of] open enrollment. Local headquarters is in but the union is statewide with over members.

In an Information Document Request [IDR] #300, the agents made the following request:

At our December 18, 20XX meeting, a representative of stated the following in response to the agent's question concerning [ ] commercial line of business and why would continue in this line of business, which so far has resulted in an overall loss:

> *started the commercial line in 20XX. The employers with 100 or more employees are the most lucrative [profitable] segment of this line, but it is very difficult to gain a foothold into this segment, which has resulted in having a large percentage of their commercial line consisting of employers with less than 100 employees, causing the overall losses. Also, if the Affordable Care Act does not provide some relief, then will terminate its commercial line of business.*

Please indicate if this is an accurate statement and if not, please modify accordingly.

gave the following response from , Vice President, Regulatory Affairs:

The description of the challenges experienced by in the commercial line of business was not, and was not intended to be, an all-encompassing explanation of experience in the commercial line. Additionally, while believes that the Affordable Care Act creates some new and significant changes in how commercial small group and individual coverage are offered in the market and is hopeful that creates new opportunities for , experience as a result of will not be the sole factor determining whether or not continues to offer commercial coverage.

In IDR #304, the agents made the following request:

At our December 18, 20XX meeting, the agents expressed their concerns with your Medicaid line of business and the possibility that said line of business could jeopardize your tax exempt status. While, at present, we believe neither party is ready to exchange position papers, nevertheless, the agents believe we should continue communicating on this matter.

If you concur, then please arrange another meeting to continue our dialogue on this important topic.

gave the following response:

> *is currently exempt under IRC 501(c)(3), and during the audit years was exempt under IRC 501(c)(4). does not concur that holding a meeting on the issue of Medicaid and exemption would be useful at this time.*

C. LAW

Section 501(a) of the Internal Revenue Code provides that an organization described in § 501(c) is exempt from income taxation.

Section 501(c)(3) provides that an organization may be exempted from tax if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes and "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 regulations provides that in order to be exempt under section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the exempt purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it does not qualify for exemption.

Section 1.501(a)(1)-1(c) defines a "private shareholder or individuals" as "persons having a personal and private interest in the activities of the organization." Thus, 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 creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(1) 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 of such exempt purposes specified in section 501(c)(3). 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(c)(2) provides that "[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. . . ."

Section 1.501(c)(3)-1(d)(1)(ii) 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. To meet the requirement of this subsection, the burden of proof is on the organization to show that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) states, in part, that the term "charitable" in section 501(c)(3) includes relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes.

Section 1.501(c)(3)-1(e)(1) provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Section 501(c)(4) of the Code provides exemption from federal income tax for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare," and whose net earnings do not inure to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations states that an organization primarily engaged in promoting the common good and general welfare of the people of the community is operated exclusively for the promotion of social welfare. This includes an organization operated primarily for bringing about civic betterments and social improvements.

Section 1.501(c)(4)-1(a)(2)(ii) explains that an organization whose primary activity is the carrying on of a business in a manner similar to for-profit organizations is not operated primarily for the promotion of social welfare.

Rev. Rul. 54-394, 1954-2 C.B. 131, stated that a nonprofit organization that provided antenna services only to its members to enable them to receive television reception was not exempt as a social welfare organization because the benefits were only available to members and not the community in general.

In **Rev. Rul. 62-167, 1962-2 C.B. 142**, a nonprofit organization whose primary activity was to retransmit TV signals, which were available to any television in the community, qualified for exemption under § 501(c)(4) because its activities benefited the community in general. Distinguishing **Rev. Rul. 54-394, 1954-2 C.B. 131**, in which the television services were available only to members of the organization who paid membership fees and monthly maintenance charges, this revenue ruling described an organization that operated its system for the benefit of all television owners in the community and obtained memberships and contributions on a voluntary basis. Therefore, the organization qualified for exemption under § 501(c)(4).

Rev. Rul. 71-529, 1971 C.B. 234, describes a nonprofit organization that provides assistance in the management of participating colleges' and universities' endowment or investment funds. Because the organization is performing an essential function for tax-exempt organizations for a charge "substantially below cost," it qualifies for exemption under section 501(c)(3).

Rev. Rul. 72-369, 1972-2 C.B. 245, concerns an organization formed to provide managerial and consulting services to unrelated section 501(c)(3) organizations. The organization enters into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The 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 exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3). Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable. Accordingly, the ruling holds that the organization's activities are not charitable and, consequently, the organization does not qualify for exemption under section 501(c)(3).

Rev. Rul. 73-349, 1973-2 C.B. 179, noted that an organization formed to purchase low-cost groceries for its members was not exempt as a social welfare organization even though membership was open to all individuals in the community. The members paid for the cost of the food and a monthly service charge to cover operating costs. It operated primarily for the private benefit of its members; any benefits to the community were not sufficient to meet the requirement that it operate primarily for the common good and general welfare of the people of the community.

An organization provided sick benefits to its members and paid death benefits to member's beneficiaries in **Rev. Rul. 75-199, 1975-1 C.B. 160**. Only individuals in a particular ethnic group in a certain geographical area who were of "good moral character and health" could become members. It was essentially a mutual self-interest organization, whose income provided direct and economic benefits to its members; any benefit to the larger community was minor and incidental. Therefore, it did not qualify for exemption under § 501(c)(4) of the Code. "Where the benefit from an organization is limited to that organization's members (except for some minor and incidental benefit to the community as a whole), the organization is not operated exclusively for the promotion of social welfare within the meaning of § 501(c)(4) of the Code."

Rev. Rul. 75-199, 1975-1 C.B. 160, distinguishes mutual benefit societies from social welfare organizations by comparing **Rev. Rul. 54-394** with **Rev. Rul. 62-167**. One organization only benefited its members who paid membership fees and monthly charges (the mutual benefit society) while the other organization made their services available to everyone in the community (the social welfare organization).

Rev. Rul. 76-419, 1976-2 C.B. 146, held that a nonprofit organization that purchased blighted land in an economically depressed community, converted the land into an industrial park, and induced industrial enterprises to locate new facilities in the park through favorable lease terms that required employment and training opportunities for unemployed and underemployed residents in the area, is operated exclusively for charitable purposes.

Rev. Rul. 77-3, 1977-1 C.B. 140, describes an organization formed for the purposes of leasing housing to a city at cost and providing all necessary repairs, adequate winter heating, security guards, and other services normally associated with providing rental housing. The city uses the housing to accommodate families whose homes or apartments have been destroyed by fire and the housing is furnished on a temporary basis, pending relocation to permanent housing. The temporary housing is furnished to families by the city at no charge and without regard to their ability to pay. The revenue ruling concludes that although the providing of free temporary housing to distressed persons in need of adequate housing is a charitable activity, the organization is not exempt under section 501(c)(3) of the Code because the city rather than the organization that is providing free housing; the organization is merely leasing housing property and providing certain maintenance and other services in connection therewith to the city at cost in a manner similar to organizations operated for profit, and is not itself engaged in charitable activities.

Rev. Rul. 77-111, 1977-1 C.B. 144, held that an organization formed to increase business patronage in a deteriorated area by providing information about the shopping opportunities is not operated for charitable purposes and is not exempt under section 501(c)(3). Increasing business patronage and reviving lagging sales are not charitable purposes.

The organization in **Rev. Rul. 78-132, 1978-1 C.B. 157**, facilitated the exchange of personal services among its members, which was open to all individuals in a particular community. The members received economic benefit even though they did not use cash for payment; every service had a corresponding credit hour amount, which the organization tracked for each member. The community realized minimal, if any, benefit from the organization. The organization was a private cooperative enterprise that operated primarily for its member's economic benefit and was not exempt as a social welfare organization under § 501(c)(4).

Rev. Rul. 80-287, 1980-2 C.B. 195, provides that a nonprofit lawyer referral service does not qualify for exemption under section 501(c)(3). The organization aided persons who did not have an attorney by helping them select one, in exchange for a nominal service charge. Any attorney who was a member of a local bar association could apply for placement on the referral list, in exchange for an application fee. Because a substantial purpose of the organization was aiding the legal profession, the organization was not organized or operated exclusively for charitable purposes, even though its lawyer referral service did provide some public benefit.

In **Rev. Rul. 98-15, 1998-1 C.B. 718**, the IRS noted that "not every activity that promotes health supports tax exemption under section 501(c)(3). For example, selling prescription pharmaceuticals certainly promotes health, but pharmacies cannot qualify for recognition of exemption under [section] 501(c)(3) on that basis alone."

In **Better Business Bureau of Washington D.C., Inc. v. U.S., 326 U.S. 279 (1945)**, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that a trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university, and therefore, the association did not qualify for exemption.

The tax court found that an insurance trust organization, created to provide its members access to insurance at group rates, was not exempt under § 501(c)(4). **New York State Association of Real Estate Boards Group Insurance Fund v. Commissioner, 54 T.C. 1325 (1954), nonacq. on different grounds, 1974-2 C.B. 5, action on decision., 1974 AOD 146 (Sept. 6, 1974)**. The organization offered benefits only to its employer members and their employees. "[W]here the primary economic benefit from an organization is limited to that organization's members, the organization is not operated exclusively for the social welfare within the meaning of the statute." **Id.** The organization did not have "the requisite civic concern to constitute 'social welfare,' and therefore . . . [did] not qualify for tax exemption under § 501(c)(4)."

Similarly, in **Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962),** the Fourth Circuit held that a membership-based nonprofit corporation involved in providing housing mainly for war veterans did not qualify for exemption under Section 501(c)(4). In so holding, the court noted that "social welfare" may be defined as "the well-being of persons as a community" (as opposed to just a subgroup of them), and it concluded that the corporation did not meet this standard. **Id.** The Court explained as follows:

> *[Lake Forest] does not propose to offer a service or program for direct betterment or improvement of the community as a whole. It is not a charitable corporation in law or equity, for its contribution is neither to the public at large nor of a public character. Lake Forest does, of course, furnish housing to a certain group of citizens but it does not do so on a community basis. It is a public-spirited but privately-devoted endeavor. Its work in part incidentally redounds to society but this is not the 'social welfare' of the tax statute.*

"[T]he exemption granted to social welfare . . . organizations is made in recognition of the benefit which the public derives from their social welfare activities and we think it only fair to determine a particular organization's right to an exemption largely on the basis of the effect its operations have on the public." **People's Educational Camp Society, Inc. v. Commissioner, 331 F.2d 923 (2d Cir. 1964).**

In **American Women Buyers Club, Inc. v. Commissioner, 338 F.2d 526 (2d Cir. 1964)** the court affirmed denial of exemption to a membership corporation of female ready-to-wear buyers organized to promote the general good and welfare of members in the trade, encourage friendly relations, and give aid to members in distress. Membership, even within the trade, was restrictive as approximately 15% of the applicants were turned down. The services provided by the club (such as employment facilities, information about sources of supply, lectures, dinners, installations, publications, and sick and death benefits) were all primarily, if not exclusively, for the club membership.

The court in **Contracting Plumbers Cooperative Restoration Corporation v. United States, 488 F.2d 684 (2d Cir. 1973)**, held that an organization did not promote the common good, even though its activities benefited the community, because only members could utilize its services. It repaired damage to city streets its members caused in the course of their plumbing activities, performing the repairs in proportion to the member's payment for the services. However, it would not repair damage created by non-member plumbers or other "enterprises that burrow into the city streets."

In **B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978)**, the Tax Court considered an organization that provided consulting services to groups that were mostly section 501(c)(3) organizations. The organization charged fees for its services set at or close to its own cost. The court concluded that there was nothing to distinguish these activities from those of an ordinary commercial consulting enterprise, and affirmed the Service's denial of exemption under section 501(c)(3).

In **Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), aff'd, 625 F.2d 804 (8 Cir. 1980),** the court held that, while selling prescription pharmaceuticals to elderly persons at a discount promotes health, the pharmacy did not qualify for recognition of exemption under section 501(c)(3) on that basis alone. Because the pharmacy operated for a substantial commercial purpose, it did not qualify for exemption under section 501(c)(3).

The organization in **Mutual Aid Association of the Church of the Brethren v. United States, 759 F.2d 792 (10th Cir. 1985),** provided property and casualty insurance to members of the church and their dependents. If a member left the church, the organization would cancel their insurance. The court determined that the church did not promote social welfare because it sold insurance. The organization operated as a mutual insurance company, not as a church. The court concluded that the presence of a substantial non-exempt purpose, such as insurance for its members in return for premiums, precluded the organization's exempt status under § 501(c)(4) as an organization primarily engaged in the promotion of social welfare.

In **American Association of Christian Schools Voluntary Employees Beneficiary Association Welfare Plan Trust v. United States, 850 F.2d 1510 (11th Cir. 1988),** a tax-exempt association of schools formed a trust to provide health, hospital, disability, life, accidental death and dismemberment, dental, and prescription drug insurance to its member schools' employees and their dependents and beneficiaries. Citing **Mutual Aid Association of the Church of the Brethren, 759 F.2d 792**, the court held that since the Trust had a substantial private purpose of providing insurance to its members in return for premiums, it was not an organization exclusively engaged in the promotion of social welfare under § 501(c)(4).

In **Geisinger Health Plan v. Commissioner, 985 F.2d 1210 (3 Cir. 1993)**, the court held that a pre-paid health care organization that arranged for the provision of health care services only for its members, benefited its members, not the community as a whole and therefore did not further charitable purposes within the meaning of section 501(c)(3).

In **Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C. 2003)**, the court concluded that an organization did not qualify for tax-exemption under section 501(c)(3) because it was operated for nonexempt commercial purposes rather than for exempt purposes. Among the major factors the court considered in reaching this conclusion was the organization's competition with for-profit commercial entities, the extent and degree of below cost services provided, the pricing policies, and the reasonableness of financial reserves. Additional factors included whether the organization used commercial promotional methods, such as advertising, and the extent to which the organization received charitable donations.

IHC Health Plans, Inc. v. Commissioner, 325 F.3d 1188 (10 Cir. 2003), involved an operator of health maintenance organizations ("HMOs") that served approximately one-quarter of Utah's residents and approximately one-half of its Medicaid population. The court held that the organization failed to meet the community benefit standard to qualify for exemption under section 501(c)(3) because its sole activity was arranging for health care services for its members, in exchange for a fee. The court said that providing health-care products or services to all in the community is necessary but not sufficient to meet the community benefit standard. Rather, the organization must provide some additional benefit that likely would not be provided in the community but for the tax exemption, and that this public benefit must be the primary purpose for which the organization operates.

The organization in **Vision Service Plan v. United States, 2005 U.S. Dist., WL 3406321 (E.D. Cal. Dec. 12, 2005)**, provided eye care services to the employees of its subscriber companies. **VSP** claimed that it was exempt under § 501(c)(4) because it served broad segments of the community through direct services and charitable activities. The court found that servicing small employers or rural subscribers did not equate to promoting social welfare. Additionally, the services **VSP** provided for the Medicaid, Medicare, and Healthy Families contracts were profitable, its charitable activities were insubstantial compared to its profits, and the executive compensation packages, cost-cutting measures, and business practices with the public were operated in a manner similar to for-profit organizations.

D. ANALYSIS

Section 501(a) exempts from income taxation certain organizations, including those described in Section 501(c)(4), i.e., organizations "not organized for profit but operated exclusively for the promotion of social welfare." The word "exclusively" as used in section 501(c)(4) has been interpreted to mean "primarily." See **Am. Women Buyers Club, Inc. v. United States, 338 F.2d 526 (2d Cir. 1964)**. Likewise, the Treasury Regulations provide that an organization is operated exclusively for the promotion of social welfare "if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community" and is "operated primarily for the purpose of bring about civil betterments and social improvements." Treas. Reg. section 1.501(c)(4)-1(a)(2)(i). The Treasury Regulations further provide that an organization is not operated primarily for the promotion of social welfare if its "primary activity" is "carrying on a business with the general public in a manner similar to organizations which are operated for profit." Treas. Reg. section 1.501(c)(4)-1(a)(2)(ii). As a result, in order to qualify for exemption under Section 501(c)(4), is required to establish both that it operates primarily for the promotion of social welfare and that it is not conducting a business with the general public in a manner similar to that of for-profit organizations. Treas. Reg. section 1.501(c)(4)-1(a)(2)(i) and (ii); with the over-arching requirement that if engaged in non-exempt activities, said activities are only incidental and insubstantial. **Manning Association v. Commissioner, 93 T.C. 596, (1989).** If the activities are substantial, exemption may be in jeopardy, irrespective of the presence of other exempt purposes, and all the facts and circumstances are to be considered in each particular case. **Id.**

Neither the Internal Revenue Code, the regulations, nor the case law provides a general definition of "insubstantial". In this regard, organizations may consider **Seasongood v. Commissioner, 227 F.2d 907 (CA-6, 1955)**, in which activities to influence legislation that represented 5% of the organization's activities were held to be insubstantial for purposes of Section 501(c)(3), and **Haswell v. U.S., 500 F.2d 1133 (Ct. Cl., 1974), *cert. den.* 419 U.S. 1107 (1975)**, in which lobbying activities representing 16.6% to 20.5% of organization's expenditures were considered to be substantial.

While there is no statutory or regulatory percentage test or other numerical threshold or ratio regarding nonexempt purposes, a level of between 5% and 15% is often used. A 5% to 15% threshold, of sorts, has been mentioned in such cases as **Best Lock Corp., 31 TC 1217 (1959)**, and in such (nonprecedential) IRS rulings as **Ltr. Rul. 9237034** and **Ltr. Rul. 200501017**. The same threshold also has been discussed in the legislative history to Section 501(m), regarding the provision of commercial insurance: "Under the bill, an organization described in sections 501(c)(3) and (4) of the Code is exempt from tax only if no substantial part of its activities consists of providing commercial-type insurance. For this purpose, no substantial part has the meaning given to it under present law applicable to such organizations. See **Haswell v. U.S., 500 F.2d 1133 (Ct. Cl. 1974); Seasongood v. Commissioner, 1227 F.2d 907 (6th Cir. 1955) ..." 1986-3 C.B. Part 2, 1 H.R. Rep. #99-426.**

An exemption from federal tax, being a matter of legislative grace, is a privilege, not a right. As a result, "a statute creating an exemption must be strictly construed and any doubt must be resolved in favor of the taxing power." **Harding**

Hospital, Inc., 505 F.2d 1068 (CA – 6th). See also **IHC Health Plans, Inc.,** supra, quoting **Bingler v. Johnson, 394 U.S. 741 (1969)**, and recognizing the "principle that exemptions from taxation are to be construed narrowly." An organization claiming exempt status bears the burden of proving that it satisfies all of the requirements of the exemption statute. **Am. Ass'n of Christian Schs.**, supra. See also **Welch v. Helvering, 290 U.S. 111 (1933).**

A central consideration in determining whether an organization is operating primarily for the promotion of social welfare under Section 501(c)(4) is whether the organization places barriers upon membership by the public at large. It is well settled that an organization operating primarily for the benefit of its members, rather than for the benefit of the community as a whole, is not entitled to exempt status under Section 501(c)(4). For example, in **Am. Women Buyers Club,** supra, the Second Circuit held that a membership organization consisting of a restricted group of women buyers of ready-to-wear-apparel that had the stated purpose of promoting the welfare of ready-to-wear buyers throughout the country was not tax exempt, where the majority of the benefits were for members. The court accordingly concluded that the organization was not operated primarily for the promotion of social welfare.

In **Contracting Plumbers Co-op Restoration Corp. v. United States,** supra, the Second Circuit denied an exemption under Section 501(c)(4) to a plumbers' cooperative organized to repair damages to city streets as the result of plumbing activities, where the benefits were directly proportional to the member's financial involvement in the cooperative. The court found that the organization provided "substantial and different benefits to both the public and its private members, and that we therefore cannot say that it is 'primarily' devoted to the common good as required by even the most liberal reading of section 501(c)(4)." **Id**. See also **New York State Ass'n of Real Estate Bds. Group Ins. Fund,** supra (insurance trust established to acquire group health and life insurance benefits exclusively for members of real estate association did not primarily promote social welfare); **Mutual Aid Ass'n of the Church of the Brethren,** supra (to the same effect; association providing property insurance exclusively to church members was primarily acting as an insurance company).

In **VSP** the District Court observed that **VSP** does not provide medical services, but simply arranges for the provision of services to its subscribers; (entity that merely arranged health care services held not to be engaged in activities that promote health care). Even if **VSP** is engaged in promoting health care, that activity would not mandate a finding that **VSP** is primarily engaged in the promotion of social welfare. Although it is true that the promotion of health can be a charitable purpose, not every activity that promotes health supports tax exemption. **IHC Health Plans, Inc.**, supra ("[n]umerous for-profit enterprises offer products or services that promote health"). What matters for purposes of exempt status under Section 501(c)(4) is whether the organization primarily promotes the common good, rather than merely the welfare of a private group. The District Court found that **VSP's** services are "most beneficial" to its private paying members, the subscribers and enrollees. See **Am. Ass'n of Christian Schs. Voluntary Employees Beneficiary Ass'n Welfare Plan Trust,** supra (trust providing health, dental and other insurance benefits exclusively to employees of member schools held not exempt under section 501(c)(4) where the trust's primary activity was providing insurance to employees in exchange for premiums).

VSP also argued that its service to small employers and geographically remote regions promotes social welfare to a degree that entitles it to exemption. The District Court rejected this argument. Contrary to **VSP**'s contentions, small employers and residents living in rural areas are not necessarily poor, needy or medically underserved. For example, a small but lucrative law firm may qualify as a "small employer," but it scarcely could be considered part of an underserved population. Moreover, even if employees of a small employer or rural resident were considered poor, needy or medically underserved, they still must be members of a limited class, i.e., paying subscribers with whom **VSP** has contracted, in order for them to obtain **VSP**'s services.

Furthermore, contrary to **VSP**'s contentions, mere participation in Medicaid, Medicare and Healthy Families does not result in it_primarily benefitting the public at large. **VSP** did not serve any segment of the population that has not already contracted with it. The criterion for an enrollee to receive **VSP**'s services, therefore, is not whether the person is a member of a medically- underserved population. It is, instead, whether the enrollee is an employee or member of a paying subscriber (e.g., the State of California) that contracts with **VSP** for a fee. Therefore, **VSP**'s activities are not primarily directed toward the medically underserved, but are directed toward the members of paying subscribers, some of whom may incidentally happen to be medically underserved. The fact that **VSP** has a requirement of membership for these groups indicates that **VSP** is primarily benefitting itself and its members by having such a restriction.

Also, the District Court found **VSP** competitively bid to obtain contracts to arrange the provision of vision care services to participants in Medicaid, Medicare and Healthy Families. Although **VSP** contends that this fact shows that it endeavors to serve all segments of the market, the argument is not well taken. The mere fact that **VSP** has entered into such contracts does not necessarily evidence that it operates primarily for the promotion of social welfare. To the contrary, the contracts could just as easily be characterized as being primarily motivated by **VSP**'s desire to increase the volume of **VSP**'s business and its revenue. Finally, the District Court noted that the Medicaid, Medicare and Healthy Families programs appeared to be profitable for **VSP**.

VSP contended that Section 501(c)(4) does not require that an organization lose money on its functions before it can qualify as exempt. While this is certainly true, **VSP**'s argument nevertheless misses the mark. If only a small portion of an organization's overall activities consist of promoting social welfare, then the organization cannot be said to be primarily engaged in that activity as required by Section 501(c)(4).

The District Court additionally found that **VSP** carried on a business similar to for-profit organizations. **VSP**'s primary activity is to arrange vision care services by connecting its subscribers and their enrollees to **VSP**'s participating providers. These services are provided in exchange for fees and claims costs that represent the majority of **VSP**'s revenues. Contracting with paying subscribers does not directly promote the social welfare of the community. Rather, it represents an ordinary commercial activity. Hence, **VSP** is clearly a commercial operation similar to a for-profit business, and no broad community benefit is conferred by **VSP**'s primary activity as a mere arranger of services.

The record showed that **VSP** has been able to accumulate an extraordinarily large surplus, over $ 300 million by the end of 2003, by successfully operating its business. On the other hand, **VSP**'s own financial statements showed that it spent only approximately $ 8.2 million on charity work during 2003. The sharp contrast between these two figures further demonstrates that **VSP**'s activities are primarily of a for-profit nature. See **People's Educ. Camp Soc.,** supra, (corporation that devoted much of its revenues to improving its ability to compete commercially in resort business through accumulation of large surpluses and expansion of income-producing facilities held not exempt under section 501(c)(4), even though it engaged in some social welfare activities): **Scripture Press Found. v. United States, 285 F.2d 800, (Ct. Cl. 1961)** (religious publishing house not exempt under section 501(c)(3) where large accumulated profits and small expenditures for educational programs indicated that its activities were primarily of a commercial nature).

The more **VSP** acts like a for-profit company (e.g., in setting salaries, in cutting costs, in increasing sales and clients, in increasing revenues, in worrying about competition), the less it focuses on the promotion of social welfare. Indeed, it was telling that **VSP** cites no factors showing that it is operating in the manner of a non-profit organization. If **VSP** is going to behave the same way as it's for- profit competitors, then it should be required to pay taxes as they do. Otherwise, **VSP** would enjoy an unfair competitive advantage that thwarts the very purpose of tax exemption. **IHC Health Plans,** supra ("granting a tax exemption to [petitioners] would necessarily disadvantage other for-profit [entities] with which [petitioners] compete").

The central principle underlying the commerciality doctrine is that an organization that carries on activities of a type, and in a manner, similar to those of for-profit enterprises as too large a part of its overall activities does not meet the requirements for exemption because it has a substantial nonexempt (i.e., commercial) purpose. A corollary rule is that the presence of a substantial commercial purpose can be reasonably and reliably inferred from the existence of certain facts about and circumstances surrounding the organization's activities.

Thus, the regulations embody several principles relating to the conduct of commercial pursuits by exempt organizations. First, because a commercial purpose is not an exempt purpose, an organization will not be found to operate 'exclusively' for exempt purposes if its operation of a trade or business for profit is a substantial purpose. In that case, the organization's exemption will be lost, no matter how many important exempt purposes it may have.

Over the years, the courts elaborated and refined the doctrine in cases involving all manner of activities, ranging from the operation of farms, **Dumaine Farms, 73 TC 650 (1980)**; pharmacies, **Federation Pharmacy Services, Inc.**, supra; restaurants, **Living Faith, Inc., 950 F.2d 365, (CA-7, 1991)**; to the provision of consulting, **B.S.W. Group, Inc.**, supra; and insurance, **Nonprofits' Ins. Alliance of California, 74 AFTR2d 94-6893 (Fed. Cl. Ct., 1994)**; services to the sale of artwork, **Aid to Artisans, Inc., 71 TC 202 (1978)**; testing materials, **Edward Orton, Jr. Ceramic Foundation, 9 TC 533 (1947)**; and vision services, **VSP**, supra. A basic precept emerged from these cases, which is the hallmark of the commerciality doctrine: The presence of a disqualifying commercial purpose can be revealed by an examination of the nature of the organization's activities and, in particular, from an analysis of certain facts and circumstances about those activities. The most frequently cited 'commerciality factors' include:

- *Competition with for-profits.*
- *Generation and accumulation of profits.*
- *Pricing margins.*
- *Business and marketing practices.*
- *Customer base.*
- *Highly Compensated Executives.*
- *Commissions paid to sales force.*
- *Lack of Contributions*

E. DISCUSSION

(1) *Commercial Line of Business*

does not provide medical services, but rather arranges for third-parties [physicians, hospitals and other medical facilities] to supply the medical services has contracted to provide to its paying subscribers [employers] for their employees [enrollees]. , like all [for profit or not for profit] , are required [by the State of] to have a 30-day open enrollment period [August 1-31] whereby members of the general public can apply for medical coverage. In case, out of enrollees in 20XX, were individuals, in 20XX, out of enrollees, were individuals, and in 20XX, out of enrollees, were individuals. Therefore, individual enrollees are considered de minimus [trifling, minimal, so insignificant that a court may overlook it in deciding an issue or case], **Black's Law Dictionary (9th Ed. 2009)**. Even if we were to consider individual enrollees, there has been no information provided which indicates that these / / individuals are part of an underserved medical group or were given relief from standard fee [premium] structure.

, like **VSP**, concentrated its efforts exclusively on fee [premium] paying subscribers [employers] and their employees [enrollees]. Every subscriber or individual needed to pay fees [premiums] to receive arranged medical benefits. It was **VSP's** membership-based model [like] which works to benefit [primarily] its subscribers and not the general welfare of the community. The Court's rejection of a membership/subscriber/enrollee model may have led to **VSP's** comments in its Supreme Court brief, "That serving primarily fee-paying users precludes tax exempt status; means the loss of tax exempt status for almost all currently tax exempt HMOs." **2008 TNT 155-53.**

Given our conclusion that commercial line of business does not advance or promote the common good and general welfare of the people of the community, so as to be considered achieving a social welfare [Section 501(c)(4)] purpose, we need to determine if this line of business is substantial, causing tax exemption under Section 501(c)(4) to be revoked.

The line of business represents between and percent of overall activities and applying the **Haswell** percentages, which Congress, courts and the IRS have used to distinguish between an 'insubstantial' or 'substantial' activity, we find commercial line of business is 'substantial' causing tax exemption to be revoked.

, during CY 20XX, did merge into a Section 501(c)(3) arranger with the Section 501(c)(3) corporate entity surviving and changing its name to , causing tax exempt status to be converted from a Section 501(c)(4) to a Section 501(c)(3) organization. This conversion situation has no bearing on our determination that tax exempt Section 501(c)(4) status should be revoked except that newly converted to Section 501(c)(3) status should also be revoked. In CY 20XX, the newly converted total commercial premiums amounted to %, [$ ÷ $]; % [$ ÷ $] of expenses, and % [÷] of enrollees.

While an organization which does not qualify for tax exemption under Section 501(c)(3) can be treated as qualifying under Section 501(c)(4) [**Rev. Rul. 75-286, 1975-2 C.B. 210**], an organization that does not qualify under Section 501(c)(4) can never qualify as a Section 501(c)(3) organization [**2011 TNT 238-34**].

Therefore, newly converted Section 501(c)(3) status still has a substantial non-exempt activity causing its converted Section 501(c)(3) status to also be revoked.

(2) Medicaid

In recent years, many states have changed from traditional indemnity insurance to a managed care system for the provision of health care services to their Medicaid population. Thus, the state Medicaid agencies contract with insurance companies and HMOs to arrange for the provision of health care services to eligible Medicaid beneficiaries.

Under fee-for-service [indemnity insurance], state Medicaid agencies paid providers for services at the prescribed rates. Under managed care, an HMO establishes a provider network, enrolls Medicaid recipients, collects capitated fees from the state, administers claims and disburses fees to the providers. However, the state still retails the obligation to provide health care to the poor; it has not transferred any of this obligation. Nor have these HMOs assumed any of the obligations. By contracting with HMOs to perform these services, the state is merely changing the methods of delivery and payment, expecting higher quality services, greater patient access and most important, lower costs.

In the managed care environment, where the Medicaid HMO is receiving substantial government funds and arranging for health care services, the state has a substantial interest in ensuring that the Medicaid HMO is delivering quality services and appropriately using the funds it receives. As a result, states exercise their right to extensively regulate and supervise the Medicaid HMO's operations. This involvement by the state is not an objective manifestation by the state that the HMO is performing a portion of the state's burden. The state is merely ensuring that it is obtaining the services it is purchasing.

does not provide the community with more health care services than were previously available. Instead of purchasing health care services from physicians on a fee-for-service basis, the state is purchasing arranger health care services from .

was granted [in 20XX] exemption under Section 501(c)(4) as [basically] an arranger Medicaid HMO. The entity merged into [in CY 20XX] was granted [in 19XX] a Section 501(c)(3) exemption as [basically] an arranger Medicaid HMO. A lot has happened since and the entity it merged into were granted tax exemption.

In 2003, the Tenth Circuit denied the tax exemption, under Section 501(c)(3), to an arranger HMO that had half of the State of Utah Medicaid population as enrollees. **IHC,** supra.

In 2005, a California District Court denied the tax exempt status, under Section 501(c)(4), to an arranger vision service HMO [**VSP**], who had some Medicaid enrollees. The court noted how profitable the Medicaid program was and how the HMO, like others, had to submit a bid to participate in the program. **VSP,** supra.

, over a three year period [CYs 20XX, 20XX and 20XX], earned gross income from the State of Medicaid program of $, with a net profit of $ and [like **VSP**], had to submit a bid, like other non-profit or for-profit entities, to participate in the program.[5]

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[5] Per State of Annual Statements.

In 2010, an Ohio District Court denied the tax exempt status, under Section 501(c)(4), of various arranger [HMO] subsidiaries of **VSP**, who had substantial Medicaid enrollees. The court noted how all of the participants in the Medicaid program had to be enrollees in the VSP plans and the "exact percentages are not what are controlling." **VSP Tax Litigation, 105 AFTR2d 2979 2010.**

The courts ruled **VSP**'s 'operational model' of arranged health care services to its members/subscribers/enrollees primarily benefited these individuals and not the common good or general welfare of the community. **Id.** It was this 'operating model' that the courts viewed as objectionable to the principles of tax exemption under Section 501(c)(3) or (4).

The court focused on the fact that an individual who wanted to participate in the arranger HMO's health care services had to be a member of a payor group [i.e., either their employer or the state], even if the individual was part of a medically underserved group, i.e., the fact that the individual was part of an underserved group is irrelevant. No information has been provided by as to how they treat an individual who no longer qualifies under the state Medicaid program, other than having their enrollment status terminated.

Therefore, an HMO [like], which merely arranges health care services for its own members/subscribers/enrollees does not translate into promoting the common good or general welfare of the community. **IHC**, supra; **VSP**, supra.

At the time was granted tax exempt status, including the entity it merged into, the Service was focused on the enrollees of an arranger HMO. If those enrollees came from a medically underserved class, such as participants in a state Medicaid program, then exemption was granted under either Section 501(c)(3) or (c)(4).

Subsequently however, the courts focused on the fact that if, even an underserved class had to be a member of a payor group such as an individual's employer or the state, then the arranger HMO was only benefitting its members/subscribers/enrollees [even if many were part of an underserved class] rather than for the purpose of benefitting the community as a whole.

In **Wisconsin Nipple & Fabricating Corporation v. Commissioner, 581 F.2d 1235 (1978)** and again in **Basch Engineering, Inc. v. Commissioner, 1990 WL 50664**, the tax court observed:

> *"It is not unreasonable for him [Commissioner] to charge a taxpayer receiving the benefit of such an opinion [tax exempt determination letter] with the responsibility of keeping abreast of current developments in the law to be assured that his plan [organization] is still in compliance.... Thus, it is incumbent upon petitioner [taxpayer] to stay abreast of any change in the law, such as through legislation, regulations, or rulings that could affect respondent's [Commissioner's] initial determination."*

Accordingly, even though or the entity it merged into were considered [by the Service] as tax exempt in 19XX and 20XX, the intervening years and the subsequent court cases demonstrate that could no longer rely on the Service's initial determination.

(3) *Commerciality Doctrine – operating similar to a for-profit organization.*

If an exempt organization is operated in a for-profit [commercial] manner, then said organization is not operating to achieve a tax exempt purpose, i.e., a commercial endeavor never translates into an exempt endeavor.

In our case, there is little doubt is, in fact, operating in a commercial manner. earned considerable income [profits]; accumulated considerable net assets [surplus]; pays their executives handsomely [highly compensated]; paid substantial commissions to their sales force; concentrates on the most lucrative clients [large employers]; advertises; and receives no contributions.

board meetings read like any for-profit [commercial] firm, i.e., concerned about competitors, sales volumes, cutting costs, paying the least amount of taxes, declining new financially risky ventures [not profitable], etc.

started as a for-profit commercial firm, i.e., this establishes the basis of formation [to operate a commercial firm]. And formed three wholly-owned, for-profit subsidiaries [two insurance companies and a third party administrator serving large (self-funded) employers].[6]

business savvy has even impressed one of its competitors [ ].

There is simply no information to contradict the obvious conclusion that is operating in a manner similar to for-profit firms and, as such, not operating primarily for the promotion of social welfare or charity under either Section

6 ; ; .

501(c)(4) or Section 501(c)(3), i.e., the presence of a single non-exempt purpose [a commercial operation] if substantial [in our case, 100%] will destroy exemption.

may believe it is publicly spirited, but its manner of operation [commercial] negates any consideration of tax exemption.

F. OVERALL COMMENTS

[like **VSP**] has an operational model whereby they arrange for their member/subscriber/enrollees to receive health care services supplied by other independent health care providers, i.e., physicians, hospitals, and others.

The California District Court [in **VSP**] found that this operating model [where **VSP** arranged for health care services only for its members/subscribers/enrollees] resulted in **VSP** "operating primarily for the benefit of its subscribers, rather than for the purpose of benefitting the community as a whole." **Id.**

The Ninth Circuit also rejected **VSP's** operational model as promoting the general welfare of the community. **VSP v. U.S., 2008 WL 268075 (CA 9th, 2008).**[7]

In an April conference on tax exempt organizations sponsored by the Georgetown University Law School, Service officials expressed support for the Ninth Circuit's decision [in VSP] and hoped other courts would follow it. Bennett, 'IRS Officials Outline Emerging Issues For Tax-Exempt Health Care Organizations,' 13 BNA Health Care Daily 1 (4/28/08). **20 TXNEXEMPT 44.**

[7] VSP's request for rehearing en banc: denied 2009 U.S. App. Lexis 3042.

VSP also petitioned the Supreme Court, stating in its brief [as previously noted], if "...serving primarily fee-paying users precludes tax exempt status; means the loss of tax exempt status for almost all currently tax exempt HMOs." [**VSP's** brief to the Supreme Court, **2008 TNT 155-53**; the court declined **VSP's** request to hear the case. **129 S.CT. 898**. Also, see **Amicus Curiae's** briefs to the Supreme Court that arrived at the same conclusion [loss of tax exempt status for HMOs]. **2008 WL 4217959, 2008 WL 4217960 and 2008 WL 4217961**].

Additionally, several years later various **VSP** subsidiaries challenged the Service's revocation of their tax exempt Section 501(c)(4) status. An Ohio District Court followed the conclusion reached by the California District Court and the Ninth Circuit in rejecting **VSP's** operating model of arranging for their members/subscribers/enrollees to receive health care services [supplied by other independent health care providers] as operating primarily for the purpose of benefitting the community as a whole, i.e., the model primarily benefitted only members/subscribers/enrollees and not the community. **VSP Tax Litigation,** supra.

The courts' rejections of **VSP's** 'operating model' occurred even though **VSP** arranged for the health care of small employer groups and participants in Medicaid, Medicare, and SCHIP programs. As the Ohio District Court noted, "...the various small employer and Medicaid, Medicare and SCHIP participants served by plaintiffs [**VSP**] are all subscribers. The exact percentages are not what are controlling." **VSP,** supra.

In late 2012, the Service denied exemption as an organization described in Section 501(c)(4) to an organization that operated as a "bundler" [arranger] of health care services. The organization entered into marketing agreements with multiple firms to sell memberships in the organization. These organizations received a fee for each type of membership they sold. Anyone could purchase a membership. Members included employers of all sizes, self-employed persons, employees, and retirees. Members received discounts on medical services and access to limited medical indemnity benefits, information on health care and health care reform, and access to scholarships for certain types of medical related studies. The organization also offered discounts on travel, pet services, household appliances, roadside assistance, legal services, and many other products and services. If the costs exceeded the maximum indemnity benefits, the member was responsible for the excess amount. The Service referred extensively to the judicial determination that **Vision Service Plan** did not qualify for exemption as a Section 501(c)(4) organization. The Service noted that both **Vision Service Plan** and this organization provided benefits only to members. In addition, the Service found that the amount devoted to social welfare was a very small share of the total expenditures.[8]

In a recent program manager technical assistance memorandum [PMTA 2013-005] from TE/GE Chief Council to the Commissioner of TE/GE, Council stated:

> *Accordingly, X would qualify for exemption under section 501(c)(4) only if X are not organized for profit, and X operate exclusively for the promotion of social welfare. The determination is based on all the facts*

[8] Private Letter Ruling (PLR) 201319031.

and circumstances of X, applying the statute, regulations and pertinent court cases (including Vision Service Plan). As discussed above, the VSP decisions, based on the particular facts and circumstances of those cases, held that certain organizations, whose principal activities were arranging or administering vision service benefits for their premium-paying members, were not exempt under section 501(c)(4).[9]

The PLR and Technical Assistance Memorandum are not provided as support for the agents' position, but rather to show the Service is applying the principles set forth in the **VSP** case to other organizations.[10]

(G) CONCLUSION

Given the dramatic effect of these cases on tax exempt status and need to keep abreast of current developments that could impact their initial determination, along with the for-profit [commercial] manner of operations, the inescapable conclusion is [starting with the calendar year ending on December 31, 20XX] no longer should be considered tax exempt under Section 501(c)(4), or should the entity merged into [during calendar year ending on December 31, 20XX] be treated as tax exempt under Section 501(c)(3).

(H) COMMENTS

During the course of this examination, the agents brought to attention, their concerns regarding the possibility that tax exemption could be in

[9] 2013 TNT 206-15, October 24, 2013.

[10] Also, CCH advises practitioners they may want to consider whether there is a FIN48 or tax return issue for tax exempt prepaid health plans. P. 22,611.035.

jeopardy and requested a meeting to discuss this matter.[11] declined the agents' request to meet and discuss exemption concerns.[12] Nevertheless, has made comments concerning their commercial line of business; the integral part doctrine; Section 501(m); and uniformity/unfair competition.

(1) Commercial Line of Business

The bulk of comments are in reference to their commercial line of business. makes a number of arguments to support its conclusion that the commercial line of business is related to their tax exempt purpose.

(a) Promotion of Health

is an arranger prepaid health care plan. does not provide any direct health care services, but rather acts as a facilitator [go between] linking their paying subscriber groups [employers] and their employees [enrollees] with participating health care providers.

believes their facilitator activities should be looked at in the same light the IRS views tax exempt hospitals [**Rev. Rul. 69-545, 1969-2 C.B. 117**]; or HMO's that directly provide medical care [**Sound Health Association v. Commissioner, 71 T.C. 158 (1978)**].

Tax exempt hospitals or direct medical service providers are granted tax exemption on the compelling evidence of substantial public benefit, based on community-wide access to health care services, open medical staffing, and the

[11] IDR #304.

[12] response to IDR #304.

provision of free emergency room care to indigents. None of those characteristics are present in facilitator activities. No non-enrollees can walk into a physician's office and expect their treatment to be paid for by . If an individual wants their treatment to be paid for by , then said individual must be linked to a paying subscriber, i.e., in most cases, an employee. Naturally, that was not the case for the hospital granted tax exempt status in **Rev. Rul. 69-545** or for the direct medical care provider in **Sound Health**.

Also, in the **Vision Service Plan [VSP]** case, [another facilitator of medical services], they **[VSP]** cited **Rev. Rul. 69-545** and **Sound Health** as authority for **VSP** to be considered tax exempt under Section 501(c)(4).[13] However, the Courts [two District Courts, twice at the Court of Appeals for the Ninth Circuit; and the Supreme Court] rejected **VSP's** reliance on **Rev. Rul. 69-545** and **Sound Health**.

<u>(b) Public Policy</u>

believes (with the enactment of the Patient Protection and Affordable Care Act [ACA] in March, 2010) that court cases such as **VSP**, **IHC Health Plan**, and **Geisinger Health Plan** are no longer "good law." The years involved in this [ ] case are years in which the ACA was not fully implemented. Nevertheless, ACA <u>does not</u> provide any relief to .

states that Congress, in enacting ACA, recognized the many negative effects associated with being uninsured for health care. Therefore, in mind, if they are providing an arranger/facilitator service of linking paying subscribers and their enrollees to participating health care providers, then they [ ] are

[13] **2005 WL 3242065; 2006 WL 2984456; 2006 WL 3294958; 2008 WL 5104792; 2008 WL 2467744; 2008 WL 4217961; 2008 TNT 155-53.**

doing the very thing that Congress sought to achieve; namely, more individuals with health care insurance. even points to a newly enacted Section 501(c)(29) exemption as proof of Congressional intent.

In **Lake Forest**, supra, an organization formed to provide adequate housing for war veterans, they [**Lake Forest**]:

> *"...offers national policy statements in a number of Acts of Congress relating to housing -- the most pertinent enacted after the sale of Lake Forest -- to establish that in the sale of the projects the Congress intended that the property should thereafter retain and enjoy a social-welfare status in the hands of the purchaser. See 42 U.S.C.A. §§ 1586, 1587, effective 1950; 2 U.S. Code Cong. Service 1950, p. 2061 et seq....While the occupancy preferences may contribute to the promotion of social welfare, they do not overbalance the private nature of the project. Government fostering of social welfare by financing housing construction through private channels or extending credit in sales of its surplus properties does not of itself establish that the recipients' operations should in addition enjoy tax immunity."*

Also, a recent Detroit News article noted a Congressional Budget Office (CBO) report estimating that 31 million Americans will not have health insurance in 2023.[14]

Therefore, as praiseworthy the congressional goals are to have every American insured, as the **Lake Forest** Court of Appeals for the Fourth Circuit noted, a

[14] Detroit News, February 20, 2014, Section B.

Congressional goal will not overrule the requirements that a Section 501(c)(4) or (c)(3) organization must be operated for the "well-being of persons as a community" as opposed to just a subgroup [subscribers and their enrollees] of them.

Section 501(c)(29) is the latest in a long line of insurance organizations Congress has determined is an appropriate recipient for tax exempt status. Section 501(e) permits cooperative hospital service organizations to purchase insurance on a group basis. Section 501(n) treats charitable risk pools as Section 501(c)(3) organizations if they serve only Section 501(c)(3) organizations, are organized under a state law authorizing charitable risk pools, and do not rely primarily on premium payments and capital contributions made by participants. In addition, small insurance companies are specifically provided tax exemption under Section 501(c)(15), which provides tax-exempt status for insurance companies (other than life insurance companies). State-sponsored health insurance pools for high-risk individuals who are otherwise unable to obtain health insurance and state-sponsored workers' compensation reinsurance organizations are eligible for tax-exempt status under Sections 501(c)(26) and (27).

The ACA added Qualified Issuers to the list of tax-exempt organizations under Section 501(c). New Section 501(c)(29) allows these insurers, which cater to individual and small group markets, to obtain federal tax exemption under certain conditions. It also requires such organizations to be nonprofit, membership corporations, substantially all the activities of which consist of issuing health plans to individuals and small groups within the state in which it is licensed. A Qualified Issuer (or a related entity or predecessor) must not have been a health insurance issuer on or before 7/16/09 and must not be sponsored by a state or local government, any political subdivision, or any instrumentality of such government or political subdivision. Qualified Issuers will receive start-up loans and/or repayable grants, which will allow Qualified Issuers to satisfy regulatory requirements necessary for state insurance licensure. A Qualified Issuer must be governed by the majority vote of its members, implement ethics and conflict of interest standards protecting against insurance industry involvement and interference, and operate with a strong consumer focus, including timeliness, responsiveness, and accountability to members. Furthermore its board of directors may not include representatives of any federal, state, or local government, nor any representative of a health insurance issuer (or related entity). Qualified Issuers must satisfy the following four conditions to receive tax exemption. First, Qualified Issuers must notify the Treasury by applying for tax exemption. Second, like Section 501(c)(3) organizations, Qualified Issuers must comply with a private inurement prohibition (with exceptions for using profits to lower premiums, improve benefits, or for other programs intended to improve the quality of health care provided to members). Third, no more than an insubstantial amount of a Qualified Issuer's activities may consist of lobbying. Fourth, Qualified Issuers must refrain from engaging in political activity. Qualified Issuers that lose their tax-exempt status, or those that do not apply for tax-exempt status, must pay federal income tax.

All this points to the fact that Congressional requirements for a particular tax exempt code section does not override Congressional requirements for another tax exempt code section.

If wants to be exempt under either Section 501(c)(4) or (c)(3), then they need to satisfy the Code section requirements and not merely point to another tax exempt code section [here Section 501(c)(29)] as justification for its failure to satisfy the Congressional requirements for continued consideration as an organization exempt from Federal taxes under Section 501(c)(4) or (c)(3).

points to provisions in the ACA where certain small employers may apply for tax credits if they provide health insurance to their employees as a positive factor. However, also contained in the ACA is a provision starting in 2018 that levels a 40% excise tax on employers who offer high-cost health care plans to their employees. Additionally, the CBO projects the revenue from this excise tax [through 2019] will be $32 billion, which far exceeds the average costs savings [$5.4 billion] from other provisions contained within the ACA.[15] Therefore, the ACA contains both tax incentives and tax disincentives relating to employers offering health care plans to their employees.

Finally, regarding speculation that **VSP, IHC Health Plan** and **Geisinger Health Plan** are no longer "good law" due to the enactment of ACA, the IRS has cited either **VSP, IHC**, or **Geisinger** as authority in eight Private Letter Rulings and one PMTA since the enactment of ACA.[16]

Accordingly, and contrary to speculation, the IRS does consider **VSP, IHC** and **Geisinger** to still be "good law."

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[15] Wall Street Journal, February 24, 2014, Special Health Care Report.

[16] PLRs 201032049; 201128028, 201145025, 201215019, 201315028, 201319031, 201350043, 201409012 and PMTA 2013-005.

(c) Vision care does not support exemption to the extent medical care does.

believes a prepaid arranger/facilitator health care plan that covers more than just vision care should be viewed in a more favorable light than a prepaid, arranger/facilitator health care plan that merely covers vision care. views the huge costs on community resources from uninsured individuals to be far greater when all medical conditions are covered as opposed to just vision care.

Contrary to assertion that vision care is not a huge drain on community resources, one of the amici curiae briefs to the Supreme Court is support of **VSP** continuing to be recognized as tax exempt under Section 501(c)(4) noted:

> *A vision problem, left uncorrected, can do serious harm to a child's development and quality of life. According to the Center for Disease Control and Prevention, "[i]mpaired vision can affect a child's cognitive, emotional, neurological and physical development by possibly limiting the range of experiences and kinds of information [to which] the child is exposed." Center for Disease Control and Prevention, What is Vision Impairment? (Oct. 29, 2004).*[17] *The effect of an uncorrected vision problem on the ability of a child to succeed in school can be devastating. Approximately 80 percent of what a child learns is learned visually. American Optometric Association, School-Aged Vision: 6 to 18 Years of Age.*[18] *Some vision problems, if not corrected at an early age, can lead to permanent disability and blindness. For example, amblyopia, or "lazy eye," is a condition*

[17] http://www.cdc.gov/ncbddd/dd/vision2.htm.

[18] http://www.aoa.org/x9451.xml#1.

> *affecting "2 to 3 out of every 100 children" and results in reduced vision in an eye that has not received adequate use during early childhood. National Eye Institute, Amblyopia (Mar. 2008).*[19] *If left untreated until age six, amblyopia will most often result in some permanent vision impairment. If left untreated until age ten, the eye may become functionally blind.*
>
> *Uncorrected vision problems are also a significant drain on the nation's economy. A 2002 study reported that untreated amblyopia alone costs the United States an estimated $7.4 billion in earning power each year. Jaime H. Membreno, Melissa M. Brown, Gary C. Brown, Sanjay Sharma & George R. Beauchamp, A Cost-utility Analysis of Therapy for Amblyopia, 109 Ophthalmology 2265, 2269 (2002). If a child becomes visually impaired, the additional costs for medical visits, home modifications and lost productivity are estimated at $601,000 over the child's lifetime. Center for Disease Control and Prevention, Economic Costs Associated with Mental Retardation, Cerebral Palsy, Hearing Loss, and Vision Impairment - United States, 2003 (Aug. 18, 2006).*[20] ***2008 WL 42177961.***

The Court was not persuaded by this argument.

In **PLR 200512023**, the IRS denied an organization's application for tax exempt status under Section 501(c)(4), which arranged for health insurance to be

[19] http:// www.nei.nih.gov/health/amblyopia/amblyopia_guide.asp.

[20] http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5303a4.htm amended by erratum at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5532a5.htm.

obtained by "small employer groups" for their employees. The IRS also found the organization did not establish:

> *"...that any benefit that the community as a whole may derive from your health insurance programs for participating employers and their employees, such as relieving the community of the financial burden of providing healthcare services to uninsured members of the community, is more than incidental, remote and tenuous."*

Accordingly, the audit team is following the Court's and the IRS's conclusion that the cost to the community associated with uninsured individuals [as speculated by] is not sufficient to recognize as qualifying for tax exemption under Section 501(c)(4) or (c)(3).

(d) Community Rating

Under this topic, we have three separate areas to consider: (i) redlining; (ii) pre-existing condition; and (iii) generally affordable premiums.

The agents pointed out how **VSP** [with no success] argued that they also did not redline; had no restrictions on pre-existing conditions; and believed their premiums were generally affordable.[21]

Nevertheless, believes it is more important to offer these items in the medical field than in the vision care field.

In the Fact section of this report, indicated they are in the small employer field only because, "employers with 100 or more employees are the most

[21] VSP's brief to the Supreme Court, 2008 TNT 155-53.

lucrative [profitable] segment of this line, but it is very difficult to gain a foothold into this segment, which has resulted in having a large percentage of their commercial line consisting of employers with less than 100 employees, causing the overall losses. Also, if the Affordable Care Act does not provide some relief, then will terminate its commercial line of business."[22]

Additionally, there is not one comment [over a three year period] in Board minutes that touch upon small employers or individuals. All Board comments concern the lucrative large employer market, "Marketing initiative includes targeting larger employer groups and doing a media blitz;"[23] " growing reputation, cost-effective and flexible benefit plans will begin to attract larger employer groups;"[24] "...many of the requests coming from large employer groups in the S.E. Region;"[25] and "...to reinvest a relationship with local ...the union is statewide with over members."[26]

On the individual side, all we know is over a three year period, had, on average, total enrollees of with average total enrollees not connected with a paying subscriber group [individuals] of .[27] You would think if is not redlining; not taking pre-existing conditions into account; and their premiums are generally affordable, then far more than individuals would have signed up over those years in one of prepaid [arranger] health care plans. Also, has failed to indicate they have any subsidized programs to assist individuals or small

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[22] IDR #304 and response.

[23] 10/20/20XX meeting.

[24] 2/14/20XX meeting.

[25] 4/17/20XX meeting.

[26] 12/18/20XX meeting.

[27] annual statements to the State of .

employees [due to their financial conditions] to secure one of prepaid [arranger] health care plans.

Additionally, the IRS noted, in its brief to the Court:

> *VSP argues that its arrangement for the provision of discounted services to Enrollees of "small employers" and Enrollees who reside in rural areas supports its claim for tax-exempt status. There is no legal authority for this argument. Indeed, small employers and rural residents are not necessarily poor, needy, or medically-underserved populations. For example, a small but lucrative law firm may qualify as a "small employer" but certainly could not be considered part of an underserved population. Certainly, even if an employee of a small employer or rural resident was considered poor, needy, or medically underserved, in order for them to obtain VSP's vision benefit, they would still be required to become an Enrollee of a paid Subscriber. Because it limited the vision benefit to its members' Enrollees, VSP's arrangement for the provision of these services does not promote social welfare.*[28]
>
> *Lastly, VSP states that its rates are "generally affordable." This bald assertion is not supported by any evidence. Instead, it is based on VSP's attorney's own statement made without personal knowledge, should not be considered, and should be stricken from the record. And, the term is too vague to support VSP's claim. The plan might be*

[28] 2005 WL 3242063.

affordable as that term is used by VSP to an Enrollee who earns $50,000 per year, but may not be affordable to an unemployed person.[29]

In Geisinger, supra, the Court stated an organization must "primarily benefit the community, not its subscribers plus a few people..." and in **IHC Health Plans,** supra, the Court stated "An organization cannot satisfy the community benefit requirement based solely on the fact that it offers health care services to all in the community in exchange for a fee."

In **PLR 200512023**, the IRS denied an organization a Section 501(c)(4) tax exempt status even though said organization was operating for the purpose of enabling employees of small employer groups to obtain health insurance they would otherwise be unable to afford; thereby reducing the number of uninsured workers and helping small businesses gain access to quality health insurance for their employees.

In **PLR 201409012**, the IRS ruled that an organization established to arrange quality health care plans for senior members of the community was <u>not</u> operating for a Section 501(c)(3)_purpose, but rather primarily for the benefit of the organization's members. The PLR went on to note, "For example, a health maintenance organization that is operated primarily for the purpose of benefiting its paying subscribers does not qualify for exemption solely because the community also derives health benefits from its activities. See **Geisinger Health Plan**, supra; and **IHC Health Plans, Inc.**, supra."

[29] 2005 WL 3242063.

In **PLR 201409013**, the IRS ruled an organization formed to assist members of a particular faith with medical expenses was not operating for a Section 501(c)(4) purpose. The IRS found the organization "primarily...is reimbursing the medical expense claims of your members in exchange for their regular payment of fees, which precludes exempt status as promoting social welfare." **Mutual Aid Association, 759 F.2d 792 (10th Cir.).**[30]

Therefore, tax exempt status, under Section 501(c)(4) or (c)(3) is not assured simply because it is offering a prepaid [arranger] health care plan to anyone willing to pay their fees.

<u>(e) Incidental Benefit</u>

raises the possibility that even if paying subscribers and their enrollees are receiving a direct [private] benefit from prepaid [arranger] health care plans, said benefit is both qualitatively and quantitatively incidental compared to the benefits the public in general received.

The agents have previously demonstrated that the Courts [in **VSP**] found to the contrary and determined the public benefit was incidental to the private benefits received by paying subscribers and their enrollees. Also, see **PLR 200512023** where the IRS [like the **VSP** courts] ruled in a like fashion.

Furthermore, the IRS's expert witness [in the **VSP** case] found the public benefit was incidental to the private benefits received by paying subscribers and their enrollees:

[30] The agents are citing these PLRs not for support of their position, but rather to show how the IRS treated situations similar to .

Mr. Marcus S. Owens is a member of the law firm Caplin & Drysdale, Chartered, of Washington D.C. and worked in the Internal Revenue Service's Exempt Organizations Division from 1975 to 2000. During his roughly 25 years with the IRS' Exempt Organizations Division, Mr. Owens served in many supervisory capacities ultimately serving in the Government's Senior Executive Service and specifically serving as Director from January 1990 to February 2000. In the decade that he served as Director of the Exempt Organizations Division, Mr. Owens was the highest-ranking official within the IRS with exclusive line responsibility for federal tax administration matters relating to tax-exempt organizations. His responsibilities included overseeing the issuance of all private letter rulings and technical advice memoranda on complex issues of federal tax law applicable to tax-exempt organizations. In addition, Mr. Owens was responsible for the development of the annual IRS audit plan for tax-exempt organizations and the development of official guidance, including revenue rulings, revenue procedures, explanatory publications, and the Internal Revenue Manual and IRS training materials, relating to tax-exempt organizations. For example, Mr. Owens supervised the development, and reviewed draft versions, of the IRS Training Text on Healthcare, "Introduction to the Health Care Industry." In conjunction with the Treasury Department and the IRS Office of Chief Counsel, Mr. Owens participated in the drafting of regulations interpreting sections of the Code relevant to tax- exempt organizations.

Mr. Owens reviewed relevant guidance and research materials, various VSP internal documents, and Mr. Mancino's [VSP's expert witness] report and concluded that "VSP does not qualify for federal income tax exemption under Section 501(c)(4) as it is operated, qualitatively and quantitatively, primarily to further the interests of its subscribers, enrollees, and providers rather than a community beyond its members." Mr. Owen's also concluded that "VSP does not qualify for federal income tax exemption under Section 501(c)(4) because its primary activity consists of carrying on a business with the general public in a manner like that of for-profit organizations.... [and] is not operated exclusively for the promotion of social welfare as described in Section 501(c)(4)."

Therefore, contrary to assertions, the Courts and IRS have concluded both qualitatively and quantitatively that paying subscribers and their enrollees are the primary beneficiaries of a prepaid [arranger] health care plan as opposed to the public at large; thereby causing said plan to be treated as other than tax exempt under Section 501(c)(4) or (c)(3).

<u>(f) Benefits to all</u>.

notes how anyone can participate in its prepaid [arranger] health care plans provided they pay the required fees. In mind, this ability for all to become participants [so long as they paid the fee] constitutes a benefit to the community justifying a tax exempt status under Section 501(c)(4) or (c)(3).

VSP [without success] made the same argument:

> *VSP's provision of vision care services primarily to its enrollees does not preclude exempt status. It is the breadth of the community that VSP serves in this manner that forms the basis for VSP's exemption.*[31] *VSP served over 5,500 small businesses representing over 70% of its subscriber groups.*[32] *VSP promoted health by arranging high quality vision services for 6.7 million enrollees.*[33]

Also, in **Lake Forest**, supra, the Court noted:

> *Size of membership in ratio to local population is not controlling on whether an organization is 'civic' or 'social'. The number affected is not the criterion. A private project may touch an appreciable segment of the people or a large physical area and yet, for want of the considerations mentioned, not be converted into a civic or social undertaking. Classification as 'civic' or 'social' depends upon the character- as public or private- of the benefits bestowed, of the beneficiary, and of the benefactor.*

Finally, as previously noted, the Court, in **IHC Health Plan**, supra, found "an organization cannot satisfy the community benefit requirement based solely on the fact that it offers health care services to all in the community in exchange for a fee."

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[31] 2006 WL 2984456.

[32] 2005 WL 3242065.

[33] 2006 WL 3294958.

Therefore, merely because anyone [for a fee] can participate in one of prepaid [arranger] health care plans, does not translate into recognizing as a tax exempt organization under Section 501(c)(4) or (c)(3).

(g) Quality Initiatives

feels its quality initiative concerning their contracted physicians will cause those physicians to treat all of their patients in a like manner, resulting in benefits for both enrollees and non-enrollees. The same argument was advanced [without success] by **VSP**.

> *VSP also promotes health through its comprehensive and rigorous quality of care programs. The government terms these quality of care programs "irrelevant" because, it alleges, they confer a benefit only on VSP's enrollees or its participating providers and do not benefit the community. First, to the extent these programs benefit VSP enrollees, that benefit extended to over 6.7 million California enrollees in 2003, including over 2.8 million patients who were Medicare, Medicaid, and Healthy Families enrollees, as well as to the over 10,000 children who received free care under VSP's Sight for Students program. But the community benefit provided by VSP's quality of care programs is not limited to VSP enrollees. By raising the standard of care for doctors on the VSP panel, through the development and continual updating of clinical algorithms and its rigorous quality management practices (credentialing, recredentialing, peer review and audits), VSP promotes health for all patients of those doctors.*

Therefore, as in **VSP**, quality initiatives argument does not support a claim for tax exemption under Section 501(c)(4) or (c)(3).

(h) Section 501(c)(3) vs. (c)(4)

is of the belief that more private benefit is allowable under Section 501(c)(4) than under Section 501(c)(3).

As we know, in August, 20XX, merged into an existing Section 501(c)(3) organization and took over that organization's Section 501(c)(3) status. Prior to August, 20XX, was exempt under Section 501(c)(4).

Again, VSP [without success] made the same argument:

> *The government acknowledges that the IRS had granted the Sound Health HMO Section 501(c)(4) status, and then asserts that there is nothing in the decision that explains why the health plan petitioned the court for a determination of Section 501(c)(3) status, "or whether the standard under Section 501(c)(3) is more or less stringent than that under Section 501(c)(4)." As to the respective standards, surely it is self-evident that if the IRS granted Section 501(c)(4) status but refused to grant Section 501(c)(3) status, then the standard under Section 501(c)(3) must be more stringent. With respect to why the Sound Health organization sought Section 501(c)(3) status rather than being content with a Section 501(c)(4) designation, its reasons were presumably the same as those of virtually every other organization that applies for exemption under Section 501(c)(3) rather than under Section 501(c)(4): as set out in VSP's motion for*

summary judgment, Section 501(c)(3) organizations are eligible for a host of tax benefits that are not available to Section 501(c)(4) organizations These include eligibility to receive deductible charitable contributions under I.R.C. Section 170, and to receive grants from private foundations under I.R.C. Section 4945 without expenditure responsibility requirements, to borrow at low interest rates in tax-exempt bond financings under I.R.C. Section 145, preferential postal rates, and potential access to additional benefits such as real property tax exemption under state law. Indeed, it is because of this higher level of associated benefits that the standards under Section 501(c)(3) are more stringent.

What fails to recognize is its subscriber/member/enrollee structure precludes tax exemption under either Section 501(c)(4) or (c)(3) no matter what the differences are between these two tax exempt code sections. Here is how **VSP** stated it to the Court:

The Government's primary argument in support of the District Court decision is that VSP's membership-based structure precludes exempt status under Section 501(c)(4). The Government relies on this membership structure argument to dismiss, or at least devalue, virtually all of the social welfare that VSP provides.

The Government's argument, adopted virtually wholesale by the District Court...that a membership organization such as VSP is per se outside of Section 501(c)(4)....

Throughout this report, the agents have repeatedly referred to subscriber/member/enrollee operational structure as what the Courts [two District Courts, twice at the Ninth Circuit Court of Appeals and the Supreme Court] found objectionable in granting [**VSP**] a Section 501(c)(4) or (c)(3) tax exempt status. Several tax exempt practitioners have found the Court's determination [in **VSP**] damaging to all HMOs. Jedrey & Buck: Vision Service Plan and the HMO Guidelines, Taxation of Exempts, May/June 2006. "The decision…suggesting that most HMOs should not qualify for tax exempt status." Jedrey & Fine: Vision Service Plan, Part Two; Taxation of Exempts, July/August 2008, "The District Court's decision…suggested that most health maintenance organizations (HMOs) would not qualify for tax exempt status." Flynn: Does Vision Service Signal Death Knell for 501(c)(4) HMOs, The Exempt Organization Tax Review, June 2008, "If the Vision Service standard is imposed in the future on HMOs seeking to qualify (or that are currently qualified) for section 501(c)(4) status, it is unlikely they will be able to qualify (or continue to qualify) under these "new" requirements."

Additionally, the IRS, in **PLR 200512023** ruled a facilitator health care organization was not entitled to a Section 501(c)(4) tax exemption [even though it acted as a facilitator for small employer groups who were unable to afford adequate health care coverage for their employees] because their activities only benefited the participating employers and their employees rather than the community as a whole.

Accordingly, the agents [like the Courts and IRS] reject subscriber/member/enrollee operating model as advancing a Section 501(c)(4) or (c)(3) purpose.

(i) Even though is not a direct provider of health care services, that [fact] is of no importance in determining if commercial line of business promotes community health.

As the agents previously stated, the hospital in **Rev. Rul. 69-545**, supra and the medical clinic in **Sound Health**, supra, were both direct medical care providers who attended to the medical needs of anyone in the community regardless of their ability to pay.[34]

is a facilitator, linking those willing to pay their fees [subscribers and their employees] with those willing to accept fees for providing health care services. This is a straight business transaction, i.e., fees charged for arranged services. There is simply no community benefit being served by this operating model; which the Courts, along with the IRS, rejected said model as advancing a Section 501(c)(4) or (c)(3) purpose. Merely offering to arrange health care services to all in the community in exchange for a fee cannot satisfy the community benefit requirement of Section 501(c)(4) or (c)(3).[35]

, in essence, is arguing the two District Courts, twice the Court of Appeals for the Ninth Circuit, and once the Supreme Court got it wrong in the **VSP** case. Namely, an organization, like , with an operational model that primarily

[34] As the government's brief in VSP found, a key fact for the Court [in Sound Health] was that an emergency patient cannot be refused aid. In contrast, VSP doctors are not required to treat non-VSP enrollees and VSP does not reimburse doctors for treatment of non-VSP enrollees. Thus, one of the key facts for the Sound Health court is not present in VSPs case. 2005 WL 3242063.

[35] IHC Health Plan, supra.

arranges medical care services to its subscribers/members/enrollees is precluded from claiming tax exempt status under Section 501(c)(4) or (c)(3). The IRS's position is clear: an organization [like], with the noted operational model, is precluded from claiming tax exempt status under Section 501(c)(4) or (c)(3). Therefore, sole avenue for it to retain tax exempt status under Section 501(c)(4) or (c)(3) is to secure concurrence from another court that operating model does not preclude from continuing to claim tax exempt status under Section 501(c)(4) or (c)(3).

The IRS examination agents are enforcing the IRS's position and, as such, commercial line of business does not achieve a Section 501(c)(4) or (c)(3) purpose and because this line of business constitutes a substantial activity [see previous portion of this report for additional details], tax exempt status should be revoked under both Section 501(c)(4) or (c)(3) effective as of the beginning of the first tax year [January 1, 20XX] included within the audited period.

(2) Integral Part Doctrine

believes this doctrine applies to their situation. The integral part doctrine/theory is not codified, but its genesis may be found in Section 1.502-1(b) of the Income Tax Regulations, which states that a subsidiary may qualify for tax exempt status "on the ground that its activities are an integral part of the exempt activities of the parent organization."

The court in **Geisinger Health Plan [GHP]**[36] covered the integral part doctrine and found **GHP** [like] was part of a large healthcare system, yet it still did not qualify for exemption under this doctrine.

> *As our examination of the manner in which GHP interacts with other entities in the System makes clear, its association with those entities does nothing to increase the portion of the community for which GHP promotes health - it serves no more people as a part of the System than it would serve otherwise. It may contribute to the System by providing more patients than the System might otherwise have served, thus arguably allowing the System to promote health among a broader segment of the community than could be served without it, but its provision of patients to the System does not enhance its own promotion of health; the patients it provides - its subscribers - are the same patients it serves without its association with the System. To the extent it promotes health among non-GHP-subscriber patients of the System, it does so only because GHP subscribers' payments to the System help finance the provision of health care to others. An entity's mere financing of the exempt purposes of a related organization does not constitute furtherance of that organization's purpose so as to justify exemption.*
>
> *Thus, it is apparent that GHP merely seeks to "piggyback" off of the other entities in the System, taking on their charitable characteristics in an effort to gain exemption without demonstrating that it is rendered "more charitable" by virtue of its association with them.*

[36] 30 F.3d 494 (CA-3, 1994).

In the **IHC – Health Plan** case,[37] again we had an arranger of medical services which was part of a large healthcare system [Health Services] claiming, but rejected by the court, it qualifies for exemption under the integral part doctrine.

Nevertheless, to the extent the integral-part doctrine recognizes that we should consider the totality of the circumstances in determining an organization's purpose, the doctrine is in accord with our section 501(c)(3) jurisprudence. One of the myriad factors we may consider in determining an organization's purpose is whether an essential nexus exists between an organization seeking tax exemption and a tax-exempt affiliate. The example cited in the Treasury Regulations aptly illustrates the point: "a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities." 26 C.F.R. § 1.502-l(b). In other words, as we interpret the integral-part doctrine, it simply recognizes that "[t]he performance of a particular activity that is not inherently charitable may nonetheless further a charitable purpose." Rev. Rul. 69-572.

Using the example cited in Treasury Regulation 1.502-l(b), if we were to consider the nature of the subsidiary's activity in isolation - furnishing electricity - we would have no indication that the subsidiary serves an exempt purpose. On the other hand, when we look at the totality of the circumstances, it becomes clear that the subsidiary's activity furthers the exempt purpose of education: the product provided is essential; the

[37] 325 F.3d 1188 (CA-10, 2003).

subsidiary furnishes its product solely to the tax-exempt affiliate and the tax-exempt parent exercises control over the subsidiary. These facts, considered in conjunction with the exempt purpose for which the tax-exempt parent operates, support a strong inference that the subsidiary operates for the same exempt purpose as does the parent.

In this case, we need not decide whether petitioners provide a service necessary to Health Services in conducting its exempt activities. The required nexus between the activities of petitioners and Health Services is lacking. As the Tax Court noted, "petitioner[s]' enrollees received approximately 20 percent of their physician services from physicians employed by or contracting with Health Services, while petitioner contracted for the remaining 80 percent of such physician services directly with independent physicians." Health Plans, 82 T.C.M. at 606. Thus, unlike the subsidiary furnishing electricity in Treasury Regulation § 1.502-1(b), petitioners do not function solely to further Health Services' performance of its exempt activities. Rather, a substantial portion (eighty percent)[38] of petitioners' enrollees received physician services

[38] The following table, taken from petitioners' brief, presents a percentage breakdown of petitioners' total billings for physician services:

Year	Employed	Not employed/ Panel	Not employed/ Non-panel
1997	23.4 %	64.3 %	12.3 %
1998	22.1 %	65.8 %	12.1 %
1999	20.5 %	69.2 %	10.3 %

"Employed" includes those physicians employed by Health Services' Physician Division. "Not employed/Panel" includes independent contractors who had medical staff privileges at a Health Services hospital. "Not employed/Non-panel" includes all other physicians.

from "physicians with no direct link to [Health Services]." Health Plans, 82 T.C.M. at 606.

While has not supplied a breakdown of its physicians' claim payments, we assume a similar **[IHC – Health Plan]** result.[39]

Accordingly, is not afforded tax exemption [under Section 501(c)(3) or 501(c)(4)] through the application of the integral part doctrine.

(3) Section 501(m)

Section 501(m)(1) of the Code provides that an organization described in section 501(c)(3) or 501(c)(4) shall be exempt "only if no substantial part of its activities consists of providing commercial-type insurance." The legislative history indicates that this provision was intended, in part, to bar continued section 501(c)(4) exemption for Blue Cross/Blue Shield organizations, which had enjoyed such status for many years despite being in many respects indistinguishable from commercial health insurers. See **H.R. Rep. No. 99-426, 99th Cong., 1st Sess. 662-6 (1986); 1986-3 C.B. (Vol. 2) 662-6**. Consequently, where an organization's activities resemble those of commercial insurers, generally, section 501(m) would serve to deny exemption under section 501(c)(4).

Section 501(m)(3)(B) of the Code provides that the term "commercial-type" insurance does not include "incidental health insurance provided by a health maintenance organization of a kind customarily provided by such organizations."

[39] Mancino, Taxation of Hospitals and Health Care Organizations (Matthew Bender, 2005), Chapter 6 (it is very difficult for an HMO to qualify for tax exempt status as an integral part of a health care system).

The legislative history of section 501(m) provides:

> *For this purpose [section 501(m) of the Code], commercial-type insurance generally is any insurance of a type provided by commercial insurance companies.*
>
> *[C]ommercial-type insurance does not include arrangements that are not treated as insurance (i.e., in the absence of sufficient risk shifting and risk distribution for the arrangement to constitute insurance). See Helvering v. LeGierse. 312 U.S. 531 (1941).*[40]

In reporting on technical corrections to Section 501(m) of the Code that were made in the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA"), the Conference Committee stated:

> *[T]he provision relating to organizations engaged in commercial-type insurance activities did not alter the tax-exempt status of health maintenance organizations (HMOs). HMOs provide physician services in a variety of practice settings primarily through physicians who are either employees or partners of the HMO or through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis). The conference committee clarifies that, in addition to the general exemption for health maintenance organizations, organizations that provide supplemental health maintenance organization-type services (such as dental or vision services) are not treated as providing commercial-*

[40] Staff of Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1986. at 58 5 (Comm. Print 1987). See also. H.R. Rep. No. 99-426, 99th Cong., 1st Sess. 663 – 4 (1986); 1986-3 C.B. (Vol. 2) 663 - 4.

type insurance if they operate in the same manner as a health maintenance organization.[41]

In any event, Section 501(m) does not grant tax-exempt status to any organization. Instead, it disqualifies an organization that otherwise meets the requirements for exempt status under Section 501(c)(3) or (4) if the organization provides "commercial-type insurance." See **Nonprofits' Ins. Alliance of Calif. v. United States, 32 Fed. Cl. 277, 292 (1994).**

As the Service stated in PMTA 2013-005, supra:

> *Provision of the Tax Reform Act of 1986 states specific circumstances in which "[t]he amendments made by this section shall not apply." As noted above, the amendments section 1012 made were to add section 501(m) to the Code.*
>
> *Section 501(c)(4) enumerates a number of specific requirements. The organization must not be organized for profit. The organization must be "operated exclusively for the promotion of social welfare." The regulations add further explication. The organization must be "primarily engaged in promoting in some way the common good and general welfare of the people of the community." Treas. Reg. section 1.501(c)(4)-1(a)(2)(i). "[I]t's primary activity" must not be "carrying on a business with the general public in a manner similar to organizations which are operated for profit." Treas. Reg. section 1.501(c)(4)-1(a)(2)(ii). Each of these requirements are distinctive, and*

[41] H.R. Conf. Rep. No. 100-1104, 100th Cong., 2d Sess. II-9 (1988).

*absent, from section 501(m). Moreover, Provision only describes the activities of X * * *. It does not cite section 501(c)(4), and it does not address whether these activities promote social welfare.*

The statutory language itself contains no statement or indication that, by enacting section 1012 of the Tax Reform Act of 1986, Congress did (or intended) anything more than to provide an exception for X from the specific requirements of section 501(m). Provision did not amend section 501(c)(4). It does not state that X met the general requirements of section 501(c)(4), nor does it provide an exception for them from section 501(c)(4)'s requirements.

*Both the legislative history to the Tax Reform Act of 1986 and to the 1988 technical corrections act describe Provision as an exception to section 501(m), not as an exception to section 501(c)(4). H.R. Rep. No. 99-841, a * * *; H.R. Rep. No. 100-795, * * *; S. Rep. No. 100-445, * * *.*

*We therefore conclude Provision of the Tax Reform Act of 1986 did not create an exception for X from the requirements for federal tax exemption under section 501(c)(4). Provision only provides that section 501(m) does not apply to X. Ruling A and * * *interpreted Provision too broadly. Neither the express statutory language nor the legislative history supports a conclusion that the provision of Y by X per se promotes social welfare, or otherwise grants X automatic exemption under section 501(c)(4).*

Also, briefs to the courts in support of **VSP's** continued tax exemption under Section 501(c)(4) noted how any revocation of **VSP's** exemption would nullify Congressional intent as stated in Section 501(m) causing that section to be superfluous [meaning less].[42] Nevertheless, the courts approved the IRS's revocation of **VSP's** tax exempt status under Section 501(c)(4).

Therefore, Section 501(m) affords no exception to the basic requirements needed to be satisfied in order for to be considered tax exempt under Section 501(c)(4) or (c)(3).

(4) Uniformity/Unfair Competition

believes a May 7, 2003 memorandum[43] issued by the IRS National Office – Tax Exempt Division, requires the IRS to resolve HMO cases on a uniform basis and not through the audit process. It would be unfair to challenge taxation on audit without dealing with the issue at other entities which competes against and are not currently being audited.

The May 7, 2003 memorandum instituted an eighteen-month moratorium on revoking tax exempt statuses of HMOs using, as the basis, Section 501(m) unless you received approval from the Director, Exempt Organization Examination and the Director, Rulings and Agreements. As noted, this moratorium was for an eighteen-month period, which has long since expired.

Also, the memorandum clearly stated the moratorium on revoking an HMO's tax exempt status under Section 501(c)(3) or (c)(4) applies [only] if the basis for the

[42] 2008 WL 510479; 2008 WL 4217959; 2008 WL 4217961; 2008 TNT 155-53.

[43] 2003 TNT 89-22.

revocation is Section 501(m). ["If a health maintenance organization no longer meets the requirements for exemption under IRC 501(c)(3) or (c)(4), without considering IRC 501(m), exemption may be revoked."]

The proposed revocation of tax exempt status under Section 501(c)(3) or (c)(4) is not based on the application of Section 501(m), but rather on the basis that no longer meets the requirements under Section 501(c)(3) or (c)(4). Therefore, this May 7, 2003 IRS memorandum has no application to our case.

Furthermore, **VSP** made the same arguments in their petition to the Court for continued recognition of their Section 501(c)(4) tax exempt status to no avail:

> *VSP's nonprofit structure fundamentally distinguishes it from its for-profit competitors in another way as well. For-profit companies have numerous ways that they can access capital to fund their growth, issuing stock through public or private placements, accessing public and private debt, obtaining venture capital, etc. Nonprofit corporations, in contrast, have limited access to capital markets, and typically must build capital through retained earnings, particularly if they are not exempt under Section 501(c)(3), which can issue tax exempt bonds and receive charitable contributions, gifts and grants. Given the financial advantages that for-profit companies have over nonprofit companies, "some legal scholars see a nonprofits' tax exemption as compensating them for the restrictions they face in raising capital." The IRS decision to deny exempt status to the VSP*

affiliates leaves them nonprofit but not tax exempt, placing them in the worst of all worlds.[44]

The IRS found, which the Court accepted:

> *"If VSP is going to behave like its competitors, then it should be required to pay taxes like its competitors. Otherwise, VSP enjoys an unfair competitive advantage that thwarts the very purpose of tax exemption." See IHC Health Plans Inc. v. Commissioner, 325 F.3d 1188, 1199 (10th Cir. 2003) ("granting a tax exemption to [petitioners] would necessarily disadvantage other for-profit [entities] with which [petitioners] compete"), quoting Federation Pharmacy Servs. Inc. v. C.I.R., 625 F.2d 804, 808 (8th Cir. 1980), citing Abbott Labs. V. Portland Retail Druggists Ass'n, Inc., 425 U.S. 1, 17-18 (1976).*[45]

Accordingly, there are no restrictions on the agents proposing to revoke tax exempt status under Section 501(c)(3) or (c)(4) and subjecting their net income to Federal taxes.

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[44] 2008 WL 2467744.

[45] 2005 WL 3242064; In the United States, two-thirds of all HMOs are for profit taxable organizations. John P. Geyman, The Corporate Transformation of Medicine and Its Impact on Costs and Access to Care, 16 J. Am. Bd. Of Family Prac. 443; David U. Himmelstein, Quality of Care in Investor-Owned vs. Not-For-Profit HMOs, 282 J.A.M.A. 159.