

# PLR 200439043; 2004 PLR LEXIS 747

US Internal Revenue Service

June 28, 2004

## Reporter

2004 PLR LEXIS 747; PLR 200439043

## Private Letter Ruling 200439043

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## Subject Matter

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Section 501(c)(3) -- Charities

[\*1]

**Reference:** Refer Reply To: T:EO:B2

**UI List:** UI No. 513.00-00, UI No. 501.03-24

## Core Terms

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certificate, candidate, exempt purpose, exempt, unrelated, income tax, operate exclusively, medical specialty, accomplishment, curriculum

## Text

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Employer Identification Number: \* \* \*

### LEGEND:

M = \* \* \*

N = \* \* \*

O = \* \* \*

A = \* \* \*

B = \* \* \*

C = \* \* \*

Dear \* \* \*

This responds to a letter from M's authorized representatives, who requested rulings under sections 501(c)(3) and 513 of the Internal Revenue Code on M's behalf.

### FACTS

M is recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Code. M is organized and operated exclusively for scientific and educational purposes to

advance the theory and practice of certain disciplines, and their allied branches and related arts and sciences. M strives to promote the understanding of the influence of technology on the public welfare and to enhance the quality of life for all people throughout the world through the constructive application of technology.

M is composed of a number of boards, including N. N has various divisions and societies, including O. O's purposes are scientific, literary, and educational, and include the advancement of the theory, practice, and application of certain areas of interest and technology.

O has created [\*2] a certification program for A (the "Certification Program"). The Certification Program will be unique because it will incorporate the standards that M has researched over many years and will focus on the overall body of knowledge that is necessary to create B.

The Certification Program has four components: (1) exam-based testing demonstrating mastery of a specific body of knowledge; (2) extensive experience base in the performance of the work or profession being certified; (3) continuing professional education, measured and relevant to the body of knowledge; and (4) review of a code of conduct and ethics.

The Certification Program encourages individuals to establish a broad base of knowledge regarding A. O has identified certain knowledge areas in which candidates for certification must enhance their knowledge and competence. Accordingly, O will take various steps to ensure that candidates develop a certain level of knowledge and competence in each of the knowledge areas.

O intends to offer various workshops and education programs regarding the knowledge areas, which will give candidates an opportunity to increase their level of competence in the knowledge areas before such candidates [\*3] take the Certification Program exam. For example, O will offer a preparation seminar that covers the knowledge areas. In addition, O has developed an online study guide to prepare candidates for the exam, and plans to develop a book of sample A problems.

Additionally, O is developing a specific curriculum ("Curriculum") with which to train potential candidates in the knowledge areas. In order to apply for certification from the Certification Program, candidates will be required to complete the Curriculum training from one of the following: (1) M, through O or any other M division or society that may offer the Curriculum training; or (2) an organization with which M itself, or through O, has contracted, or endorsed to provide the Curriculum training.

Certification from the Certification Program will be valid for three years and may be maintained only if the individual earns a certain amount of continuing education credits during such three-year period. At the end of the three-year period after a certificate is issued, a certificate holder will be required to fill out a form and return it with a certification maintenance fee. The form will request details about the continuing education [\*4] credits earned by the certificate holder. On receipt of this information, a new certificate will be issued.

In addition to requiring candidates to participate in traditional continuing education programs, O has concluded the candidate's continued knowledge and competence will be greatly enhanced if such candidate is either a member of a professional society or registered as a professional C under some state's body of law. Therefore, in order to apply for certification in the Certification Program,

candidates must meet one of the following three criteria: (1) membership in O; (2) membership in an equivalent professional society or organization as defined by one of O's committees; or (3) registration as a professional C.

Candidates for certification in the Certification Program will be required to review and sign the A Code of Ethics and Professional Practice. Such requirement is intended to educate candidates regarding the existence of the Code of Ethics, and not to police the industry.

Rulings Requested:

M requests the following rulings:

1. The Certification Program will not constitute an unrelated trade or business of M under section 513 of the Code.
2. The Certification Program will not [\*5] adversely affect M's status as an organization described in section 501(c)(3) of the Code.

## LAW

Section 501(a) of the Code exempts from federal income taxation organizations that are described in section 501(c)(3).

Section 501(c)(3) of the Code, in part, describes corporations, trusts, and associations organized and operated exclusively for charitable, educational, and scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations (the "regulations") provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that 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(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest.

Section 511 of the Code imposes a tax on the unrelated [\*6] business taxable income of organizations described in section 501(c).

Section 512(a)(1) of the Code provides that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business carried on by it, less the deductions allowed which are directly connected with the carrying on of such trade or business, with certain modifications.

Section 513(a) of the Code provides that the term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which

is not substantially related (aside for 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 for its exemption under section 501.

Section 1.513-1(d)(2) of the regulations provides that trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has causal relationship to the achievement of exempt purposes; and it is "substantially related" only if the causal [\*7] relationship is a substantial one. Thus for the conduct of 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.

Rev. Rul. 73-567, 1973-2 C.B. 178, describes a medical specialty board formed by members of a medical profession to improve the quality of medical care available to the public and to establish and maintain high standards of excellence in a particular medical specialty. The board's activities consist of devising and administering written examinations and issuing certificates to the successful candidates in the medical specialty. The board determines whether the candidates meet established criteria necessary to qualify for the examination. The certified physicians are authorized by the [\*8] board to hold themselves out to the public as specialists. Listings of these physicians are made available by the board to various medical groups who in turn make the listings available to the public.

The Rev. Rul. states that by examining and certifying physicians under the circumstances described, the board promotes high professional standards. Although some public benefit may be derived from promoting high professional standards in a particular medical specialty, the activities of the board are directed primarily to serving the interest of the medical profession. Under these circumstances, the board is not organized and operated exclusively for charitable purposes. On the other hand, since the activities of the board consist of certifying physicians who are thereafter authorized to hold themselves out to the public as specialists, its purpose is to promote the common business interest of the physicians. Accordingly, the Rev. Rul. holds that the board is exempt from federal income tax under section 501(c)(6) of the Code, but is not exempt under section 501(c)(3).

#### ANALYSIS

The Certification Program of O consists of exam-based testing designed to demonstrate mastery of a specific body [\*9] of knowledge that M has determined is necessary to create B. Participants who earn a passing grade on the exam and who have attained a certain level of A experience will be eligible for certification from the Certification Program. Thus, the activities of the Certification Program are designed to improve the quality of A and maintain high standards of excellence in the A specialty.

Such activities are indistinguishable from the activities of the medical specialty board described in Rev. Rul. 73-567, which, as discussed above, were found to be directed primarily at serving the interests of the medical profession and only incidentally the interests of the public. Similarly, the Certification Program of O is directed primarily at serving the interests of the A profession and the professional and business interests of persons employed in the A industry, and only incidentally the interests of the public.

The seminars and study guides developed in conjunction with the certification examination, while educational, are designed primarily to assist candidates in passing the examination.

Since the activities of the Certification Program are directed primarily at serving the interests of the A [\*10] profession, they do not contribute importantly to, and thus are not substantially related to, the accomplishment of the purposes for which M was granted exemption under section 501(c)(3) of the Code. Since such activities are not substantially related to M's exempt purposes, and because such activities are a regularly carried on trade or business, they constitute an unrelated trade or business under section 513 of the Code.

Even though the activities of the Certification Program do not accomplish one or more exempt purposes under section 501(c)(3) of the Code, they constitute an insubstantial part of the total activities conducted by M and, therefore, should not affect M's status as an organization described in section 501(c)(3). See section 1.501(c)(3)-1(c)(1) of the regulations

## CONCLUSIONS

Accordingly, based on the information submitted, we rule as follows:

1. The Certification Program will constitute an unrelated trade or business of M under section 513 of the Code.
2. The Certification Program will not adversely affect M's status as an organization described in section 501(c)(3) of the Code.

This ruling is based on the understanding that there will be no material changes in the facts [\*11] upon which it is based.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to M's authorized representative. A copy of this letter should be kept in M's 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,

Joseph Chasin  
Manager, Exempt Organizations  
Technical Group 2

**Load Date:** 2006-01-25

This document may not be used or cited as precedent. Section 6110(j)(3) of the Internal Revenue Code.