



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

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Legend:

You = [REDACTED]

Dear Applicant:

The market for consumer credit counseling services has undergone changes in the past 30 years. In 2002, the IRS began a comprehensive study of organizations offering credit counseling and debt-management services. On July 30, 2004, the IRS Office of Chief Counsel released IRS Chief Counsel Advice (CCA 200431023 2004 IRS CCA Lexis 22 (July 13, 2004)), presenting a comprehensive legal analysis as to whether credit counseling organizations can qualify as charitable or educational organizations described in section 501(c)(3) of the Internal Revenue Code. We have enclosed a copy of the CCA for your information.

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated on [REDACTED]. You are an outgrowth of a sole proprietorship that has offered investment and debt counseling services. With your incorporation, you will provide the debt counseling service, while the sole proprietorship will continue to offer investment services to present and future clients. The sole proprietor is one of your directors/officers and is a licensed securities and insurance representative. You share the same phone number with the sole proprietorship. (See the attached Internet site.) The sole proprietor also owns the office space where your records are maintained and where your financial analysis is performed.

You represent that [REDACTED] percent of your time and resources will be devoted to "performing a complete personal financial analysis for families who are struggling to meet their financial obligations..." [REDACTED] percent will be devoted to "negotiating with the creditors, to restructure debt payments and bring them down to a manageable level...A small one time contribution (maximum \$ [REDACTED]), will be requested..." You also will request a monthly contribution of [REDACTED] percent of the monthly total with a \$ [REDACTED] cap for your services. Another [REDACTED] percent will be devoted to "educating families in basic financial issues that are pertinent to successfully managing family finances..." Also, [REDACTED] percent of your time and resources are devoted to

[REDACTED]

"managing debt repayment plans. [You will] receive monthly dollars from each family in the program. [You will also] disburse the dollars to the creditors, maintain records, keep client informed of progress in the program." You state that "this service will be offered to businesses, as an alternative to traditional collection agencies." When a business' clients are in debt, the business will refer them to you. You state that you take a "kindler gentler approach" to debt collection and collection agencies. You also state that your "only request of these people is to give me [sole proprietor] serious consideration in competing for their investment and insurance needs after I [sole proprietor] have them out of debt and in a strong financial position."

Your sources of financial support are expected to come from monthly contributions from the creditor companies and from monthly contributions from the debtor families. You do not anticipate having a fundraising program. According to your financial data, you expect to incur expenses for the years 2003, 2004, and 2005 for the following items: compensation of officers, directors, and trustees; other salaries and wages; occupancy (rent, utilities, etc.); and depreciation and depletion. Your Board of Directors and officers include the sole proprietor (President), his wife (Treasurer), and another individual (Secretary). The officers' compensation will be based on a percentage of money that is left over after all operating expenses are paid.

In your November 10, 2003 letter, you submitted a brochure outlining your debt management division. Your brochure describes your mission statement, which is two-fold: "To help businesses manage their debt collection process in a positive and productive way. To help individuals manage their debt and avoid bankruptcy; protect their credit standing, and help them plan their financial future." The brochure also provides that the consumer will "budget for one monthly payment that is tailored to your financial situation." You further state in your November letter that the brochure introduces the potential client to the Debt Management Program. Your proposal you submit to individual businesses states that "we arrange a payment schedule that fits within your [the businesses] client's budget. The client makes their payment to you [the business] each month through our debt management program until you receive the amount owed." In describing your program, you stated that you make an in-home visit to the potential customer, help the customer complete the intake forms, which takes one to two hours to complete. All client contact is done in the home. You also perform a financial analysis for the customer.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar (a for-profit enterprise) for purposes of raising money for scholarships. The board of directors included the bar's owners and accountant, and two other persons. The court reasoned that, because the bar owners controlled the organization and appointed its directors, the organization's fundraising activities could be used to the advantage of the bar owners, and thus, provide them with a maximum private benefit.

[REDACTED]

The organization claimed that it was independent because there was a separate accounting and that no payments were going to the bar. The court did not agree and maintained that the organization's and the bar's activities were so interrelated as to be "functionally inseparable." A separate accounting did not change that fact. Thus, the organization did not operate exclusively for exempt purposes, but rather benefited private interests – the bar owners. Exemption was properly denied.

In Rev. Rul. 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses that supported and operated a nurses' registry primarily to afford greater opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

In Rev. Rul. 80-287, 1980-2 C.B. 185, a lawyer referral service that aids persons who do not have an attorney by helping them to select one was not entitled to exemption under section 501(c)(3) of the Code. Although the service provides some public benefit, its principal purpose is to introduce individuals to the use of the legal profession in the hope that they will enter into lawyer-client relationships on a paying basis as a result of their experience.

Based on the information provided, we cannot conclude that you operate primarily for a charitable purpose or benefit the public, rather than private interests, under section 501(c)(3) of the Code. You are a one-man operation that originated from a sole proprietorship. You share the same phone number with the sole proprietor. In fact, the sole proprietor owns the office space where your records are maintained and where your financial analysis is performed. Your directors and officers consist of the sole proprietor, his wife, and one other individual, rather than being representative of a broad cross-section of the community. You are similar to the nurses' registry described in Rev. Rul. 61-170 in that one of your purposes is to enhance the business of the sole proprietor. Although your activities have some public benefit, your primary benefit will be to the sole proprietor. (Also, see P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), in which the court found that the organization and the for-profit enterprise were so interrelated as to be functionally inseparable. Thus, the organization did not operate exclusively for exempt purpose, but rather benefited the private interests of the for-profit owners.)

Because the sole proprietor and his wife control your Board of Directors and are also your officers, we cannot conclude that your assets will not inure to their benefit. Your board, as presently constituted, has inherent conflicts of interest. You represented that the officers' compensation will be based on a percentage of money that is left over after all operating expenses are paid. Because the sole proprietor and his wife control your operations, consumers can be easily steered to the sole proprietorship for investment and insurance services. Thus, the sole proprietor has a substantial business interest in ensuring your success, and thus, the success of the for-profit sole proprietorship. Your assets would inure to the sole proprietor's benefit. (Also, see Rev. Rul. 80-287, in which the Service found that the organization's principal purpose is to introduce individuals to the use of the legal profession in

[REDACTED]

the hope that they will enter into lawyer-client relationships on a paying basis as a result of their experience.)

Although you are in the start-up phase of your debt management operations and only have two debt management clients and no cash flow yet, you have outlined detailed plans and provided documentation for conducting a full-capacity debt management program that furthers a substantial non-exempt commercial purpose. You state that seventy five percent of your time and resources will be devoted to selling, setting up, and maintaining debt management plans (DMPs) for a fee. You make an in-home visit to the potential customer, help the customer complete the intake forms, which take one to two hours to complete. All client contact is done in the home. You perform a financial analysis for the customer. Your brochure describes your debt management division that is tailored to establishing DMPs for individual consumers and business clients in debt. In fact, you state that the difference between you and a for-profit collection agency is that you take a "kindler gentler approach" to debt collection. Your officers' compensation resembles that of a commercial entity.

Your financial structure does not resemble that of a typical charity because it plans to be based entirely upon revenue earned by selling services to the public. You state in your application that your sources of support will include monthly contributions from the creditor companies and from monthly contributions from the debtor families. You represent that a one-time \$ [REDACTED] contribution will be requested, and that a monthly contribution of [REDACTED] percent of the monthly total with a \$ [REDACTED] cap will be also requested for your services. You also do not anticipate having a fundraising program. There is no evidence that you will receive contributions or gifts from disinterested members of the general public.

In addition to operating for substantial non-exempt purposes, once the debt management division is operating, you will provide substantial private benefit to the credit card companies and other creditors by operating as their collection agency. The "fair share" paid by the credit card companies would undoubtedly result in significant savings over the possible costs of not recovering any of the unpaid debt owed them. These companies clearly realize substantial financial benefits through their business relationship with you.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

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

[REDACTED]

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 judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted 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 a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
[REDACTED]

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings & Agreements

Attachment

IRS Chief Counsel Advice
Superpages.com Internet Site
Notice 437