



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200450037**
Release Date: 12/10/04

Date: 09/17/04

Contact Person:

Identification Number:

Contact Number:

UIL: 501.00-00

You =

Dear :

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.

FACTS

You were incorporated and filed an Application for Recognition of Exemption (Application) in . Your articles of incorporation state the following purposes:

...charitable purposes as may be properly allowed under the laws of the State.... Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 510(c)(3)(sic) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Prior to your incorporation as a non-profit corporation, you operated as a sole proprietorship engaged in credit repair and credit counseling, using "intellectual property given to [the sole proprietorship] by various credit repair and consumer credit counseling services." (Correspondence of April 23, 2003; hereafter Correspondence, Answer 5) You intended to offer referral fees to mortgage brokers, car salesmen, and financial managers. (Web pages attached to Correspondence.) "After long review of the business plan and failed pitches to investors, the concept of Consumer Credit Protection, Inc. was shelved," and you re-organized as a non-profit

organization and applied for exempt status. (Correspondence, Answer 8) Your founder is your sole officer, director and employee. His background is in computer technology.

Your application for exempt status as a consumer advocacy organization states that you were created for the purpose of:

...assisting consumers [to] protect their rights under statutes and laws protecting them from violations and illegal activities of such agencies. These activities also include providing mailing assistance and pre-written letters that consumers may use in corresponding with such agencies. (Application Part II)

Consumer advocacy activities are your primary activities. You described your activities in your Application as follows:

- (a) Consumer Advocacy Activities...account for seventy percent of all activities performed...include...phone calls on behalf of consumers to agencies, companies, or bureaus, such as collection agencies, credit reporting bureaus, law firms acting as collection agencies, insurance companies, FCC, FTC, public service and public telecommunications companies...[for] the sole purpose of assisting consumers protect their rights under statutes and laws protecting them from violations and illegal activities of such agencies...also include providing mailing assistance and pre-written letters that consumers may use in corresponding with such agencies. This activity is not considered practicing law, but assisting in correspondence....
- (b) Consumer Credit Counseling Activities...account for twenty percent of all activities ...include...aiding consumers in proper credit use, credit decisions, and avenues of action that consumers may take to stand up for their rights, repair their own credit, protect their privacy, and help hold agencies liable for their actions...
- (c) Marketing & Seminars... in the future, after a target date of March 1, , will account for six percent of all activities...include performing seminars for consumers consisting of some marketing and some informative information being shared on industry knowledge and consumer advocacy. All other marketing activities include...distributing brochures, web site development, strategic partnerships and referral programs, radio and TV advertisements, and program development and research...
- (d) Lobbying and Political Involvement...will account for one percent...include...meeting with public candidates, public speaking on issues, organized rallies, demonstrations, petitions, bill endorsement, candidate campaigns, persuasive articles and journals, publishing political advertisements, and enlisting the attention and consideration of congressional committees...
- (e) Administrative activities...account for one percent of all organizational activities

You assert that you do not perform credit repair. You do, however, “offer assistance in the resolution of creditor disputes, along with disputes with regulatory agencies and credit reporting bureaus.” (Correspondence, Answer 7). Among the services listed in your fee schedule are: “complete alleviation of debt/settlements, complete deletion of derogatory credit/permanently,

consumer advocacy services.” You also state that you do not plan to offer “any sort of debt management or debt repayment programs...within the next 5 years.” (Correspondence, Answer 2i) You explain that your credit advocacy activity:

fulfills a 501(c)(3) purpose as it gives consumers the ability to protect their rights under credit and commercial code laws and regulations that they may not otherwise be aware of...and...gives consumers an affordable alternative to hiring an attorney to handle civil credit matters ...legal knowledge is...explained to clients to help them better understand legal proceedings and their rights during those proceedings, as well as legal documents that may otherwise costs exceptional amounts of money to prepare. [sic]
(Correspondence, Answer 1(d))

The information you submitted as part of your Application shows that you will be entirely supported by client fees. You do not plan any fundraising activities. According to the fee schedule attached to your application, your charges range from \$ to \$, depending upon the type of case (student loan, credit card, judgment, foreclosure, tax lien), the age of the credit, and the size of the disputed amount. In Part II of your Application, you state that fees are “determined on the basis of cost of execution....charges cover the cost of physical materials used, postage paid...cost of time paid to employees.... “ They allow “the bare minimum cost while covering 100% of overhead and administrative costs.” You offer several ways to reduce the cost of your services to clients who are unable to afford the fees, such as installment payments, having the client handle the administrative details of mailing and postage, phased execution, and obtaining “client consents to allow Consumer Credit Protection, Inc. to...build a civil case in which Consumer Credit Protection, Inc.’s costs for working such accounts may be obtained through the courts from the violating parties.” (Correspondence, Answer 1(c)(iv))

Although you state that your original business plan is no longer operative and that you do “not pay referral fees to private organizations for sending clients to our organization,” (Correspondence, Answer 7(p), the most significant expenses in the “Statement of Revenue and Expenses” attached to your Application are “contributions.” You explained these as primarily “referral fees” and that the category also included donations to “consumer advocacy groups aimed towards a similar...goal.” In your correspondence, you “apologize for the misinformation on the outdated web site” concerning referrals, but do not retract or revise similar information contained in your Application. (Correspondence, Answer 8a.) You intend to market your services by distributing brochures, web site development, strategic partnerships and referral programs, radio and TV advertisements. You also “plan to hold a public seminar on the credit industry, consumers’ rights, and how Consumer Credit Protection, Inc. works.”

LAW

1. Law

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and certain other enumerated purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or

individual. Such organizations may not participate in or intervene in (even by publishing or distributing statements) any political campaign.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines the words “private shareholder or individual” in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations requires an applicant organization to show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term “charitable” is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term “educational” refers to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public about personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who had financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, which held the funds in a trust account and disbursed them on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from one carried out by a university.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and also

services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed, for the sake of argument, that the organization had an educational purpose. However, it held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and therefore the organization was not entitled to exemption.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but commercial. The court found that the corporation failed to demonstrate that its services were not in competition with commercial businesses. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs, and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation had failed to limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 44 A.F.T.R.2d (RIA) 5122 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from service fees.

The court found the organizations exempt under section 501(c)(3) because providing information to the public regarding the sound use of consumer credit is charitable in that it advances and promotes education and social welfare. These programs were also educational because they instructed the public on subjects useful to the individual and beneficial to the community. The counseling assistance programs were likewise charitable and educational in nature. Because the community education and counseling assistance programs were the

agencies' primary activities, the agencies were organized and operated for charitable and educational purposes. The court also concluded that the limited debt management services were an integral part of the agencies' counseling function, and thus charitable, but stated further that even if this were not the case, these activities were incidental to the agencies' principal functions.

Finally, the court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3) or to provide its services solely without charge. Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. They charged nominal fees for services that were incidental. Moreover, even this nominal fee was waived when payment would work a financial hardship.

In Easter House v. U.S., 12 Ct. Cl. 476 (1987), aff'd 846 F. 2d 78 (Fed. Cir 1988), the court found that adoption services were the primary activity of the organization. In deciding that the organization conducted adoption services for a business purpose rather for a charitable purpose, the court considered the manner in which the organization operated. The record established a number of factors that characterize a commercial activity and which were evident in the operations of Easter House also. The court determined that the organization competed with other commercial organizations providing similar services; fees were the only source of revenue; it accumulated very substantial profits, because it set its fees in order to generate a profit; the accumulated capital was substantially greater than the amounts spent on charitable and educational activity; and the organization did not solicit and did not plan to solicit contributions. The court also found a corporate-type structure in the classes of memberships (including a single life member having inherent power that the holder could transfer like stock), and dependence on paid employees.

In Living Faith, Inc. v. Commissioner, 950 F. 2d 365 (7th Cir. 1991) aff'g 70 T.C. 352 (1978), the court held that a vegetarian restaurant and health foods store that adhered to the principles of the Seventh Day Adventist Church was not operated exclusively for exempt religious purposes, but rather for a substantial commercial purpose. The court examined the method of operations to infer the purposes. Although the organization catered to the dietary restrictions of the Church, its primary activities were managing a restaurant and health food store, operated in competition with commercial entities, charging competitive prices set by formulas common in the retail food business, and using commercial promotional methods.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court concluded that the Foundation was operated for a substantial non-exempt purpose. It based this conclusion on the manner in which the organization managed a conference center. "Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations." Thus, the court looked at the business methods of the organization as a method of inferring whether its purpose was to serve the public or

whether there was a substantial non-exempt purpose of operating a business for profit. See section 1.501(c)(3)-1(e), of the regulations.

RATIONALE

An organization cannot be recognized as exempt under section 501(c)(3) of the Code unless it shows that it is organized and operated exclusively for charitable, educational, or other exempt purposes and that it is not operated for a substantial non-exempt purpose, and does not provide private benefit. You have failed to establish that you are both organized and operated exclusively for exempt purposes. You do not serve a charitable class, or educate the public or counsel individuals. Rather, you have the substantial non-exempt purpose of operating a commercial advocacy business.

As a preliminary matter, we note that you violate the organizational requirements of section 501(c)(3). Your articles of incorporation refer to incorrect sections of the Code in two places. In Article VI(c), your articles state that after dissolution any remaining assets must be disposed of by a court to organizations that the court shall determine provided such organizations "have established their tax exempt status under Section 591©(3) of the Internal Revenue Code," and in Article VIII(c) your articles state that the "Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 510(c)(3)."

Section 501(c) of the Code states that an organization cannot participate or intervene in a political campaign. This is an absolute prohibition. Your Form 1023 states your activities include:

Meeting with public candidates, public speaking on issues, organized rallies, demonstrations, petitions, bill endorsement, candidate campaigns, persuasive articles and journals, publishing political advertisements...These activities ...have already been initiated.

Not only do you plan to intervene, you state that you have already done so. Therefore, you do not qualify for exempt status under section 501(c)(3).

While political activity is fatal to exempt status, we will consider all of your activities. An organization will be regarded as operating exclusively for exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. Providing services to a charitable class may accomplish a charitable purpose. For instance, providing services exclusively for the benefit of the poor for free or at reduced cost furthers a charitable purpose. Counseling the poor about economics and personal finance can achieve an exempt purpose. See Rev. Rul. 69-441, *supra*. However, you admit that you do not limit your services to the poor or underprivileged through a financial test or

income limit or by any other means. Therefore, you do not operate to further a charitable purpose in the sense of providing relief to the poor or distressed.

We have also reviewed your activities to determine whether they meet the definition of education. Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term “educational” means either training an individual to develop his capabilities or instructing the public on subjects useful to the individual and beneficial to the community. Financial counseling could be carried out as an educational activity. See Consumer Credit Counseling Service of Alabama and Rev. Rul. 69-441, above.

You do not conduct any public seminars or classes, nor do you provide individuals with a course of study. Your own description of your activities makes it clear that your primary purpose is to help clients with credit problems through your services rather than through an education program. Education is incidental to the services such as the “legal representations, complete alleviation of debt/settlements, complete deletion of derogatory credit/permanently, consumer advocacy services, formatted complaints to the Attorney General’s office” listed in your fee schedule. We cannot conclude that you are organized and operated for the exclusive purpose of education.

You rely upon Consumer Credit Counseling Service of Alabama, *supra*, as support, implying that your organization is identical and should be accorded the same treatment as an educational organization. You quote the court as saying that:

The debt management and creditor intercession activities are an integral part of the Agencies’ counseling function, and thus are charitable and educational undertakings. Even if this were not the case, these credit intercession activities are incidental to the Agencies’ principal functions.

The Court approved the debt management and creditor intercession activities in those cases because they supported and were much less extensive than the primary educational activity of the CCCS organizations. Your operations differ significantly. Your intercession activities are neither integral nor incidental to a principal educational function. By your own description, consumer advocacy activities “encompass 70% of your time,” with consumer credit counseling as your “secondary activity.” Some of what you describe as education appears to be merely an explanation of your activities. You do not conduct any public education. In a reversal of the situation in the CCCS cases, and describing your activities in the most favorable light, your educational activities are clearly incidental to your main activity of providing a commercial service. Therefore, you do not further educational purposes because your activities do not provide training to the public.

Thus, you are not organized or operated for charitable or educational purposes or for any other purpose described in section 501(c)(3). Even if you could prove that you were organized and operated for charitable purposes, we would have to determine whether your activities further a substantial non-exempt purpose such as a commercial purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption

regardless of the number or importance of truly exempt purposes. Specifically, the court in held that if education is conducted for a substantial non-exempt purpose, exempt status should be denied.

We have reviewed your activities and determined that they further a substantial non-exempt purpose. Factors indicative of a commercial purpose were identified in several of the cases cited above. Those factors include: (1) competition with for-profit commercial entities; (2) whether clients pay for, and receive, a desired service commonly associated with commercial enterprises; (3) the extent and degree of free or below-cost services; (4) pricing policies, (5) commercial promotion methods, and (6) the extent to which the organization is funded by charitable donations.

Considering these factors, we find that your services have a commercial purpose. First, the advocacy services you offer are similar to services offered by competing for-profit organizations and lawyers. Second, your clients are paying for, and receiving, a desired service—assistance in pursuing their rights under credit and commercial code laws. You do not offer below-cost or free services. You plan to use many different commercial promotion or marketing methods. Finally, your financing does not resemble that of a typical public charity under section 501(a) of the Code.

When we analyze your activities and compare them to the activities of the organizations in the Consumer Credit Counseling Service of Alabama, it becomes clear that you are operated for commercial purposes. Your activities differ in important ways from those described in the CCCS of Alabama cases. They were financially supported by government and private grants, and assistance from labor agencies and the United Way. The CCCS organizations did not charge fees for either public education or individual counseling. The fees they did charge for debt management were very modest. They were no more than \$10 per month and were waived in situations of financial hardship. Only a fraction of total revenue was derived from fees. You charge substantial fees for your advocacy, based upon the amount and age of the credit at issue. Your fees range from \$ to \$ dollars, set to “cover the cost of operating.” (Correspondence, Answer 1d) You do not waive fees for clients who are unable to afford them, but instead reduce the amount of services you offer, or stretch out your services over a longer time and allow the client to pay as the services are rendered. The boards of directors of each CCCS organization contained at least 60 percent representation of the general public, whereas you are governed by a single person who also founded you and is a paid employee.

You admit that you compete with attorneys. You described your advocacy as “an affordable alternative to hiring an attorney to handle civil credit matters.” Competition with commercial firms was considered strong evidence of a dominant commercial purpose by B.S.W. Group, *supra*. You have not limited your clients to a charitable class, the poor, for example, but offer your services to all in the open market.

Consumer advocacy, like the adoption services in Easter House, *supra*, is not a traditionally charitable activity. Although it can be conducted for the public interest in a charitable manner, it is also purchased in the market as a commercial service. Therefore, you

must demonstrate by the manner in which you conduct the activity that it is charitable, rather than relying on the inherent nature of the activity.

Your revenue is derived entirely from fees received in return for services, an important characteristic of a commercial enterprise. The fees are based upon your cost of delivering the service, and upon the size and age of the client's debt. While you describe reductions available where the fee would be a hardship, they primarily involve providing reduced services or increased time in which to pay. You have not provided any evidence that you intend to charge fees below your cost. As the court stated in B.S.W Group, the fact that your fees may be lower than those of your competitors is not enough to prove an exempt purpose. There is no evidence in your file that you offer free services to anyone.

You intend to advertise on the web, and expect to receive so many inquiries from promotion on the Internet that you will need additional staff to handle them. In addition, you plan advertising on television and through marketing seminars. Such promotional efforts have been interpreted as evidence of commercial operations. Living Faith, and Airlie Foundation. Your price structure may also lead to considerable accumulation of capital. The judge in Easter House found the accumulation of capital through a profit-making fee structure that was the only source of income, indicated the commercial character of the operation.

The final factor mentioned by the judge in the Airlie Foundation is the extent of charitable donations. Public charities typically receive substantial revenue in the form of donations from the public and grants from governmental entities and private foundations. In contrast, you do not solicit or receive support from disinterested parties or organizations. Public support indicates that an organization is committed to the public benefit and accountable to the community through its dependency on public contributions. Your sole revenue is from client fees.

Another form of public support is through the participation of knowledgeable or representative and independent persons on the board or as volunteers. The public has no role in your management as your board is composed of a single person. This person founded you and performs paid work for you. Lack of public support, both financial and leadership, indicates that you are not operated for public benefit.

Regardless of the number of exempt purposes, a single non-exempt purpose, if substantial, will prevent recognition under section 501(c)(3) of the Code. In Better Business Bureau of Washington, *supra*, the Supreme Court found that the educational program carried out by a trade association had an underlying commercial motive. Similarly, some of the discussion that you label "counseling" appears not to educate but merely to describe your organization and your activities on behalf of the individual customer. It supports your commercial purpose rather than the reverse.

Having identified a commercial purpose to your activities, we are left with the question of whether the commercial purpose constitutes a substantial nonexempt purpose. To the extent that you conduct education, it is subordinate in time and importance to your commercial

advocacy and credit repair. Therefore, you have a substantial nonexempt purpose which defeats exemption.

Finally, in addition to requirements of exempt purpose, you must operate for public benefit. The regulations require you to establish that you are not operated for the benefit of private individuals, such as your creator. Section 1.501(c)(3)- 1(d)(1)(ii). Your creator is also your only officer and director. He sets his own salary and makes all decisions about revenues and expenses. You have no community oversight or ties to established community organizations to provide accountability. Neither structure nor policy protects your assets from the risk of inurement to the founder.

Based on this analysis of your purposes and activities, we conclude that you are not operated exclusively for one or more of the purposes described in section 501(c)(3) of the Code. You have engaged in political intervention and plan to continue. Your activities have failed the organization test and your activities do not further charitable or educational purposes. Even if you could prove that you were organized and operated for charitable purposes, you are operated for a substantial nonexempt purpose and for private rather than public purposes.

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.

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 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).

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details,

see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, and do not intend to protest our denial of exempt status, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If you also disagree with our proposed deletions, you should send your comments on the deletions with your protest statement, and not to the address shown in Notice 437.

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

Internal Revenue Service
TE/GE (SE:T:EO:RA:T)

1111 Constitution Ave, N.W.
Washington, D.C. 20224

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,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements