

MEMORANDUM

TO: CMSA
FROM: David W. Norris
DATE: December 13, 2002
RE: Chapter Scholarship and Memorial Funds

This memorandum is about whether or not a CMSA chapter may provide funds to its chapter members as donations for tuition, even in the case management field to attend a course or apply for a certification, or other such personal uses which do not involve payments for services provided by the members to the chapter.

The Model Bylaws of the Case Management Society Chapter of “_____,” used by most chapters, specifically state in Article II, Section 3(a), that:

“No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to, its members, directors, officers, or other private persons, except ... in furtherance of the purposes set forth herein.”

Article II, Section 2, of the Model Bylaws provides that the purpose of a Chapter is to:

“... assist in providing the means by which persons and firms offering services or products within or to the health care case management profession may voluntarily coordinate their efforts to advance the professional in all respects.”

Therefore, a CMSA chapter’s own bylaws generally prohibit the chapter from giving funds to a chapter member as a contribution or donation for tuition or other personal uses which did not involve payment for services rendered to the chapter. There is one possible exception which usually does not apply. The giving of chapter funds would have to be shown to be in furtherance of the purposes of the chapter, *i.e.*, to “... assist in providing the means by which persons and firms offering services or products within or to the healthcare case management profession may voluntarily coordinate their efforts to advance the professional in all respects.” Otherwise, such a use of chapter funds would potentially constitute prohibited “private inurement,” a tax term meaning for a member’s personal benefit.

Why is this? A brief look at federal tax law may help. Such restrictions on CMSA chapters as well as CMSA itself are imposed by federal tax law in order for the chapters to be tax-exempt organizations. This means chapters do not pay income tax as for-profit corporations must do. CMSA and its chapters are exempt from federal income taxation under Internal Revenue Code (“IRC” or “Code”) § 501(c)(6) and described as “a business league” for federal tax purposes. The more common term is a trade association or professional society.

Organizations exempt under most categories of IRC § 501 must meet two separate tests in order to be tax-exempt. The first test, called the organizational test, ensures that no one owns an exempt organization. In other words, the members are *not* shareholders who own the corporation. The second test is effectively an ongoing one. Exempt organizations of all categories must continually operate

“exclusively” for their particular exempt purposes, whether charitable, educational, or to collectively promote the members’ businesses and activities.

An exempt organization should not devote itself to benefiting individual members. To describe the requirements of tax-exempt status, IRC § 501 uses the word “inures” to limit the activities of a number of categories of exempt organizations, including professional societies such as CMSA and CMSA chapters. These subsections all require that, “no part of the net earnings inure to the benefit of any private shareholder or individual.”

The last of the six definitions of “inure” found in *Webster’s Deluxe Unabridged Dictionary*, second edition, is the one applied for federal tax exemption purposes: “***to serve for the use or benefit of, as a gift of land inures to the heirs of a grantee or it inures to their benefit.***” Inurement is likely to arise where the organization transfers financial resources to an individual solely by virtue of the individual’s relationship with the organization, and without regard to accomplishing the chapter’s exempt purpose, or more plainly stated, an individual member may not pocket the organization’s funds for his or her own benefit.

“Private inurement” potentially occurs whenever a person receives funds or property from a chapter in return for which he or she gives insufficient consideration – in other words, pays less for something than it is worth or gives less than he or she receives. An organization that devotes too much of its funds to providing private inurement does not qualify for exemption or may lose its exemption from federal income tax (and state income tax).

“Member benefit” is an especially confusing aspect of the inurement prohibition. Because § 501(c)(6) organizations are intended to benefit their members, they have wider latitude in providing services. Nevertheless, those services still must be directed toward the group objectives of the exempt organization. § 501(c)(6) membership organizations must serve its members, e.g., case management professionals, in a group sense, not on an individual level. Thus, § 501(c)(6) membership organizations, like CMSA and its chapters, must carry out programs that benefit its members collectively, such as education programs, or to publish information. Payments to individuals for something other than ***services rendered to the chapter*** may cost the chapter its exemption and constitute taxable income to the member.

If you need more information on this, please contact CMSA.

DAVID WALTER NORRIS is an associate with Howe & Hutton, Ltd. He is a graduate of IIT Chicago Kent College of Law where he earned his Juris Doctorate in 1987. Prior to joining the law firm of Howe & Hutton, Ltd., he practiced as a certified public accountant. In addition to being a CPA, Dave is a Certified Financial Planner and holds an M.M. (an M.B.A. at any other school) from Northwestern University and an M.S.T. (Taxation) from DePaul University.