



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **200932061**
Release Date: 8/7/09
Date: May 12, 2009
UIL Code: 501.03-30

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

Letter 4038 (CG) (11-2005)
Catalog Number 47632S

If you have any questions **about this letter**, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions **about your Federal income tax status and responsibilities**, please contact IRS Customer Service at **1-800-829-1040** or the IRS Customer Service number for businesses, **1-800-829-4933**. The IRS Customer Service number for people with hearing impairments is **1-800-829-4059**.

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date.

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

A = Date

B = Name of State

C = Address

M = Name of Entity

I = Name of Individual

V = Name of Individual

UIL Nos: 501.36-01

501.33-00

534.00-00

Dear

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

ISSUE:

Do you qualify for recognition of tax exemption under section 501(c)(3) of the Code?

FACTS:

You, (M), are a corporation formed on A and operate pursuant to the laws of the State of B. Your Articles of Incorporation stated that **your specific purpose is to provide financial services such as financial literacy education, home buyer workshops, credit counseling, debt negotiation and debt settlement, notary public services as well as income tax filing.** Your Articles of Incorporation made no mention about how your assets will be distributed upon dissolution.

In your application, you described your activities as follows:

The [main] purpose of forming this organization is to provide Affordable Financial services to **Low-to-Moderate income families**. The organization plans to serve the community

through the FDIC Financial Literacy, Money Smart Program, First Time Home Buyer Workshops, Housing Counseling, Debt and Credit Management, Debt negotiation and settlement and Notary Public Services.

In addition, the organization will also provide free income tax services with a voluntary contribution to cover administrative as well as office expenses to [taxpayers] whose income levels are less than \$45,000 AGI. That will prevent and protect taxpayers from predatory tax professionals who are offering them the unnecessary 'Rapid Refunds Loans' that usually cost them, [sometimes] more than \$200 per return. The organization would welcome any opportunity that could assist in offering this service to the community.

You outlined your specific activities in your Business Plan as follows:

1. Income Tax Service
 - (a) Individual (b) Self-Employed (c) Small Business
2. Business Start-up
 - (a) Corporation Search, Registration and Filing
 - (b) Fictitious Name Search and Registration
 - (c) Assistance with a well grounded business plan
3. USCIS Immigration Services
 - (a) Application for Naturalization-Form N-400
 - (b) Application for Asylum-Form
 - (c) Application for Replacement of Naturalization/Citizenship Document-Form N-565
 - (d) Change of Address Notification Form AR-11
 - (e) Application to Replace Permanent Residence Card-Form I-90
 - (f) Affidavit of Support and Sponsorships
4. Credit Counseling Services
 - (a) Debt Counseling and Management
 - (b) Debt Negotiation and Settlement
 - (c) Debt Consolidation
 - (d) Budgeting
5. Bookkeeping Services
 - (a) Payroll
 - (b) Profit and [Loss] Statement
 - (c) Quick Book Business Set up
 - (d) Bill Payment Services - Light, Telephone, Cable, Mortgage, Credit Cards and more
6. Mortgage Services
 - (a) First Time Home Buyer Grants Assistance
 - (b) First Time Home Buyer Workshop Education
 - (c) Foreclosure Prevention
 - (d) FDIC Money Smart Training
7. Other Services
 - (a) Auto Tag Renewal
 - (b) Drive's License Renewal
 - (c) Drive's License Duplication due to change of address

As part of your mortgage services, you plan to offer classes using the Money Smart curriculum available from the FDIC on a monthly basis. However, no evidence has been submitted that any classes using the FDIC Money Smart curriculum have been held. **You represented that your credit counseling program comprised 50 percent of your overall activities; while your income tax service program comprised 40 percent of your overall activities. Further, your other services such as Business Start-Up, USCIS Immigration Services, Bookkeeping Services and Mortgage Services and Driver License Related Services encompassed the remaining 10 percent of your total activities.**

With respect to your fee structure, although you provided that your services are free of charge, participating clients however, are required to make a "donation" to you at a predetermined amount dependent on the type of service received. You explained that the cost of running a business is extremely expensive. Consequently, to cover your operational cost, a donation is **required** from your clients for the services you provide. **According to your Business Plan, "For debt management a donation of \$50 per month would be required to maintain accounts. For credit counseling, an account setup fee in the amount of \$75 would be required in order to cover the cost of contacting all creditors as well as other account setup expenses.** For debt settlements, debtors are require[d] to donate 15% of the discounted amount from an account as a result of long term debt negotiation with creditors and collection agencies in order to cover expenses and to streamline settlement process for others. **For tax services, clients will donate just \$75 regardless the type of tax returns. For taxpayers with very low income that require a filing of a 1040 EZ form, the donation will not be more than \$40..."** You have yet to establish a fee waiver policy for your services.

You detailed your credit counseling service program as follows:

T or V will call the prospect referred by the mortgage companies and the real estate companies to introduce your company. You will request documents from the prospect needed for an analytical review in order to determine if the service is appropriate for the prospect. You will put together a budget for the prospect to find out whether he/she really needs a debt management plan or just counseling on how to handle credit. The analysis of the budget will identify any potential of overspending or the need for getting rid of unnecessary expenses in order to meet the prospect's obligations. Once the prospect indicates that he/she needs your services, you will request for additional financial documents such as pay stubs, bills and credit card statements. At this point, the client will complete an Enrollment Application and execute an Enrollment Agreement. This same enrollment contract is used for all your programs. Some notable terms of the Enrollment Agreement are:

- Enrollee agrees to deposit with you, by the dates agreed upon, the full amount of funds needed to cover all of his/her monthly debt payments or full settlement amount required for a one time settlement and any required voluntary administrative contribution agreed to under this agreement.
- Enrollee will make all of his/her monthly deposits by bank check, certified check or money order made payable to you.
- Enrollee understands that you do not charge an "advance fee" for any of their debt counseling programs; however, he/she has voluntarily agreed to make a one time nonrefundable contribution of \$75.00 program setup donation in order to help with the operational costs involved in setting up his/her account.
- The Enrollee has agreed to make a voluntary "monthly" contribution of \$50.00 for all accounts that he/she enrolls in the credit counseling program with you.

- The Enrollee agrees to contribute 10% of each account settlement discount from his/her creditors, but not more than \$300, to you due to the high cost of negotiating settlement with creditors.
- If the enrollee voluntarily cancels any time after enrollment, he/she agrees to a cancellation contribution of \$149.00 in order to help you with other administrative expenses involved my accounts.

Although you seek to target low-to-moderate income individuals, your prospective clients are anyone in need of your services. When we inquired about any on-going educational program your clients will participate in while undergoing your debt management program (DMP), you said that clients might be encouraged to participate in your FDIC Money Smart Program classes. You will also refer your clients in your DMP program to the computer-based Money Smart Program offered for free by the FDIC. Otherwise, no other educational materials will be provided by you. You are currently operating in a facility located at C. However, you intend to move to a larger facility upon receipt of financial assistance.

You plan to purchase leads and utilize other non-profit organizations, real estate companies, mortgage companies, churches as well as past or current clients as sources of referrals. Your overall promotional strategy will encompass advertising on traditional mediums, Internet and Yellow Pages. Although you state that you will conduct public fundraising, you have not provided specific information regarding your fundraising program. Your projected budget is as follows:

PROJECTED BUDGET

REVENUES:

500 clients @ \$ 1 time account setup administration fee	\$.
500 clients @ \$ x12 – monthly administrative donation	-
Total Revenues	\$.

EXPENSES:

General Manager annual salary	\$
Operational Manager annual salary	
Sr. Debt Counselor annual salary	
Certified Debt Counselor annual salary	
Contract Bookkeeper annual salary	
General Office Assistance annual salary	
Subtotal Expenses – Salaries	\$.
Transportation	\$
Rent	
Software	
Website design	
Advertising	

Computers
 Telecommunication
 Printer & fax machines
 Miscellaneous

Subtotal Expenses - Other

\$

Total Expenses

\$

Based on your financial data, **you will be entirely supported by fees you receive from services you provide.** Your projected budget shows that most of your expenses will be allocated towards payment of compensation. **Your budgets do not allocate any expenses towards the operation of a substantive educational program.**

You have two board members, I, and V. I is your President, Chief Executive Officer, Marketing Manager, and board member. I's background includes experience as a mortgage loan processor, debt counselor and loan coordinator. I has been certified by the FDIC as a Money Smart Program instructor as well as certified by The National Association of Certified Credit Counselors (NACCC) as a credit counselor. I has full management responsibility over your organization. V is your Operation Manager and board member. V has experience in income tax services. I and V are a married couple. **Your Business Plan provided that you are structured as a family owned and operated agency with I as your Founder/Owner/General Manager.** Based on your application, the stated compensation for I and V are \$ and \$ per year respectively. **However, your Business Plan indicated that your Owner's compensation is tied to the company's performance.** Hence I, as your Owner, will receive non-fixed compensation payments dependent on your profitability. You have yet to adopt bylaws or a conflict of interest policy.

LAW:

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

Section 501(q) of the Code states that an organization that provides credit counseling services will not qualify for exemption under section 501(c)(3) unless it is organized and operated in accordance with specific requirements. **These requirements include section 501(q) (1)(A)(i) of the Code which maintains that the organization must provide credit counseling services tailored to the specific needs and circumstances of consumers.**

Section 501(q)(1)(C) of the Code provides that the organization's fee policy must indicate that the fees charged are reasonable and allow for the waiver of fees for consumers who are unable to pay. The organization can not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan. Except to the extent allowed by State law, prohibits the charging of any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or on the projected or actual savings to the consumer resulting from enrolling in a debt management plan. Fees cannot be based on the size of the consumer's debt or projected savings unless permitted by State law.

Section 1.501(q)(1)(D) of the Code provides that at all times the board of directors of a credit counseling service organization must be **controlled** by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders. **Not more than 20 percent of the voting power of the board of directors can be vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities.** Furthermore, not more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially.

Section 501(q)(1)(F) of the Code states that the organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(2)(A) of the Code provides that a credit counseling service organization will not be exempt from tax under subsection (a) unless such organization is organized and operated in accordance with the following requirements: **(i) The organization does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.**

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. **If an organization fails to meet either the organizational or 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 limit its purposes to one or more exempt purposes and do not expressly empower it to engage, otherwise than as an insubstantial part, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal Government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

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 states 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. **It is necessary for an organization to establish 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 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 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 services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed arguendo that the organization had an educational purpose. However, **the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business.** Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. **"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."**

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 rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organizations. 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 did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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 that carried out by a university.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S. Tax Cas. 9660 (D.D.C. 1978), the court held 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, which had been recognized as exempt under section 501(c)(3) in a group ruling, is an umbrella organization made up of numerous credit counseling service agencies. In this case, 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. The professional counselors used only 12 percent of their time for debt management programs. They did not limit these services to low-income individuals and families, but they provided their services free of charge. 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). Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. A nominal fee was charged for the debt management services but was waived when payment 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 fees. Thus, the court concluded that “each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization.” See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

Solution Plus, Inc. v. Commissioner of Internal Revenue, T.C. Memo. 2008-21, held that an organization primarily engaged in provision of debt management programs (DMPs) did not operate exclusively for charitable purposes and did not qualify for tax exemption under section 501(c)(3) of the Code. The court focused on organization’s operations to decide whether it satisfied the operational test. Factors that the court considered included: (a) the organization’s primary activity which was the provision of DMPs to the general public for a fee from its customers and its customers’ creditors; (b) the organization’s conduct of this activity in a self-promotional and profit-maximizing manner; (c) the fact that the organization did not limit its DMP services to low-income individuals; and (d) the organization has not established that its proposed DMP fee structure was reasonable. Thus, the court concluded that petitioner did not operate exclusively for charitable purposes.

In Salvation Navy v. Commissioner, T.C.M. 2002-275 (2002), the court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that its net earnings would not inure to the benefit of a private individual, its founder.

In Birmingham Business College, Inc. v. Commissioner, 276 F.2d 476 (5th Cir. 1960), the court denied tax exemption to an organization, in part because the net earnings were distributed to its shareholders for their personal benefit. The founder of the organization and his two sisters were the only shareholders; these three and two of their spouses were the organization's trustees. The court found that the organization was operated as a business ultimately producing substantial revenues for its operators.

In Revenue Ruling 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment 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 Revenue Ruling 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on 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 have 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 the funds 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 voluntary 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. Revenue Ruling 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Revenue Ruling 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Revenue Ruling 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Revenue Ruling 70-590, 1970-2 C.B. 116 (clinic to help

users of mind-altering drugs); Revenue Ruling 70-640, 1970-2 C.B. 117 (free marriage counseling); Revenue Ruling 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.**

RATIONALE:

Section 501(c)(3) of the Code sets forth two main tests for qualification for tax exempt status. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) of the Code.

Your purpose as stated on your Articles of Incorporation is to provide various financial services including credit counseling, debt negotiation, debt settlement, notary services and the filing of income tax returns. Your Articles of Incorporation do not limit your purpose to those exempt under section 501(c)(3) of the Code, but rather empower you to engage in activities which are in stark contrast to charitable or educational purposes under section 501(c)(3) of the Code. The various financial services that you seek to provide as listed on your Articles of Incorporation are not inherently charitable or educational and often are conducted in a commercial manner. Moreover, your Articles of Incorporation do not contain an express or implied provision dedicating your assets to an exempt purpose upon dissolution. Therefore, we hold that you are not organized exclusively for exempt purposes and fail the organizational test as provided in sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the Regulations.

To satisfy the operational test, you must be operated exclusively for one or more exempt purposes as provided in section 1.501(c)(3)-1(c)(1) of the Regulations.

We hold that you not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. In fact, the administrative record demonstrates that you will operate for the substantial non-exempt commercial purpose. In addition, you have not established that your income will not inure to the benefit of your related, board members.

You devote a substantial amount of time and activities to providing commercial services for a fee (labeled as donations) to the general public. In fact, your debt settlement and debt negotiation services are strictly commercial endeavors which in no way contribute to the accomplishment of credit counseling or public education. Your other services, including income tax filing, immigration services, corporation filing, bookkeeping, notary public and mortgage services, are also indistinguishable from those that are commercially available. The court held in American Institute for Economic Research v. United States, *supra*, that the totality of the organization's activities including its sale of publications and sale of advice for a fee to individuals, were indicative of a business. Therefore, the organization had a significant non-exempt commercial purpose that was not incidental to the exempt purpose, and was not entitled to be regarded as tax exempt. You are remarkably like the organization described in American Institute for Economic Research v. United States, *supra*, in that your sale of a multitude of commercial services for a fee is indicative of a business. Based on the totality of your activities, we hold that you are operated for a substantial non-exempt commercial purpose, rather than a tax-exempt purpose.

Further evidence that you are operated for a substantial non-exempt purpose is manifested in the fact that you have met many of the factors exemplifying commerciality. You are like the organization described in Airlie Foundation v. Commissioner, *supra*. Your financial and other services including: debt settlements, debt negotiations, income tax services, mortgage services,

bookkeeping services, driver-license related services, immigration services, and business start-up services directly compete with other for-profit business providers. One of the factors considered in assessing commerciality is the extent and degree of below cost services provided. You have provided no evidence that your clients receive services for free, services at below cost or services according to their ability or pay. You have not provided any evidence that your fees will bear any relation to the costs of providing your services and are not purely a profit-making tool. The fact that you charge a 10 to 15 percent fee to your clients based on the possible savings reaped from creditors in your debt settlement program and a \$149 cancellation fee for withdrawing from your programs demonstrates a fee structure that is established purely as a profit-making tool. Your fee structure reflects your drive to maximize profits at every stage of your operations. You have provided no financial studies or other information that would justify the amount of any particular fee. Moreover, you will use traditional outlets, local newspapers, Yellow Pages and the Internet to advertise your services in the manner of an ordinary for-profit business. Furthermore, like commercial business, you will purchase leads in order to expand your client base. Thus, you have met many of the factors cited in Airlie Foundation v. Commissioner, *supra*, illustrating a commercial operation.

You are similar to the organization described in B.S.W. Group, Inc. v. Commissioner, *supra*. Your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Your primary purpose is not charitable or educational, but rather commercial. Although you claim that you will conduct fundraising, you are unable to submit any fundraising materials to demonstrate that you have a public solicitation program. You have not shown that you will receive any support from contributions from the general public, government or private foundation grants, or public contributions. By comparison, for-profit business enterprises are supported by fees paid by those who receive services. Like a for-profit business, all of your revenues are from fees paid by those who receive debt management, debt settlement and income tax services from you. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. Your fees however, are set high enough to recoup all projected costs and to produce a profit.

You do not operate a substantive on-going educational program. Although you claim that you will provide monthly classes using the Money Smart Program developed by the FDIC, you have not provided evidence that such classes or workshops have taken place. Furthermore, your Money Smart classes and homebuyer workshops are conducted as part of your mortgage services which comprise less than 10 percent of total your activities. Hence, your educational classes and workshops are merely an incidental component of your overall activities. Your operational aim is to generate fees from debt management, debt settlement, debt negotiation, income tax and other services rather than on on-going financial education for the general public. You do not provide financial education to participants in your DMP program. Other than suggesting that they attend your Money Smart classes and referring them to the on-line program offered for free by the FDIC, you will not provide any other educational materials to clients in your DMP program. It is clear from your own description that your primary purpose is the sale of income tax and debt management services for a fee rather than financial education of the public as a whole. You devote all of your time and activities to the sale of your services under the guise of financial counseling. You have not shown that you are operated exclusively to educate individuals for the purpose of developing their capabilities. Analogous to the organization described in Better Business Bureau of Washington D.C., Inc. v. United States *supra*, your activities appear to have an underlying commercial motive that distinguishes your educational activities from that carried out by a university.

In addition, your clients are not limited to a charitable class of individuals such as the minorities, low-income or elderly. In fact, despite your intentions to target low-to-moderate income individuals and families, you affirm that your services are essentially available to anyone in need of your assistance. Thus, there are no limitations to your services. You are unlike the organization described in Revenue Ruling 69-441, 1969-2 C.B. 115, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. The organization described in the Revenue Ruling 69-441 also provided educational and counseling programs free of charge. You have not offered any evidence that you will provide your services free of charge or that you will waive your fees for those unable to pay. Therefore, you are unlike the organizations described in Revenue Ruling 78-99, Revenue Ruling 76-205, Revenue Ruling 73-569, Revenue Ruling 70-590, Revenue Ruling 70-640, and Revenue Ruling 68-71, *supra*, as you are not supported by public contributions and do not provide counseling services free of charge.

Your financial structure does not resemble that of a typical charity either because it solely relies upon revenues earned by selling your debt management and income tax services to the public. Based on your financial budgets, all of your income will be derived from fees for services you render. You are unlike the organizations described in Consumer Credit Counseling Service of Alabama, Inc. v. United States, *supra*, which received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. These organizations only received an incidental amount of their revenues from fees. Hence, you are operated in the manner of a trade or business.

You are comparable to the organization described in Solution Plus, Inc. v. Commissioner of Internal Revenue Service, *supra*, in that your primary focus is on providing services including debt negotiations, debt management (DMPs), debt settlement services for a fee. You conduct your activities in a self-promotional and profit-maximizing manner. You do not limit your DMP services strictly to low-income individuals. You have not established that your proposed DMP fee ("donation") structure is reasonable. Therefore, you are not operated exclusively for a charitable purpose but rather, for a substantial non-exempt commercial purpose.

Furthermore, section 501(q)(1)(A)(1) of the Code requires that the organization must provide credit counseling services tailored to the specific needs and circumstances of consumers. According the description of your counseling activities, your clients are provided general information applicable to many individuals facing financial difficulty. You merely present your clients with a budget outline featuring their income and expenses. You do not establish long-term counseling relationships with your clients or cultivate in your clients a clear understanding of the root causes of their financial predicament. Because your income is solely derived from fees from services, your debt management, debt negotiation and debt settlement services are presented as perhaps the best options to pursue. Hence, it is evident that you do not provide counseling that is tailored to the specific needs and circumstances of each client.

In addition, section 501(q)(1)(C) provides that the organization's fee policy must indicate that the fees charged are reasonable and allow for the waiver of fees for consumers who are unable to pay. You have not shown that your fees are reasonable or that you would waive your fees for clients who are unable to pay. Although you claim that your services are free of charge, your program enrollment contract plainly establishes the required fee ("donation") that each of your clients must pay for your services.

Likewise, your governance structure violates the requirements of section 501(q)(1)(D) of the Code. Section 501(q)(1)(D) of the Code provides that at all times the board of directors of a

credit counseling service organization must be **controlled** by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders. Your board of directors is not controlled by persons who represent the broad interests of the public. Instead, your board of directors is controlled by one related couple with experience in mortgage and income tax services. Moreover, section 501(q)(1)(D) of the Code requires that not more than 20 percent of the voting power of the board of directors can be vested in persons who are employed by the organization or who will benefit financially, directly or indirectly from the organization's activities. Contrary to the requirements of section 501(q)(1)(D) of the Code, one hundred percent of the voting power of your board of directors is vested in persons who are employed by you or who benefit financially, directly or indirectly from your activities. You have only two board members, T and V. Both T and V are compensated by you in their positions as General Manager and Operations Manager respectively. As you are controlled by individuals who will financial benefit directly from your organization's activities, you do not meet the requirements of section 501(q)(1)(D) of the Code.

Moreover, in breach of section 501(q)(1)(f) of the Code, you intend to pay for referrals of customers. Furthermore, section 1.501(q)(2)(A) of the Code provides that the organization must not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization. According to your enrollment contract, clients must agree to your specified fees in order to receive initial and continued services. Thus, you have violated a number of the requirements that credit counseling organization must adhere to under section 501(q) of the Code.

A fundamental requirement for an organization that seeks exemption from federal income taxes is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. (See section 1.501(c)(3)-1(c)(2) of the Regulations.) You have not met your burden of proof that your organizational structure and manner of operation do not result in inurement to T and V as provided in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations and the court decision in Salvation Navy v. Commissioner, *supra*. You are not governed by an independent board of directors as T and V are a married couple. Despite this lack of independent oversight, both T and V are receiving compensation from you. As your entire board of directors is related, the compensation arrangements you have with your board members were not negotiated in arm's-length. Similar to Revenue Ruling 61-170, you seek to provide your related board members with employment opportunities. Moreover, among the other indicators of a trade or business, T is referred to as your owner and his compensation is tied to your organization's overall performance on your Business Plan. Additionally, your Business Plan described your governance structure as family owned and operated. Like the organization described in Birmingham Business College, Inc. v. Commissioner, *supra*, you have not shown that your earning do not inure to the benefit of private individuals and that you are not operated to produce revenues ultimately benefiting your related operators/board members. You have not established that you are formed to serve a public rather than a private interest.

In summary, we hold that you have failed both the organizational and operational tests under section 501(c)(3) of the Code. As your primary aim is to provide various services for a fee, you are operated for a substantial non-exempt commercial purpose. Additionally, as you are controlled by a compensated board of directors comprised of a single related couple, you have not demonstrated that your earnings do not inure to the benefit of private individuals in contravention of section 501(c)(3) of the Code. Therefore, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code or under any other sections of the Code.

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

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201
Attn:

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202
Attn:

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892