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

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UIL: 501.00-00 & 513.00-00
Date:

NOV 20 2002

Contact Person:

Identification Number:

Telephone Number:

T. EO. B1

Employer Identification Number:

**Legend**

H=
M=
O=
P=
I=
S=

Dear Sir or Madam:

You requested rulings under sections 501(c)(3) and 511 of the Internal Revenue Code. This letter responds to your request.

**Facts**

H is exempt under section 501(c)(3) of the Code and is described in sections 509(a)(1) and 170(b)(1)(A)(vi). H's purposes include: the promotion of health by coordinating the efforts of other charitable organizations; conducting health education and health promotion programs; and operating a health professional placement and information service (the "Original Program"). H derives its support from direct and indirect contributions, membership fees, and income from related activities.

The Original Program and the new programs, described below, involve a web-based health care provider information and job opportunity database. The Original Program's purpose was the matching of physicians, physician assistants, nurses, and advanced practice nurses with employment opportunities to meet the health care needs of M residents. Due to the success of the Original Program and in response to similar needs in other states, H developed substantially similar programs ("Web-Based Services") in the states of O, P and I (collectively with M, the "States") to address health care work force shortages in those States. In the States, H will provide Web-Based Services addressing physician and nursing work force supply shortages. The Web-Based Services will be limited to physicians, physician assistances, nurses, as well as mid-level licensed health care providers, such as nurse practitioners, certified nurse midwives and certified registered nurse anesthetists who are interested in practice opportunities in the States. Tax exempt hospitals and other providers of physician and midlevel provider services

register their job-opportunities on the Web-Based Services. Commercial recruiters and headhunters are not eligible for Web-Based Services.

The costs of operating the Web-Based Services are defrayed by paid membership fees from health care entities and nonprofit organizations representing their communities. No commercial recruiters or headhunters are allowed to list job opportunities or become members of the Web-Based Services. Access to the Web-Based Services by potential job candidates is free, and no placement fee or other type of fee is charged when a job is filled through the use of the Web-Based Service. The Web-Based Services contain no editorial comments relating to any job opportunity and do not express any preference in favor of or against any job opportunity.

H also operates S. H started S because: it found the Web-Based-Services were not cost effective for S's members; the Web-based-Services did not meet the needs of small rural hospitals because of lower level of physician and nurse turnover; S's members did not have the human resources to perform these services; S's members did not have the budget to hire human resource personnel; and S's members found it very expensive to use commercial recruiters. H now wants to offer S's services in O, P, and I while continuing its services in M.

S's activities include assisting tax-exempt hospitals to receive assistance from H to fill physician, physician assistant and advanced practice nurse job opportunities in needy communities. Assistance includes: telephoning potential candidates to introduce job opportunities; providing related employer and community information; and contacting residency, fellowship programs, and state and national trade associations in search of potential candidates. In the event two or more of S's members have the same physician need, all such physician opportunities are presented to each candidate. H does not promote one S member over another S member. If a potential candidate is interested in a job opportunity S directs the candidate to the hospital - employer. All other contacts are conducted directly by the hospital-employer. S only makes the initial contact with potential candidates. H states S services are labor intensive, costly in terms of high personnel expenses and membership fees paid by tax-exempt hospitals defray its costs. M also states to accommodate S's members it provides these services below its cost, and S has operated at a loss since its inception.

H developed the Web-Based Services and S to act as vehicles for matching health care providers to health care needs in the communities served. H states one of the primary concerns in health care today is timely and appropriate access to well-trained physicians, nurses and mid-level providers. Of particular concern are the low ratio of health care providers to residents in many areas in the States and the geographic mal-distribution of providers in these States. The Health Resources and Services Administration of the United States Department of Health and Human Services designated various portions of the States served as Health Professional Shortage Areas ("HPSAs") and Medically Underserved Areas ("MUAs"). HPSAs include: (1) urban and rural geographic areas; (2) population groups; and (3) facilities with shortages of health professionals. In determining whether an area is an HPSA, a degree-of-shortage classification is assigned based on population-to-practitioner ratios and other indicators of high need for health care professionals. HPSAs in the States range from the highest degree-of shortage to lower levels of degree-of-shortage. The following data indicates a significant overall shortage of primary care health providers exists in the States.

| State | % HPSA-designated Counties | % MUA-designated Counties |
|---|---|---|
| M | 81% | 71% |
| O | 51% | 62% |
| P | 73% | 84% |
| I | 38% | 48% |

H states no mechanism, other than the Web-Based Services and S, exists to attract physicians, nurses and mid-level providers to the States as a whole, rather than simply to one facility or community. While professional recruiters are available, their fees can place a significant strain on the limited financial resources of tax-exempt hospitals and other health care providers. Further, commercial recruiters only present the opportunities for which they have been paid. On the other hand, the Web-Based Services provide general information about practice opportunities throughout the States. In return, H believes residents of the States will benefit directly from increased access to needed medical care that promotes health in the States.

**Law**

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

Section 1.501(c)(3)-1(c)(2) of the Income Tax Regulations provides an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations provides the term charitable is used in section 501(c)(3) in its generally accepted legal sense. The promotion of health has been recognized as a charitable purpose. See Restatement (Second) of Trusts, sections 368 and 372 (3rd. ed. 1967).

Section 1.501(c)(3)-1(e) of the regulations provides an organization will not be operated exclusively for one or more exempt purposes if it is organized and operated for the primary purpose of carrying on an unrelated trade or business.

Section 511(a)(1) of the Code provides, in pertinent part, that a tax is imposed on the unrelated business taxable income received by organizations described in section 501(c)(3) of the Code.

Section 512(a)(1) of the Code provides, in pertinent part, that the term unrelated business taxable income is defined as the gross income derived by an exempt organization from any unrelated trades or businesses, as defined in section 513 of the Code, regularly carried on by the exempt entity.

Section 513(a) of the Code provides, in pertinent part, that the term unrelated trade or business means any trade or business, the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis of its exemption under section 501 of the Code.

Section 1.513-1(d)(1) of the regulations provides gross income derives from unrelated trade or business, within the meaning of section 513(a), if the conduct of the trade or business which produces the income is not substantially related to the purposes for which exemption is granted.

Section 1.513-1(d)(2) of the regulations provides, in pertinent part, that a trade or business is related to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income); and it is substantially related, for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of a trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Revenue Ruling 55-656, 1955-2 C.B. 262, describes a community nursing bureau operated as a community project which maintained a nonprofit register of qualified nursing personnel, including graduate nurses, unregistered nursing school graduates, licensed attendants and practical nurses. The bureau operated for the benefit of hospitals, health agencies, doctors and individuals and received its primary financial support from various community organizations and public contributions. The purpose of the organization was to "operate a central directory of qualified nursing personnel, both professional and nonprofessional . . .". Membership on the board of directors was drawn from public health and welfare organizations and the public at large. The ruling held that the purpose of the nursing registry was the relief of conditions relating to the health of the community, and thus the registry qualified for exemption under Section 501 of the Code.

Revenue Ruling 61-170, 1961-2 C.B. 112, describes an association comprised of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members. The purposes of the organization included providing employment for its members as well as the organization of an adequate and available nursing placement service for the community. A board of trustees composed of professional nurses controlled the association, and its membership was open to nurses who met certain requirements. The income of the association was obtained primarily from membership dues, fees and assessments. The ruling held the primary purpose of the nursing registry was employment of its members, and therefore the organization was not free from substantial private benefit in its operation. Exemption under section 501(c)(3) of the Code was denied.

Rev. Rul. 69-545, 1969-2 C.B. 117, provides a nonprofit organization whose purpose and activity are providing hospital care is promoting health and it may, therefore, qualify as organized and operated in furtherance of a charitable purpose if it meets the other requirements of section 501(c)(3) of the Code.

Rev. Rul. 73-313, 1973-2 C.B. 174, held that attracting a physician to a community having no available medical services furthered the charitable purpose of promoting the health of the community. In Rev. Rul. 73-313, residents of an isolated rural community had to travel a considerable distance to obtain care. Faced with the total lack of local services, the community formed an organization to raise funds and build a medical office building to attract a doctor to the locality. The ruling stated certain facts are particularly relevant: (1) the demonstrated need for a physician to avert a real and substantial threat to the community; (2) evidence that the lack of a suitable office had impeded efforts to attract a physician; (3) the arrangements were completely at arm's-length; and (4) there was no relationship between any person connected with the organization and the recruited physician. The ruling said the arrangement used to induce the doctor to locate a practice in the area bears a reasonable relationship to promotion and protection of the health of the community and any private benefit to the physician is incidental to the public purpose achieved. It concluded the activity furthers a charitable purpose and the organization qualified for section 501(c)(3) exemption.

Rev. Rul. 97-21, 1997-1 C.B. 121, involved various "situations" in which incentives were used to recruit private practice physicians to join a hospital's medical staff or to provide medical services in the community. Situation 1 involved Hospital A, located in rural County V, which was the only hospital within a 100-mile radius. The U.S. Public Health Service designated County V as a Health Professional Shortage Area for primary medical care professionals. Hospital A recruited physician M to establish and maintain a full-time private ob/gyn practice in its service area and become a member of its medical staff. The revenue ruling held Situation 1 did not affect Hospital A's exempt status and, like the organization described in Rev. Rul. 73-313, Hospital A had objective evidence demonstrating a need for obstetricians and gynecologists in its service area and engaged in physician recruitment activity bearing a reasonable relationship to promoting and protecting the health of the community in accordance with Rev. Rul. 69-545.

Situation 2 of Rev. Rul. 97-21 involved Hospital B located in an economically depressed inner-city area of City W. Hospital B conducted a community needs assessment indicating both a shortage of pediatricians in Hospital B's service area and difficulties for Medicaid patients obtaining pediatric services. Hospital B recruited physician N to relocate to City W. Physician N agreed to establish and maintain a full-time pediatric practice in Hospital B's service area, become a member of Hospital B's medical staff, and treat a reasonable number of Medicaid patients. The revenue ruling held Situation 2 did not affect Hospital B's exempt status. It stated like Hospital A in Situation 1, Hospital B had objective evidence demonstrating a need for pediatricians in its service area and engaged in physician recruitment activity bearing a reasonable relationship to promoting and protecting the health of the community.

**Rationale**

H requests we rule its operation of the Web-Based Services and S is in furtherance of its exempt purposes and will not adversely affect its exemption under section 501(c)(3) of the Code. H's purposes include taking all necessary and practical steps to arrange for the availability of medical, dental, hospital and related services by encouraging, stimulating, fostering and supporting the establishment of health and medical care programs in communities in need. In the general law of charity the promotion of health is considered to be a charitable purpose. See Restatement (Second) of Trusts, sections 168 and 372.

The Web-Based Services are similar to the activities of the organization described in Rev. Rul. 55-656, supra. Like the organization in that revenue ruling, H operates a web-based health care provider information and job opportunity database. The Web-Based Services purpose is the matching of physicians, physician assistants, nurses, and advanced practice nurses with employment opportunities in the States. The fact H's operations are on a larger scale, state wide versus community wide, does not change the fact its services benefit hospitals, health agencies and other providers in communities with needs for health care providers. Like the organization in Rev. Rul 55-656, H receives financial support from the States as well as public contributions and its board of directors is drawn from the community at large and not from individuals with a financial interest. The revenue ruling held the purpose of the nursing registry was the relief of conditions relating to the health of the community and thus, the registry qualified for exemption under Section 501(c)(3) of the Code. The Web-Based Services also involve the relief of conditions relating to the health of the various communities in the States served. This is because the services are the result of community need assessments, HPSAs and MUAs indicating a shortage of physicians in the States. Lastly, the Web-Based Services have none of the adverse characteristics of the organization described in Rev. Rul. 61-170, supra. Accordingly, the Web-Based Services do not affect H's exempt status.

In regard to H's operation of S, H found its Web-Based Services did not meet the needs of small rural exempt hospitals. To accommodate small rural hospitals, S's activity evolved into a greater level of participation in the recruitment process than the registry provided by the Web-Based Services. S assists tax-exempt hospitals to fill physician, physician assistant and advanced practice nurse job opportunities in needy communities. Assistance includes: telephoning potential candidates to introduce job opportunities; providing related employer and community information; and contacting residency, fellowship programs, and state and national trade associations in search of potential candidates. In the recruitment process H does not promote one S member over another S member. If a potential candidate is interested in a job opportunity, S directs the candidate to the hospital employer. All other contacts are conducted directly by the hospital-employer. S only makes the initial contact with potential candidates.

Because of S's involvement in the recruitment activity, its operations are similar to the activities of Hospitals A and B in Situations 1 and 2 of Rev. Rul. 97-21, supra. The revenue ruling held, like the organization described in Rev. Rul. 73-313, Hospitals A and B had objective evidence demonstrating a need for physicians in its service area and its physician recruitment activity bore a reasonable relationship to promoting and protecting the health of the community. In regard to S, Community need is demonstrated because the States have shown a need for

health care providers. The Health Resources and Services Administration of the United States Department of Health and Human Services designated various portions of the States served as HPSAs and MUAs. This data indicates community need because an overall significant shortage of primary care health providers exists in the States.

H also offers the following to show its recruiting activities bear a reasonable relationship to promoting and protecting health in a community. S's activities include assisting only tax-exempt hospitals to recruit physicians, physician assistants and advanced practice nurses in communities with demonstrated need. S's recruitment activities differ from commercial placement firms. S only makes the initial contact with potential candidates and then directs the candidate to the hospital employer. H provides S services below its cost and operates at a loss. The costs of S are defrayed by other activities of H. Accordingly, the operation of S advances H's exempt purpose and does not affect H's exemption under section 501(c)(3) of the Code.

You also request we rule the operation of the Web-Based Services and S by H will not result in unrelated business taxable income. As we conclude above, the operation of the Web-Based Services and S by H will contribute substantially to the accomplishment of H's exempt purposes. The operation of the Web-Based Services and S will also not constitute an unrelated trade or business within the meaning of section 513 of the Code, and therefore will not result in unrelated business taxable income to H.

**Conclusion**

We rule as follows:

1. The operation of the Web-Based Services and S by H will not adversely affect H's tax-exempt status under section 501(c)(3) of the Code.

2. The gross income received by H as a result of the operation of the Web-Based Services and S will not be unrelated business income and will not be subject to unrelated business income tax.

These rulings are based on the understanding there will be no material changes in the facts upon which they are based. These rulings are directed only to the organization that requested them. Section 6110(j)(3) of the Code provides they may not be used or cited as precedent.

Please keep a copy of this ruling letter in your permanent records.

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

Sincerely,

(signed) Marvin Friedlander

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1