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Date 4/10/98
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4/13/98

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EIN: [redacted]

FEB 27 1998

Dear Applicant:

We have considered your application for exemption under section 501(c)(3) of the Code.

You advise that you were established in [redacted] to provide tax practitioners with a certification program which will exemplify their proficiency in tax matters. In addition, you advise that the recognizable designation will provide the general public with an identifiable means of selecting a qualified tax specialist.

You developed a certification mark registered with the United States Patent and Trademark Office, [redacted]. You state that the [redacted] designation encompasses a broad range of tax topics and reflects professional professional competency with regard to current tax matters in individual income taxes.

There are four basic requirements for acquiring the [redacted] designation: experience, education, examination and adherence to a professional code of ethics. Each [redacted] candidate must have a minimum of three years tax experience. An individual must pass for credit two college level courses in taxation within the last three years, from an approved institution or take the [redacted] Self-Study Program or take a self-study program authorized by you. All candidates must meet the appropriate educational requirement before sitting for the [redacted] examination. The examination consists of multiple choice questions and problems reflecting current tax law and individual income tax problems. The examination is administered on an individually scheduled and proctored basis. All [redacted] designation holders shall agree to comply with the policies, procedures, and [redacted] Professional Code of Ethics. You advise that this Code of Ethics is similar to the ethical standards the Internal Revenue Service imposes on enrolled agents. In addition, [redacted] must meet the continuing education requirement of the institute. In general, the requirement consists of 20 CPE hours, annually, in the area of taxation. You have authority to approve all continuing education hours. Examples of acceptable forms of continuing education include but

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are not limited to activities in taxation such as seminars, college-level courses, conferences,symposiums, self-study courses, etc. Each recipient of the [redacted] designation is authorized to display the professional designation after his or her name.

You have advised that all activities involving continuing professional education such as, the Tax Court review, partnership tax updates, and other continuing education activities have been taken over by a for profit entity, [redacted]. You advise that you only retain the functions of preparation, administration and grading of the [redacted] examination and maintain a code of ethics for the designation.

You represent that you do not provide any referral services, do no conduct any lobbying activities, conduct any public relations programs to enhance the public image of the [redacted].

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will not be regarded as operated exclusively for exempt purposes under section 501(c)(3) of the Code if more than an insubstantial part of its activities is not in furtherance of such exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for charitable purposes unless it serves a public rather than a private interest.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" relates to instruction or training of the individual for the purpose of improving or developing his capabilities.

Rev. Rul. 61-170, 1961-2 C.B. 112 provides that an association composed of professional private duty nurses and practical nurses which supports and operates a nurses registry primarily to afford greater employment opportunities for its members is not entitled to exemption from Federal income Tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code.

Furthermore, it was concluded that the association is not entitled to exemption as a business league described in section 501(c)(6) of the Code since its primary purpose is the operation

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of a regular business of a kind ordinarily carried on for profit and it is engaged in rendering particular services for individual persons rather than promoting the general business conditions of the nursing profession.

Rev. Rul 71-504, 1971-2 C.B. 321, provides in part that a city medical society, exempt under section 501(c)(6) of the code, that primarily directs its activities to the promotion of the common business purposes of its members may not be reclassified as an educational or charitable organization under 501(c)(3). It was concluded that while some of the society's activities are charitable or educational, the activities are directed primarily at the promotion of the medical profession and thus further the common business purpose of its members. Moreover, it has been held that the presence of a single noncharitable or noneducational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number or importance of truly charitable or educational purposes.

Rev. Rul. 73-567, 1973-2 C.B. 178, provides that a medical specialty board that devises and administers written examinations to physicians in a particular medical specialty and issues certificates to successful candidates is exempt from tax as a business league under section 501(c)(6) but is not exempt under section 501(c)(3). 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.

Rev. Rul. 74-553 1974-2 C.B. 168 provides in part that a nonprofit organization formed by members of a State medical association to operate peer review boards for the primary purpose of establishing and maintaining standards for quality and reasonableness of costs of medical services qualifies for exemption from tax under section 501(c)(6) of the Code but not under section 501(c)(3).

Rev. Rul. 71-505, 1971-2 C.B. 231, provides that a city bar association is not exempt from federal income tax under section 501(c)(3) of the Code. The association conducted a number of activities primarily directed at the promotion and protection of the practice of law. These activities were found not to be in furtherance of charitable or educational purposes. That ruling relied in part on the principle, expressed in Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct. D. 1650, 1945 C.B. 375, that the presence of a single

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nonexempt purpose, if substantial in nature, will preclude exemption regardless of the number or importance or statutorily exempt purposes.

Rev. Rul. 74-146, 1974-1 C.B. 129, provides in part that a nonprofit organization of accredited educational institutions, whose membership includes a small number of proprietary schools, and whose activities include the preparation of accreditation standards, identification of schools and colleges meeting these stands, and the dissemination of accredited institution lists qualifies as an exempt organization under section 501(c)(3). The development and publication of standards for accreditation of schools and colleges, along with their regular inspection and evaluation, and the development of recommendations for improvement of such institutions are all activities which support and advance education by providing significant incentive for maintaining a high quality educational program. Any private benefit that may accrue to the proprietary members because of accreditation is incidental to the purpose of improving the quality of education.

In the case of Est of Hawaii, A Hawaiian Corporation v. Commissioner, an organization engaged in activities relating to "est" programs involving training, seminars, lectures, etc., in areas of intrapersonal awareness and communication which were conducted under a licensing agreement with a for profit was held not to be exempt under 501(c)(3). The court held that although the organization was educational in nature, it served the commercial purposes of the for profit corporation and therefore was not operated exclusively for exempt purposes.

While some of your activities are clearly educational or advance education you have failed to establish that you are organized and operated exclusively for exempt purposes. Although some public benefit may be derived through your promotion of high professional standards in the community of tax professionals, your activities primarily benefit individual tax practitioners in the enhancement of his/her business objectives and in the solicitation of business rather than serve the interests of the general public. In addition, your certification process tends to promote the commercial purposes of your for profit affiliate. Accordingly, you are not operated exclusively for exempt purposes.

While some of your activities are charitable in that they advance education and are similar to those conducted by the accrediting institution described in 74-146 it is clear that the enhancement of the reputation of the individual tax professional is more than an insubstantial activity of your organization. The promotional materials you have submitted note that "Certification

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furnishes deserving tax professionals with a high degree of public recognition" and "Certification provides the competitive edge in a fast paced financial services industry."

In addition, while you maintain that the term [redacted] is designed to protect the public and educate the public with regard to the qualifications of tax professional, it has been noted that the use of the term "certified" may, in fact, be misconstrued by the general public. In the comments regarding the final regulations governing practice before the Internal Revenue Service of September 9, 1992 it was noted that the use of the term "certified" by tax practitioners when used in either correspondence or advertisements relating to taxation is closely identified by the public with certified public accountants. While the authority of enrolled agents and certified public accountants to practice before the Internal Revenue Service may be the same, it is an important protection to the public that there is a distinction between the two categories of practitioners.

Enrolled agents, in describing their professional designation, may not utilize the term of art "certified" or indicate an employer/employee relationship with the Internal Revenue Service (see 31 CFR Part 10, Practice Before the Internal Revenue Service; Advertising and Solicitation 57 FR 41093, September 9, 1992 ) The comments to the Rule note that the prohibition is intended to be limited to descriptive or acronymic designations dealing with tax practice. If the term "certified" is used in a descriptive phrase dealing with a bona fide attainment clearly not applicable to tax services per se, it would be permitted. While a number of cases including Ibanez v. Florida Department of Business and Professional Regulation, Board of Accountancy, 114. S.Ct. 2084, (1994) have concluded that use of the professional designations is commercial speech for purposes of the first amendment and must be deceptive or misleading to be banned, the regulation with regard to use of the term "certified" in connection with tax practice by enrolled agents arguably is still valid. Therefore, it would be contrary to the established policy of the Service to encourage the use of a designation dealing with tax practice.

Finally, since your organization certifies the educational programs which meet the requirements to take your exam and the continuing education programs required to maintain the [redacted] designation you indirectly serve the private benefit of certain continuing education providers, including your own for-profit affiliate, which offers such services.

Accordingly, we conclude that you are not entitled to recognition of exemption under section 501(c)(3) of the Code.

[redacted]

You are required to file Federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have aright to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner,it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of columbia determines that the organization involved has exhausted the administrative remedies available to it within the Internal Revenue Service.

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

Sincerely yours,

[redacted]

Chief, Exempt Organizations
Technical Branch 3