



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

TE/GE: EO Examinations

1100 Commerce Street

Dallas, TX 75242

501.04-00

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 15, 2010

Release Number: **201029037**

Release Date: 7/23/10

LEGEND

ORG = Organization name

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

ORG
ADDRESS

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

This is a final determination regarding your exempt status under section 501(c)(4) of the Internal Revenue Code (IRC). Recognition of your exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4) is revoked effective January 1, 20XX because it is determined that you have not established that you are observing the conditions required for the continuation of an exempt status.

We previously mailed you a report explaining our proposed revocation of your tax-exempt status. In that correspondence, we requested that you respond to the report within 30 days from the date of the letter accompanying the report.

Because we did not hear from you within that 30 day period, we will process your case on the basis of the recommendations shown in the report.

We have determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service center for all years beginning January 1, 20XX.

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Acting Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service
TE/GE Exempt Organizations Examinations Division
1100 Commerce Street MC 4980 DAL
Dallas, Texas 75242

March 15, 2010

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe an adjustment of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter modifying or revoking exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Sunita Lough
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope

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LEGEND

ORG = Organization name XX = Date Address = address City = city State = state Phone = phone website = website President = president V.P. = V.P. Treasurer = treasures
1ST, 2ND & 3RD COMPANIES RA-1, RA-2 & RA-3 = 1ST, 2ND & 3RD RA CO-1, CO-2 & CO-3 =

Issues

Whether ORG (“ORG”) qualifies for exemption under 501(c)(4) of the Internal Revenue Code (“Code”).

1. ORG’s primary activity is not operated in a manner designed to further 501(c)(4) purposes.
2. ORG has not established that it is observing the conditions for continuation of its exempt status as required under 501(c)(4) and Rev. Proc. 20XX-52.

Facts

History overview

ORG was recognized as a tax-exempt organization on August 29, 20XX under 501(c)(4) of the Code. ORG originally applied for tax-exemption under Code 501(c)(3). During the application process, ORG was notified by the Determination Specialist that the organization’s operations would better qualify under 501(c)(4). ORG agreed to be recognized under 501(c)(4).

ORG filed its Articles of Incorporation on March 8, 20XX. The purpose of the organization as enumerated in its Articles of Incorporation was to “provide assistance to individuals or families in the resolution of credit/debt problems”. The Articles of Incorporation reported the principal office of ORG as Address, City, State. The Articles of Incorporation also show that the original officers included President--President; V.P.--Vice-President; Treasurer--Secretary/Treasurer.

The State Secretary of State web site reported ORG’s stated purpose as “(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems”. ORG was incorporated on March 8, 20XX, its mailing address shown as Address, City, State, with the registered agent’s name of President, address of Address, City, State. The officers listed included President--President, V.P.--Vice-President, Treasurer--Secretary/Treasurer.

As confirmed by President, ORG started to operate its debt management plan (DMP) program as its primary activity under Code section 501(c)(4). However, business was not picking up, especially with the credit card companies who traditionally paid fair share, who primarily deal with 501(c)(3) organizations. The organization became inactive. In correspondence of October 23, 20XX, President added the following statement with respect to the ORG being inactive:

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“...because of a lack of funding by the credit grantors and no grants or DMPs, we decided not to expand our operations”.

Application for Recognition of Exemption (Form 1023 & Form 1024)

ORG originally applied for tax-exemption under Code 501(c)(3). During the application process, ORG was notified by the Determination Specialist that the organization's operations would better qualify under Code 501(c)(4). ORG agreed to be recognized under Code 501(c)(4) on August 9, 20XX.

On August 29, 20XX, based on the information that ORG provided in its application for exemption and on the assumption that ORG would operate in the manner represented in its application, ORG was recognized as a tax-exempt organization described in 501(c)(4).

In the application, ORG described its activities and operational information as follows.

1. ORG described its past, present and planned activities as follows:

ORG is a community service organization providing budget, credit, debt counseling, stewardship and repayment programs. To provide counseling to families and individual who have credit/debt problems; to include assistance in developing and utilization of a plan for liquidation of debts; to promote educational programs and tools dealing with the wise and unwise use of credit, budgeting, and money management. These activities were initiated in March 20XX at Address, City, State, provided by counselors at ORG.

2. ORG described its source of financial support as follows:

Contributions and donations.

3. ORG listed the following individuals as officers or directors:

- *President—President/Director*
- *V.P.---Vice President/Director*
- *Treasurer—Secretary/Treasurer/Director*

The address of President was shown as Address, City, State and the address of ORG as Address, City, State, telephone numbers PHONE and PHONE.

ORG responded to the Determination Specialist's letter of June 25, 20XX as follows with regard to their stated purpose:

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"Please note ORG was incorporated as a 'not for profit' community service organization for the sole purpose of budget, credit, debt and financial education, and repayment programs and to teach consumers about the wise use of money and stewardship."

Form 13770, Credit Counseling and Form 990 Filing Requirement Questionnaire

IRS correspondence dated February 23, 20XX, and April 8, 20XX, was issued to ORG to conduct a compliance check with regard to the organization's credit counseling operation for the tax year ended December 31, 20XX. In the correspondence, the IRS requested ORG to complete Form 13770, *Credit Counseling and Form 990 Filing Requirement Questionnaire*. ORG responded to the correspondence in a letter dated March 17, 20XX. As part of the response, ORG enclosed a copy of the Form 990 return for ORG. The return was signed by President on March 12, 20XX. It was noted that the cover letter had the ORG logo, address, telephone number, and operating hours. The address shown was Address, City, State, telephone # PHONE, with operating hours of 8:30 – 5:00. The ORG logo on the letterhead showed as follows:

ORG
A Comprehensive Credit Counseling Service
Non-Profit Organization

The completed Form 13770 was signed by President, President, on March 17, 20XX. ORG responded to the Form 13770 questionnaire as shown below.

Part I, Organization:

President wrote in the name of the organization as "ORG" and the employer identification number of EIN.

Part II, Not required to file Form 990:

President wrote in "N/A".

Part III, Operation:

Q #1: Responded "yes" to having a web site. Provided the web site address of: website.

Q#2: Responded to having provided the following services: Consumer credit counseling services, debt management services, and debt negotiation services.

Q#3: Responded to having the following activities with respect to Q#2:

- Education and/or counseling consumers, in person, in writing, or using electronic means;
- Helping consumers consolidate debts; negotiating with creditors on behalf of consumers to lower interest rates, waive fees, adjust balances, or restore acceptable credit ratings.

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Part IV, Consumer Credit Counseling/Debt Management Credit Repair/Debt Negotiation Services:

Q#1: Stated that the organization's services are available to everyone, regardless of income or assets.

Q#2: Fee structure are reduced or waived in hardship situations or because of client's inability to pay.

Q#3: In counseling sessions, counselors are asked each person to provide detailed information about the following:

1. The type, amount and source of all income(current and future)
2. Assets
3. Monthly and annual expenses
4. Secured debt such as mortgages and car loans
5. Unsecured debt, including student loans and credit cards
6. Other liabilities such as child support, alimony and tax liabilities
7. Employment
8. Significant expenditures
9. Buying habits
10. Past or anticipated changes in earnings, assets, expenses and liabilities, including the reason or cause for those changes
11. Health and other life issues that may affect the individual's financial situations

Q#4: In counseling sessions, counselors present clients with the following options to address debt problems:

1. Negotiating directly with creditors on payment or interest rate relief
2. Mechanics and advantages of creating and maintaining a budget
3. Changing buying habits or strategies for saving money
4. Custom-designed self-administered payment plans
5. Enrolling in debt management plans (DMPs)
6. Filing for bankruptcy
7. Other—referral for homeless shelter, mental health, food bank, social service
8. Counselors discuss the advantages and disadvantages of each of the options checked above
9. Counselors offer written materials on budgeting and managing personal finances

Q#5: In counseling sessions, the following was marked as criteria for recommendations:

1. Counselors analyze all information before making recommendations
2. Counselors use objective criteria when recommending any options in Q#2 above that best meet the client's individual needs, goals and circumstances.

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Q#6: In counseling sessions, the following was marked with respect to referrals:

1. Counselors provide specific and appropriate referrals to social service organizations for appropriate support services when they identify problems such as unemployment, lack of training, substance abuse, literacy or psychological issues.

Q#7: In counselor education and training, the following was marked:

1. Counselors receive comprehensive training in counseling skills, personal finance, budgeting, and credit and debt management in live or interactive training sessions and through detailed written manuals.
2. Counselors are trained on how to develop options and recommendations that address the particular circumstances of each client.
3. Counselors are trained to identify underlying personal problems such as illness, job loss, or suicide risk that may contribute to financial problems, and on making appropriate referrals.
4. Counselors are evaluated on how thoroughly and effectively they develop and present options to match the particular circumstances of each client.

Q#8: In outreach and advertising, use of website, educational pages can be accessed without providing contact information was marked.

Q#9: In outreach and advertising, content of advertising, the organization marked the box that state the advertising mentions DMPs as one option for addressing debt problems, not as a universal solution.

Q#10: In outreach and advertising, referrals, the organization marked the box that state the organization receives potential clients from referral by employers, union leaders, clergy and/or community organizations.

Q#11: In governance, the organization marked the following:

1. The organization is governed by a community-based board that includes significant representation by religious organizations, civic groups, labor unions, educational institutions and business groups.
2. The organization is governed by a board that has no familial or business relationships and is independent of creditors, contractors, employees or others with a financial interest in the organization.

Q#12: In governance, governing board information, the organization state that there are

1. 5 governing board members
2. No governing board members are compensated

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3. 3 board members with backgrounds in personal finance, 1 board member with background in education, and 2 in nonprofit organizations.

Q#13: With respect to educational materials/seminars:

1. The organization offers seminars taught by qualified instructors that are designed to meet the current needs of financially stressed individuals.
2. The organization distributes publications concerning financial management, budgeting, and credit.
3. Seminars are open and advertised to the public.
4. The website contains educational materials that are readily accessible to the public.
5. All clients are provided with educational materials that will assist them with budgeting and their financial management goals, whether they choose to receive additional counseling or purchase additional services such as a DMP.
6. All DMP and payment-plan clients are assigned a counselor who provides counseling and support during the plan.
7. Clients who do not choose DMP services are offered continuing educational opportunities and help with budgeting.

Q#14: With respect to services provided:

1. Educational services
2. Counseling services
3. Advertising, mass mailing and/or telephone solicitations
4. Administrative services to manage DMPs, such as processing client payments and disbursing the funds, resolving credit card payment problems, and negotiating "Fair Share" with creditors.

Q#21: With respect to creditor "fair share" payments:

1. Direct payments to organization

Q#22: With respect to the Office of the United States Trustee (Bankruptcy Trustee):

1. The organization applied to the Office of the U.S. Trustee to be certified provider of credit counseling under the new bankruptcy act in mid-October 20XX.

Operation of ORG activities

Per a telephone conversation with President on April 11, 20XX, President said that he would agree to terminate ORG because of its inactivity. President mentioned that ORG was inactive since its inception and expected ORG to be inactive in the future. ORG does not have any books or records (no income or expenses to report). There are no employees; the officers are all

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volunteers. President is looking into changing the name of ORG to a name that would not have the word "credit counseling" or perhaps forming another organization. Currently, ORG is using CO-1 to answer telephone calls for ORG. Subsequent to the telephone conversation with President, the agent issued Information Document Request (IDR) # 0001. In that IDR, the agent asked for documentation to affirm that ORG was no longer in business. President responded to IDR #0001 in a letter of May 13, 20XX. In the letter, President stated that ORG was not dissolved and thus, the documentation requested was not submitted.

IDR #0002 was issued to ORG on May 22, 20XX. The IDR was to advise ORG of an examination of ORG books and records at Address, City, State on June 19, 20XX. The IDR also asked ORG to provide various documents to verify the organization's operations and record keeping compliance.

The on-site examination took place on June 19, 20XX with President. The documentation provided by President was the following: 1) copies of a part of the Form 1023 application, 2) the determination letter, and 3) a State of State annual report for January 1, 20XX. No other information was provided.

During the initial interview, President stated that he did not want to terminate or revoke ORG. President stated that he is the only active officer/counselor in the organization. He stated that he conducts credit counseling sessions to about 3 or 4 individuals a month; his focus is on individuals that are undergoing some sort of mortgage troubles, i.e., homeowners in distress and first-time homebuyers. President also stated to have conducted credit counseling sessions primarily at his home and close by towns in his neighborhood (NEIGHBORHOOD) and around town such as State City and downtown. During his counseling sessions he would go over their budgets and either suggests doing short sales or moving to apartment complexes. President stated that he also conducted counseling sessions verbally, with no handouts given to clients. In ORG's response to the IRS letter of October 3, 20XX, President offered the following statement with respect to the termination of ORG:

"True—I was trying to emphasize the importance of what I believe is a viable ORG, in terms of Home Owner Counseling. I believe you noted in this paragraph that I said ' I did NOT want to terminate ORG'. I also pointed out that it is inactive only in the concept that it receives no income, has no paid employees, (all persons are volunteers) and all expenses are paid by myself, ie: office supplies, travel, etc. In this way I can provide some sort of service to needy homeowners."

President also made the following statement with respect to the termination of ORG:

"...I would rather NOT terminate ORG because it becomes more and more evident that the 'home owners' and consumers whom I usually counsel are becoming more and more anxious about their ability to pay their mortgages. "

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President went on to say that ORG has no income, no DMP, no expenditures. He claimed that if there were expenditures, it would be paid out of his own pocket. ORG used to operate its business at the Address address for several years. Now he conducts his business either at his home or at his client's home. ORG ran ads in the yellow pages to solicit clients. President also operates another business, a for-profit business called CO-2 President has a real estate broker license and about 3 real estate agents working under him. In ORG's response to the IRS letter of October 3, 20XX, President stated that he no longer runs ads in the yellow pages. President stated the officers and board members of ORG are:

President, President and counselor
V.P., Vice-President
Treasurer, Secretary/Treasurer.

President stated that his duties included credit counseling, meeting with the board once a year, as well as operating and managing ORG. President confirmed that V.P. and Treasurer have no actual interactions with the organization, solely being additional names present on a list of directors. V.P. and Treasurer are not related to President. V.P. is an insurance agent and Treasurer teaches at a university. President is the only counselor for ORG.

During the initial interview, President stated that he obtains clients through referrals from previous clients, friends, and clients in real estate dealings. On occasion, President would give out the CO-1 telephone number (another credit counseling service) to his clients as a referral.

In ORG's response to the IRS letter of October 3, 20XX, President offered the following statement with respect to relationship with CO-1:

"...CO-1 is a 501(c)(3), non-profit corporation. However, it is not a part of ORG or ORG. I do not know, nor should I comment on 'CO-1'. I am not familiar with CO-1, their Board of Directors, or Officers. I do not believe I intended to, nor would I say that 'CO-1' took over 'ORG'. CO-1 Educational is a separate corporation, incorporated under the laws of the State of State and recognized by the IRS as a 501(c)(3) organization with it's own board of Directors and Officers, of which RA-1 is neither on their Board of Directors or an officer."

Research of CO-2 disclosed that the corporation was no longer in business and the officer listed was not President. Additionally, research revealed President's association with CO-3 The State Secretary of State web site for CO-3 shows that the corporation is a domestic for-profit corporation, incorporated December 16, 19XX. The corporation was rated as active and in good standing. The description of its purpose was "real estate sales and development". The mailing address shown was Address, City, State, telephone number PHONE. The registered agent's name was President. The officers listed were President, President; RA-1, Vice-President; RA-2, Secretary/Treasury.

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President also provided a copy of the State of State annual report for January 1, 20XX. The annual report shows the following:

- Name and address of organization: ORG, Address, City, State.
- Description of actual activity: “(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems”.
- Registered agent’s name and address: President, Address, City, State.
- The officers/directors name: President—President/Director; V.P.—Vice-president/Director; Treasurer—Secretary/Treasurer/Director.

Form 990, Return of Organization Exempt From Income Tax

IRS records indicate that ORG did not file Form 990 for the period under examination or for prior and subsequent years.

Related organization

At or about the same time, President also submitted an application for ORG (“State Credit”) under Code section 501(c)(3). State Credit’s exemption under section 501(c)(3) was revoked by the IRS in September 20XX. In correspondence of October 23, 20XX, President offered the following statement with respect to the relationship with State Credit, where “ORG” refers to ORG and “ORG” refers to ORG:

“ORG applied for it’s 501(c)(3) in 19XX and it was approved. It was not until many years later that it received an adverse ruling from the IRS. ORG was not restarted; it went ahead with the 501(c)(4) recommendation only to find out, as you stated, the credit granters did, in effect, not recognize a 501(c)(4) because they were only familiar with 501(c)(3) organizations. Thus, we receive no DMP funds and lacked operating funds. “

ORG Web site:

State Credit web site was reviewed at website. A copy of the home page was printed and shown as Exhibit A. According to exhibit A, the opening page of the web site contains the introduction heading, “ORG” below the heading the statement, “Welcome to ORG!” was displayed. After the introduction heading, the following statement was displayed:

ORG (ORG) is a non-profit community service offering:

- *Free confidential personal stewardship counseling, education, debt management programs and negotiating with creditors in eliminating debt in the fastest time period possible.*

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- *Free budget, credit, debt, financial and, housing counseling with a bonded, certified, licensed professional.*

Our consumer advocates are here to help!

- *Lower interest rates, fees and monthly payments*
- *Credit reports and evaluation*
- *Establish budget and financial goals*
- *Stop collection calls/harassment*
- *Pay off debts in the fastest time period possible*
- *Automatic bill payment*
- *Settle accounts for as low as 50%*
- *Money management education*
- *Debt consolidation*

On the same page, the web site showed the address and telephone number for contact information as follows:

*Address
City, State
Tel: Fax:
Toll free:*

Research of State Credit was also conducted at the State Secretary of State web site. According to the State Secretary of State web site, ORG is a domestic nonprofit corporation incorporated November 9, 19XX. The corporate status is shown as "active". The stated purpose of the organization was reported as "comprehensive credit counseling education & establishing voluntary debt repayment programs". The mailing address was reported at Address, City, State. The registered agent's name and address was President, Address, City, State. The officers listed are President-- President, Stratford Whiting-- Vice-president, Treasurer--Secretary, and V.P.-- Treasurer

Law

Section 501(q) of the Internal Revenue Code establishes standards that a credit counseling organization must satisfy for exemption under section 501(c)(3) or section 501(c)(4), as follows:

1. the organization provides credit counseling services tailored to the specific needs and circumstances of consumers,
2. the organization makes no loans to debtors and does not negotiate the making of loans on behalf of debtors,
3. the organization provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

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4. the organization does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
5. the organization does 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.
6. the organization establishes and implements a fee policy which requires that any fees charged to a consumer for services are reasonable, allows for the waiver of fees if the consumer is unable to pay, and except to the extent allowed by State law, prohibits charging 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 the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
7. at all times the organization has a board of directors or other governing body which is 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,
8. not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities, and
9. not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities.
10. the organization does not own more than 35 percent of the total combined voting power of any corporation, the profits interest of any partnership which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payments processing, or similar services, and
11. 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.

The credit counseling provision of the Pension Protection Act of 2006 defines credit counseling services as:

Credit counseling services are 1) the provision of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; 2) the assisting of individuals and families with financial problems by providing them with counseling; or 3) any combination of such activities.

The provision defines debt management plan services as:

Debt management plan services are services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

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501(c)(4) of the Code provides, in part, for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated to bring about civic betterment and social improvements.

Treas. Reg. 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

The regulations require that an organization claiming exemption under 501(c)(4) of the Code must operate for the benefit of the community as a whole rather than for the benefit of a limited group. Compare Rev. Rul. 78-69, 1978-1 C.B. 156, which holds that an organization providing rush hour commuter bus service to all residents of a community qualifies for exemption under 501(c)(4), with Rev. Rul. 55-311, 1955-1 C.B. 72, which holds that a local association of employees operating a bus primarily for the convenience of its members does not so qualify. Also compare Rev. Rul. 62-167, 1962-2 C.B. 142, which holds that an organization retransmitting television signals for the benefit of an entire community qualifies for exemption under 501(c)(4), with Rev. Rul. 54-394, 1954-2 C.B. 131, which holds that an organization providing television on a cooperative basis does not qualify.

Additionally, Erie Endowment v. United States, 316 2d 151, 1963, holds that a nonprofit corporation formed to obtain and operate a low-cost housing cooperative was held not to be a civic league or social welfare organization because it did not offer a program of service to benefit the community-at-large.

Rev. Rul. 78-50, 1978-1 CB 155, (Jan. 01, 1978), states in part, that a nonprofit organization that processes consumer complaints concerning products and services provided by business establishments, meets with the parties involved to encourage resolution of the problem, recommends a fair solution and, if the proposed solution is not accepted, informs the parties about appropriate judicial or administrative bodies that may be used to resolve the disputes qualifies for exemption under 501(c)(4) of the Code.

Rev. Rul. 65-299, 1965-2 C.B. 165, states in part, that a nonprofit organization that was formed to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy in the community qualifies as a social welfare organization under section 501(c)(4) of the Code.

Rev. Proc. 2007-52, with respect to revocation or modification of a determination, states in part, the revocation or modification of a determination letter or ruling recognizing exemption may be

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retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which section 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization.

In Credit Counseling Centers v. S. Portland, 814 A.2d 458 (S. C. Me. 2002), the Supreme Court of Maine denied state tax exemption to a credit counseling agency that provided significant benefits to creditors. Credit card companies commonly make payments to credit counseling agencies of a portion of the funds they receive from clients of the agencies. These payments are known as “fair share” payments and are a source of substantial funding for credit counseling agencies. In this case, the credit counseling agency received 60 percent of its income from “fair share” payments from credit card companies, at the rate of 8.5% to 9% of debt payments.

Taxpayer’s position

ORG will be allowed 30 days to review the examination report and respond.

Government’s position

Based on the information provided by ORG, we conclude that ORG is not operated for an exempt purpose as described in 501(c)(4). For an organization to be exempt under 501(c)(4), it must be organized and operated exclusively for the promotion of social welfare. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501(q) of the Internal Revenue Code sets restrictions on who may serve on the governing board of a credit counseling organization. This includes public officials, community leaders, and persons having special knowledge or expertise in credit or financial education. No more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially in any other way.

ORG does not have a board of directors or a governing body that is controlled by persons who represent a broad interest of the public, such as public officials acting in their capacities such as persons having special knowledge or expertise in credit or financial education, and community leaders.

ORG has not established that its operated for the common good and general welfare of the people of the community. During the course of the examination, it was noted that ORG submitted conflicting information concerning the actual activities of the organization. In the initial interview, President claimed that the services offered by ORG were counseling to distressed homeowners and first-time homebuyers.

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ORG's Articles of Incorporation, application for exemption, and information provided on Form 13770, stated ORG's activities as providing counseling in personal stewardship, education in debt management programs, and negotiating with creditors in eliminating debt. The evidence suggests that ORG has been inactive since its inception.

The State Secretary of State web site reported the status of the organization as "(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems". However, President, claimed that the organization is only inactive to the extent that the organization *"receives no income, has no paid employees, (all persons are volunteers) and all expenses are paid by myself, ie: office supplies, travel, etc. In this way I can provide some sort of service to needy homeowners."*

The organization has no employees and no operating funds. The volunteer officers as indicated in its application and to the Secretary of State are also inactive except for President. President claimed to be the only active officer and the only counselor. It appears that President is operating ORG in a manner similar to a sole proprietorship business than a corporation. Moreover, the organization does not have or distribute newsletters, newspaper articles, advertisements, brochures, pamphlets, or maintain financial statements to show its operations. Accordingly, ORG has not established that it has maintained a traditional business model such as maintaining records, hiring employees, or maintaining a formal office.

The regulations require that an organization claiming exemption under 501(c)(4) of the Code must operate for the benefit of the community as a whole rather than for the benefit of a limited group. Compare Rev. Rul. 78-69, 1978-1 C.B. 156, which holds that an organization providing rush hour commuter bus service to all residents of a community qualifies for exemption under section 501(c)(4), with Rev. Rul. 55-311, 1955-1 C.B. 72, which holds that a local association of employees operating a bus primarily for the convenience of its members does not so qualify. Also compare Rev. Rul. 62-167, 1962-2 C.B. 142, which holds that an organization retransmitting television signals for the benefit of an entire community qualifies for exemption under section 501(c)(4), with Rev. Rul. 54-394, 1954-2 C.B. 131, which holds that an organization providing television on a cooperative basis does not qualify.

Additionally, Erie Endowment v. United States, 316 2d 151, 1963, holds that a nonprofit corporation formed to obtain and operate a low-cost housing cooperative was held not to be a civic league or social welfare organization because it did not offer a program of service to benefit the community-at-large. The concept of social welfare includes the provision of benefits to the community at large. The providing of benefits to a narrow group of recipients, in most cases, is not considered as promoting social welfare.

It is the government's position that the ORG operation is in a manner that is materially different from that represented in its application for exemption. In ORG's application for exemption, signed under penalties of perjury of August 20XX, ORG represented that it was *"a community service organization providing budget, credit, debt counseling, stewardship and repayment programs. To*

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provide counseling to families and individual who have credit/debt problems; to include assistance in developing and utilization of a plan for liquidation of debts; to promote educational programs and tools dealing with the wise and unwise use of credit, budgeting, and money management. These activities were initiated in March 20XX at Address, City, State, provided by counselors at ORG."

Revocation of a determination letter may be retroactive if the organization operated in a manner materially different from that originally represented. Rev. Proc. 20XX-52, Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01.

On the Form 13770 questionnaire, ORG listed their internet site address as website; however, after inspecting that site, it was determined that the site refers to ORG as the provider of credit counseling and debt solutions. The web site provided complete details on the services offered by ORG. IRS records indicate that the ORG had its exempt status revoked in February 20XX.

According to the ORG website for 20XX and 20XX, the services offered were the following:

- *Free confidential personal stewardship counseling, education, debt management programs and negotiating with creditors in eliminating debt in the fastest time period possible.*
- *Free budget, credit, debt, financial and, housing counseling with a bonded, certified, licensed professional*

The website further advertised that the organization can help in the following ways:

- *Lower interest rates, fees and monthly payments*
- *Credit reports and evaluation*
- *Establish budget and financial goals*
- *Stop collection calls/harassment*
- *Pay off debts in the fastest time period possible*
- *Automatic bill payment*
- *Settle accounts for as low as 50%*
- *Money management education*
- *Debt consolidation*

The web site also showed the address of Address, City, State
Telephone # Fax: #Toll Free: #.

Based on the information submitted, it appears that ORG is operating as State Credit, which was revoked by the IRS in February 20XX. The web site address given by ORG was that of State Credit's web site address. The officers and board listed on the application for exemption and State Secretary of State are the same as State Credit. Moreover, the services and purposes

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stated for ORG are those of State Credit. ORG is continuing on the operations of State Credit even though State Credit was revoked by the IRS in February 20XX.

In the organization's correspondence of March 17, 20XX to the IRS, ORG enclosed a copy of State Credit's Form 990 return along with completed Form 13770. A review of the completed Form 13770 disclosed the following information:

- President wrote in the name of the organization as "ORG" and employer identification number EIN.
- President responded to "yes" to have a web site and wrote in the ORG website as website.
- Provided the organization service as consumer credit counseling services, debt management services, and debt negotiation services. The organization offered education and/or counseling consumers, in person, writing, or using electronic means; helping consumers consolidate debts; negotiating with creditors on behalf of consumers to lower interest rates, waive fees, adjust balances, or restore acceptable credit ratings.
- The educational material, outreach, and credit counseling activities were the same activities as ORG.
- With respect to governance, the organization stated that it is governed by a community-based board that includes significant representation by religious organizations, civic groups, labor unions, educational institutions and business groups. The organization also marked that it is governed by a board that has no familial or business relationships and is independent of creditors, contractors, employees or others with a financial interest in the organization.
- With respect to governance--governing board information, the organization stated that there are 5 governing board members, no governing board members are compensated, 3 board members with backgrounds in personal finance, 1 board member with background in education, and 2 in nonprofit organizations.

A review of the return revealed that the return was signed by President on March 12, 20XX and the officers listed were the same as ORG. A review of the cover letter attached to the correspondence disclosed the State Credit logo, address, telephone number, and operating hours were the same as ORG. The State Credit logo on the letterhead showed as follows:

ORG
A Comprehensive Credit Counseling Service
Non-Profit Organization

Conclusion

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In order to qualify for exemption under 501(c)(4) an organization must be both organized and operated to achieve a purpose that is described under that Code section. ORGs has failed to demonstrate that it is operated in accordance with Internal Revenue Code 501(c)(4) and 501(q) governing qualification for tax exemption under the Code. Accordingly, the tax-exempt status of ORG as an organization described in 501(c)(4) of the Code should be revoked.

ORG is required to file income tax returns on Form 1120 for all years beginning after December 31, 20XX.

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LEGEND

ORG = Organization name XX = Date Address = address City = city State = state
 Phone = phone website = website President = president V.P. = V.P.
 Treasurer = treasures RA-1, RA-2 & RA-3 = 1ST, 2ND & 3RD RA CO-1, CO-2 & CO-3 = 1ST, 2ND & 3RD COMPANIES

Issues

Whether ORG (“ORG”) qualifies for exemption under 501(c)(4) of the Internal Revenue Code (“Code”).

1. ORG’s primary activity is not operated in a manner designed to further 501(c)(4) purposes.
2. ORG has not established that it is observing the conditions for continuation of its exempt status as required under 501(c)(4) and Rev. Proc. 20XX-52.

Facts

History overview

ORG was recognized as a tax-exempt organization on August 29, 20XX under 501(c)(4) of the Code. ORG originally applied for tax-exemption under Code 501(c)(3). During the application process, ORG was notified by the Determination Specialist that the organization’s operations would better qualify under 501(c)(4). ORG agreed to be recognized under 501(c)(4).

ORG filed its Articles of Incorporation on March 8, 20XX. The purpose of the organization as enumerated in its Articles of Incorporation was to “provide assistance to individuals or families in the resolution of credit/debt problems”. The Articles of Incorporation reported the principal office of ORG as Address, City, State. The Articles of Incorporation also show that the original officers included President--President; V.P.--Vice-President; Treasurer--Secretary/Treasurer.

The State Secretary of State web site reported ORG’s stated purpose as “(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems”. ORG was incorporated on March 8, 20XX, its mailing address shown as Address, City, State, with the registered agent’s name of President, address of Address, City, State. The officers listed included President--President, V.P.--Vice-President, Treasurer--Secretary/Treasurer.

As confirmed by President, ORG started to operate its debt management plan (DMP) program as its primary activity under Code section 501(c)(4). However, business was not picking up, especially with the credit card companies who traditionally paid fair share, who primarily deal with 501(c)(3) organizations. The organization became inactive. In correspondence of October 23, 20XX, President added the following statement with respect to the ORG being inactive:

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"...because of a lack of funding by the credit grantors and no grants or DMPs, we decided not to expand our operations".

Application for Recognition of Exemption (Form 1023 & Form 1024)

ORG originally applied for tax-exemption under Code 501(c)(3). During the application process, ORG was notified by the Determination Specialist that the organization's operations would better qualify under Code 501(c)(4). ORG agreed to be recognized under Code 501(c)(4) on August 9, 20XX.

On August 29, 20XX, based on the information that ORG provided in its application for exemption and on the assumption that ORG would operate in the manner represented in its application, ORG was recognized as a tax-exempt organization described in 501(c)(4).

In the application, ORG described its activities and operational information as follows.

1. ORG described its past, present and planned activities as follows:

ORG is a community service organization providing budget, credit, debt counseling, stewardship and repayment programs. To provide counseling to families and individual who have credit/debt problems; to include assistance in developing and utilization of a plan for liquidation of debts; to promote educational programs and tools dealing with the wise and unwise use of credit, budgeting, and money management. These activities were initiated in March 20XX at Address, City, State, provided by counselors at ORG.

2. ORG described its source of financial support as follows:

Contributions and donations.

3. ORG listed the following individuals as officers or directors:

- *President—President/Director*
- *V.P.---Vice President/Director*
- *Treasurer—Secretary/Treasurer/Director*

The address of President was shown as Address, City, State and the address of ORG as Address, City, State, telephone numbers PHONE and PHONE.

ORG responded to the Determination Specialist's letter of June 25, 20XX as follows with regard to their stated purpose:

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"Please note ORG was incorporated as a 'not for profit' community service organization for the sole purpose of budget, credit, debt and financial education, and repayment programs and to teach consumers about the wise use of money and stewardship."

Form 13770, Credit Counseling and Form 990 Filing Requirement Questionnaire

IRS correspondence dated February 23, 20XX, and April 8, 20XX, was issued to ORG to conduct a compliance check with regard to the organization's credit counseling operation for the tax year ended December 31, 20XX. In the correspondence, the IRS requested ORG to complete Form 13770, *Credit Counseling and Form 990 Filing Requirement Questionnaire*. ORG responded to the correspondence in a letter dated March 17, 20XX. As part of the response, ORG enclosed a copy of the Form 990 return for ORG. The return was signed by President on March 12, 20XX. It was noted that the cover letter had the ORG logo, address, telephone number, and operating hours. The address shown was Address, City, State, telephone # PHONE, with operating hours of 8:30 – 5:00. The ORG logo on the letterhead showed as follows:

ORG
A Comprehensive Credit Counseling Service
Non-Profit Organization

The completed Form 13770 was signed by President, President, on March 17, 20XX. ORG responded to the Form 13770 questionnaire as shown below.

Part I, Organization:

President wrote in the name of the organization as "ORG" and the employer identification number of EIN.

Part II, Not required to file Form 990:

President wrote in "N/A".

Part III, Operation:

Q #1: Responded "yes" to having a web site. Provided the web site address of: website.

Q#2: Responded to having provided the following services: Consumer credit counseling services, debt management services, and debt negotiation services.

Q#3: Responded to having the following activities with respect to Q#2:
Education and/or counseling consumers, in person, in writing, or using electronic means;
Helping consumers consolidate debts; negotiating with creditors on behalf of consumers to lower interest rates, waive fees, adjust balances, or restore acceptable credit ratings.

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Part IV, Consumer Credit Counseling/Debt Management Credit Repair/Debt Negotiation Services:

Q#1: Stated that the organization's services are available to everyone, regardless of income or assets.

Q#2: Fee structure are reduced or waived in hardship situations or because of client's inability to pay.

Q#3: In counseling sessions, counselors are asked each person to provide detailed information about the following:

1. The type, amount and source of all income(current and future)
2. Assets
3. Monthly and annual expenses
4. Secured debt such as mortgages and car loans
5. Unsecured debt, including student loans and credit cards
6. Other liabilities such as child support, alimony and tax liabilities
7. Employment
8. Significant expenditures
9. Buying habits
10. Past or anticipated changes in earnings, assets, expenses and liabilities, including the reason or cause for those changes
11. Health and other life issues that may affect the individual's financial situations

Q#4: In counseling sessions, counselors present clients with the following options to address debt problems:

1. Negotiating directly with creditors on payment or interest rate relief
2. Mechanics and advantages of creating and maintaining a budget
3. Changing buying habits or strategies for saving money
4. Custom-designed self-administered payment plans
5. Enrolling in debt management plans (DMPs)
6. Filing for bankruptcy
7. Other—referral for homeless shelter, mental health, food bank, social service
8. Counselors discuss the advantages and disadvantages of each of the options checked above
9. Counselors offer written materials on budgeting and managing personal finances

Q#5: In counseling sessions, the following was marked as criteria for recommendations:

1. Counselors analyze all information before making recommendations
2. Counselors use objective criteria when recommending any options in Q#2 above that best meet the client's individual needs, goals and circumstances.

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Q#6: In counseling sessions, the following was marked with respect to referrals:

1. Counselors provide specific and appropriate referrals to social service organizations for appropriate support services when they identify problems such as unemployment, lack of training, substance abuse, literacy or psychological issues.

Q#7: In counselor education and training, the following was marked:

1. Counselors receive comprehensive training in counseling skills, personal finance, budgeting, and credit and debt management in live or interactive training sessions and through detailed written manuals.
2. Counselors are trained on how to develop options and recommendations that address the particular circumstances of each client.
3. Counselors are trained to identify underlying personal problems such as illness, job loss, or suicide risk that may contribute to financial problems, and on making appropriate referrals.
4. Counselors are evaluated on how thoroughly and effectively they develop and present options to match the particular circumstances of each client.

Q#8: In outreach and advertising, use of website, educational pages can be accessed without providing contact information was marked.

Q#9: In outreach and advertising, content of advertising, the organization marked the box that state the advertising mentions DMPs as one option for addressing debt problems, not as a universal solution.

Q#10: In outreach and advertising, referrals, the organization marked the box that state the organization receives potential clients from referral by employers, union leaders, clergy and/or community organizations.

Q#11: In governance, the organization marked the following:

1. The organization is governed by a community-based board that includes significant representation by religious organizations, civic groups, labor unions, educational institutions and business groups.
2. The organization is governed by a board that has no familial or business relationships and is independent of creditors, contractors, employees or others with a financial interest in the organization.

Q#12: In governance, governing board information, the organization state that there are

1. 5 governing board members
2. No governing board members are compensated

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- 3 board members with backgrounds in personal finance, 1 board member with background in education, and 2 in nonprofit organizations.

Q#13: With respect to educational materials/seminars:

- The organization offers seminars taught by qualified instructors that are designed to meet the current needs of financially stressed individuals.
- The organization distributes publications concerning financial management, budgeting, and credit.
- Seminars are open and advertised to the public.
- The website contains educational materials that are readily accessible to the public.
- All clients are provided with educational materials that will assist them with budgeting and their financial management goals, whether they choose to receive additional counseling or purchase additional services such as a DMP.
- All DMP and payment-plan clients are assigned a counselor who provides counseling and support during the plan.
- Clients who do not choose DMP services are offered continuing educational opportunities and help with budgeting.

Q#14: With respect to services provided:

- Educational services
- Counseling services
- Advertising, mass mailing and/or telephone solicitations
- Administrative services to manage DMPs, such as processing client payments and disbursing the funds, resolving credit card payment problems, and negotiating "Fair Share" with creditors.

Q#21: With respect to creditor "fair share" payments:

- Direct payments to organization

Q#22: With respect to the Office of the United States Trustee (Bankruptcy Trustee):

- The organization applied to the Office of the U.S. Trustee to be certified provider of credit counseling under the new bankruptcy act in mid-October 20XX.

Operation of ORG activities

Per a telephone conversation with President on April 11, 20XX, President said that he would agree to terminate ORG because of its inactivity. President mentioned that ORG was inactive since its inception and expected ORG to be inactive in the future. ORG does not have any books or records (no income or expenses to report). There are no employees; the officers are all

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volunteers. President is looking into changing the name of ORG to a name that would not have the word "credit counseling" or perhaps forming another organization. Currently, ORG is using CO-1 to answer telephone calls for ORG. Subsequent to the telephone conversation with President, the agent issued Information Document Request (IDR) # 0001. In that IDR, the agent asked for documentation to affirm that ORG was no longer in business. President responded to IDR #0001 in a letter of May 13, 20XX. In the letter, President stated that ORG was not dissolved and thus, the documentation requested was not submitted.

IDR #0002 was issued to ORG on May 22, 20XX. The IDR was to advise ORG of an examination of ORG books and records at Address, City, State on June 19, 20XX. The IDR also asked ORG to provide various documents to verify the organization's operations and record keeping compliance.

The on-site examination took place on June 19, 20XX with President. The documentation provided by President was the following: 1) copies of a part of the Form 1023 application, 2) the determination letter, and 3) a State of State annual report for January 1, 20XX. No other information was provided.

During the initial interview, President stated that he did not want to terminate or revoke ORG. President stated that he is the only active officer/counselor in the organization. He stated that he conducts credit counseling sessions to about 3 or 4 individuals a month; his focus is on individuals that are undergoing some sort of mortgage troubles, i.e., homeowners in distress and first-time homebuyers. President also stated to have conducted credit counseling sessions primarily at his home and close by towns in his neighborhood (NEIGHBORHOOD) and around town such as State City and downtown. During his counseling sessions he would go over their budgets and either suggests doing short sales or moving to apartment complexes. President stated that he also conducted counseling sessions verbally, with no handouts given to clients. In ORG's response to the IRS letter of October 3, 20XX, President offered the following statement with respect to the termination of ORG:

"True—I was trying to emphasize the importance of what I believe is a viable ORG, in terms of Home Owner Counseling. I believe you noted in this paragraph that I said ' I did NOT want to terminate ORG'. I also pointed out that it is inactive only in the concept that it receives no income, has no paid employees, (all persons are volunteers) and all expenses are paid by myself, ie: office supplies, travel, etc. In this way I can provide some sort of service to needy homeowners."

President also made the following statement with respect to the termination of ORG:

"...I would rather NOT terminate ORG because it becomes more and more evident that the 'home owners' and consumers whom I usually counsel are becoming more and more anxious about their ability to pay their mortgages. "

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President went on to say that ORG has no income, no DMP, no expenditures. He claimed that if there were expenditures, it would be paid out of his own pocket. ORG used to operate its business at the Address address for several years. Now he conducts his business either at his home or at his client's home. ORG ran ads in the yellow pages to solicit clients. President also operates another business, a for-profit business called CO-2 President has a real estate broker license and about 3 real estate agents working under him. In ORG's response to the IRS letter of October 3, 20XX, President stated that he no longer runs ads in the yellow pages. President stated the officers and board members of ORG are:

President, President and counselor
V.P., Vice-President
Treasurer, Secretary/Treasurer.

President stated that his duties included credit counseling, meeting with the board once a year, as well as operating and managing ORG. President confirmed that V.P. and Treasurer have no actual interactions with the organization, solely being additional names present on a list of directors. V.P. and Treasurer are not related to President. V.P. is an insurance agent and Treasurer teaches at a university. President is the only counselor for ORG.

During the initial interview, President stated that he obtains clients through referrals from previous clients, friends, and clients in real estate dealings. On occasion, President would give out the CO-1 telephone number (another credit counseling service) to his clients as a referral.

In ORG's response to the IRS letter of October 3, 20XX, President offered the following statement with respect to relationship with CO-1:

"...CO-1 is a 501(c)(3), non-profit corporation. However, it is not a part of ORG or ORG. I do not know, nor should I comment on 'CO-1'. I am not familiar with CO-1, their Board of Directors, or Officers. I do not believe I intended to, nor would I say that 'CO-1' took over 'ORG'. CO-1 Educational is a separate corporation, incorporated under the laws of the State of State and recognized by the IRS as a 501(c)(3) organization with it's own board of Directors and Officers, of which RA-1 is neither on their Board of Directors or an officer."

Research of CO-2 disclosed that the corporation was no longer in business and the officer listed was not President. Additionally, research revealed President's association with CO-3 The State Secretary of State web site for CO-3 shows that the corporation is a domestic for-profit corporation, incorporated December 16, 19XX. The corporation was rated as active and in good standing. The description of its purpose was "real estate sales and development". The mailing address shown was Address, City, State, telephone number PHONE. The registered agent's name was President. The officers listed were President, President; RA-1, Vice-President; RA-2, Secretary/Treasury.

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President also provided a copy of the State of State annual report for January 1, 20XX. The annual report shows the following:

- Name and address of organization: ORG, Address, City, State.
- Description of actual activity: "(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems".
- Registered agent's name and address: President, Address, City, State.
- The officers/directors name: President—President/Director; V.P.—Vice-president/Director; Treasurer—Secretary/Treasurer/Director.

Form 990, Return of Organization Exempt From Income Tax

IRS records indicate that ORG did not file Form 990 for the period under examination or for prior and subsequent years.

Related organization

At or about the same time, President also submitted an application for ORG ("State Credit") under Code section 501(c)(3). State Credit's exemption under section 501(c)(3) was revoked by the IRS in September 20XX. In correspondence of October 23, 20XX, President offered the following statement with respect to the relationship with State Credit, where "ORG" refers to ORG and "ORG" refers to ORG:

"ORG applied for it's 501(c)(3) in 19XX and it was approved. It was not until many years later that it received an adverse ruling from the IRS. ORG was not restarted; it went ahead with the 501(c)(4) recommendation only to find out, as you stated, the credit granters did, in effect, not recognize a 501(c)(4) because they were only familiar with 501(c)(3) organizations. Thus, we receive no DMP funds and lacked operating funds. "

ORG Web site:

State Credit web site was reviewed at website. A copy of the home page was printed and shown as Exhibit A. According to exhibit A, the opening page of the web site contains the introduction heading, "ORG" below the heading the statement, "Welcome to ORG!" was displayed. After the introduction heading, the following statement was displayed:

ORG (ORG) is a non-profit community service offering:

- *Free confidential personal stewardship counseling, education, debt management programs and negotiating with creditors in eliminating debt in the fastest time period possible.*

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- *Free budget, credit, debt, financial and, housing counseling with a bonded, certified, licensed professional.*

Our consumer advocates are here to help!

- *Lower interest rates, fees and monthly payments*
- *Credit reports and evaluation*
- *Establish budget and financial goals*
- *Stop collection calls/harassment*
- *Pay off debts in the fastest time period possible*
- *Automatic bill payment*
- *Settle accounts for as low as 50%*
- *Money management education*
- *Debt consolidation*

On the same page, the web site showed the address and telephone number for contact information as follows:

*Address
City, State
Tel: Fax:
Toll free:*

Research of State Credit was also conducted at the State Secretary of State web site. According to the State Secretary of State web site, ORG is a domestic nonprofit corporation incorporated November 9, 19XX. The corporate status is shown as "active". The stated purpose of the organization was reported as "comprehensive credit counseling education & establishing voluntary debt repayment programs". The mailing address was reported at Address, City, State. The registered agent's name and address was President, Address, City, State. The officers listed are President-- President, Stratford Whiting-- Vice-president, Treasurer--Secretary, and V.P.-- Treasurer

Law

Section 501(q) of the Internal Revenue Code establishes standards that a credit counseling organization must satisfy for exemption under section 501(c)(3) or section 501(c)(4), as follows:

1. the organization provides credit counseling services tailored to the specific needs and circumstances of consumers,
2. the organization makes no loans to debtors and does not negotiate the making of loans on behalf of debtors,
3. the organization provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and

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4. the organization does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
5. the organization does 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.
6. the organization establishes and implements a fee policy which requires that any fees charged to a consumer for services are reasonable, allows for the waiver of fees if the consumer is unable to pay, and except to the extent allowed by State law, prohibits charging 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 the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
7. at all times the organization has a board of directors or other governing body which is 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,
8. not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities, and
9. not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities.
10. the organization does not own more than 35 percent of the total combined voting power of any corporation, the profits interest of any partnership which is in the trade or business of lending money, repairing credit, or providing debt management plan services, payments processing, or similar services, and
11. 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.

The credit counseling provision of the Pension Protection Act of 2006 defines credit counseling services as:

Credit counseling services are 1) the provision of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; 2) the assisting of individuals and families with financial problems by providing them with counseling; or 3) any combination of such activities.

The provision defines debt management plan services as:

Debt management plan services are services related to the repayment, consolidation, or restructuring of a consumer's debt, and includes the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

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501(c)(4) of the Code provides, in part, for the exemption of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated to bring about civic betterment and social improvements.

Treas. Reg. 1.501(c)(4)-1(a)(2)(i) provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterments and social improvements.

The regulations require that an organization claiming exemption under 501(c)(4) of the Code must operate for the benefit of the community as a whole rather than for the benefit of a limited group. Compare Rev. Rul. 78-69, 1978-1 C.B. 156, which holds that an organization providing rush hour commuter bus service to all residents of a community qualifies for exemption under 501(c)(4), with Rev. Rul. 55-311, 1955-1 C.B. 72, which holds that a local association of employees operating a bus primarily for the convenience of its members does not so qualify. Also compare Rev. Rul. 62-167, 1962-2 C.B. 142, which holds that an organization retransmitting television signals for the benefit of an entire community qualifies for exemption under 501(c)(4), with Rev. Rul. 54-394, 1954-2 C.B. 131, which holds that an organization providing television on a cooperative basis does not qualify.

Additionally, Erie Endowment v. United States, 316 2d 151, 1963, holds that a nonprofit corporation formed to obtain and operate a low-cost housing cooperative was held not to be a civic league or social welfare organization because it did not offer a program of service to benefit the community-at-large.

Rev. Rul. 78-50, 1978-1 CB 155, (Jan. 01, 1978), states in part, that a nonprofit organization that processes consumer complaints concerning products and services provided by business establishments, meets with the parties involved to encourage resolution of the problem, recommends a fair solution and, if the proposed solution is not accepted, informs the parties about appropriate judicial or administrative bodies that may be used to resolve the disputes qualifies for exemption under 501(c)(4) of the Code.

Rev. Rul. 65-299, 1965-2 C.B. 165, states in part, that a nonprofit organization that was formed to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy in the community qualifies as a social welfare organization under section 501(c)(4) of the Code.

Rev. Proc. 2007-52, with respect to revocation or modification of a determination, states in part, the revocation or modification of a determination letter or ruling recognizing exemption may be

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retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which section 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization.

In Credit Counseling Centers v. S. Portland, 814 A.2d 458 (S. C. Me. 2002), the Supreme Court of Maine denied state tax exemption to a credit counseling agency that provided significant benefits to creditors. Credit card companies commonly make payments to credit counseling agencies of a portion of the funds they receive from clients of the agencies. These payments are known as “fair share” payments and are a source of substantial funding for credit counseling agencies. In this case, the credit counseling agency received 60 percent of its income from “fair share” payments from credit card companies, at the rate of 8.5% to 9% of debt payments.

Taxpayer’s position

ORG will be allowed 30 days to review the examination report and respond.

Government’s position

Based on the information provided by ORG, we conclude that ORG is not operated for an exempt purpose as described in 501(c)(4). For an organization to be exempt under 501(c)(4), it must be organized and operated exclusively for the promotion of social welfare. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.

Section 501(q) of the Internal Revenue Code sets restrictions on who may serve on the governing board of a credit counseling organization. This includes public officials, community leaders, and persons having special knowledge or expertise in credit or financial education. No more than 49 percent of the board may be employees of the organization, creditors, or those who will benefit financially in any other way.

ORG does not have a board of directors or a governing body that is controlled by persons who represent a broad interest of the public, such as public officials acting in their capacities such as persons having special knowledge or expertise in credit or financial education, and community leaders.

ORG has not established that its operated for the common good and general welfare of the people of the community. During the course of the examination, it was noted that ORG submitted conflicting information concerning the actual activities of the organization. In the initial interview, President claimed that the services offered by ORG were counseling to distressed homeowners and first-time homebuyers.

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ORG's Articles of Incorporation, application for exemption, and information provided on Form 13770, stated ORG's activities as providing counseling in personal stewardship, education in debt management programs, and negotiating with creditors in eliminating debt. The evidence suggests that ORG has been inactive since its inception.

The State Secretary of State web site reported the status of the organization as "(inactive) to counsel individuals with credit problems and contact their creditors to resolve the problems". However, President, claimed that the organization is only inactive to the extent that the organization *"receives no income, has no paid employees, (all persons are volunteers) and all expenses are paid by myself, ie: office supplies, travel, etc. In this way I can provide some sort of service to needy homeowners."*

The organization has no employees and no operating funds. The volunteer officers as indicated in its application and to the Secretary of State are also inactive except for President. President claimed to be the only active officer and the only counselor. It appears that President is operating ORG in a manner similar to a sole proprietorship business than a corporation. Moreover, the organization does not have or distribute newsletters, newspaper articles, advertisements, brochures, pamphlets, or maintain financial statements to show its operations. Accordingly, ORG has not established that it has maintained a traditional business model such as maintaining records, hiring employees, or maintaining a formal office.

The regulations require that an organization claiming exemption under 501(c)(4) of the Code must operate for the benefit of the community as a whole rather than for the benefit of a limited group. Compare Rev. Rul. 78-69, 1978-1 C.B. 156, which holds that an organization providing rush hour commuter bus service to all residents of a community qualifies for exemption under section 501(c)(4), with Rev. Rul. 55-311, 1955-1 C.B. 72, which holds that a local association of employees operating a bus primarily for the convenience of its members does not so qualify. Also compare Rev. Rul. 62-167, 1962-2 C.B. 142, which holds that an organization retransmitting television signals for the benefit of an entire community qualifies for exemption under section 501(c)(4), with Rev. Rul. 54-394, 1954-2 C.B. 131, which holds that an organization providing television on a cooperative basis does not qualify.

Additionally, Erie Endowment v. United States, 316 2d 151, 1963, holds that a nonprofit corporation formed to obtain and operate a low-cost housing cooperative was held not to be a civic league or social welfare organization because it did not offer a program of service to benefit the community-at-large. The concept of social welfare includes the provision of benefits to the community at large. The providing of benefits to a narrow group of recipients, in most cases, is not considered as promoting social welfare.

It is the government's position that the ORG operation is in a manner that is materially different from that represented in its application for exemption. In ORG's application for exemption, signed under penalties of perjury of August 20XX, ORG represented that it was *"a community service organization providing budget, credit, debt counseling, stewardship and repayment programs. To*

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provide counseling to families and individual who have credit/debt problems; to include assistance in developing and utilization of a plan for liquidation of debts; to promote educational programs and tools dealing with the wise and unwise use of credit, budgeting, and money management. These activities were initiated in March 20XX at Address, City, State, provided by counselors at ORG."

Revocation of a determination letter may be retroactive if the organization operated in a manner materially different from that originally represented. Rev. Proc. 20XX-52, Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01.

On the Form 13770 questionnaire, ORG listed their internet site address as website; however, after inspecting that site, it was determined that the site refers to ORG as the provider of credit counseling and debt solutions. The web site provided complete details on the services offered by ORG. IRS records indicate that the ORG had its exempt status revoked in February 20XX.

According to the ORG website for 20XX and 20XX, the services offered were the following:

- *Free confidential personal stewardship counseling, education, debt management programs and negotiating with creditors in eliminating debt in the fastest time period possible.*
- *Free budget, credit, debt, financial and, housing counseling with a bonded, certified, licensed professional*

The website further advertised that the organization can help in the following ways:

- *Lower interest rates, fees and monthly payments*
- *Credit reports and evaluation*
- *Establish budget and financial goals*
- *Stop collection calls/harassment*
- *Pay off debts in the fastest time period possible*
- *Automatic bill payment*
- *Settle accounts for as low as 50%*
- *Money management education*
- *Debt consolidation*

The web site also showed the address of Address, City, State
Telephone # Fax: #Toll Free: #.

Based on the information submitted, it appears that ORG is operating as State Credit, which was revoked by the IRS in February 20XX. The web site address given by ORG was that of State Credit's web site address. The officers and board listed on the application for exemption and State Secretary of State are the same as State Credit. Moreover, the services and purposes

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stated for ORG are those of State Credit. ORG is continuing on the operations of State Credit even though State Credit was revoked by the IRS in February 20XX.

In the organization's correspondence of March 17, 20XX to the IRS, ORG enclosed a copy of State Credit's Form 990 return along with completed Form 13770. A review of the completed Form 13770 disclosed the following information:

- President wrote in the name of the organization as "ORG" and employer identification number EIN.
- President responded to "yes" to have a web site and wrote in the ORG website as website.
- Provided the organization service as consumer credit counseling services, debt management services, and debt negotiation services. The organization offered education and/or counseling consumers, in person, writing, or using electronic means; helping consumers consolidate debts; negotiating with creditors on behalf of consumers to lower interest rates, waive fees, adjust balances, or restore acceptable credit ratings.
- The educational material, outreach, and credit counseling activities were the same activities as ORG.
- With respect to governance, the organization stated that it is governed by a community-based board that includes significant representation by religious organizations, civic groups, labor unions, educational institutions and business groups. The organization also marked that it is governed by a board that has no familial or business relationships and is independent of creditors, contractors, employees or others with a financial interest in the organization.
- With respect to governance--governing board information, the organization stated that there are 5 governing board members, no governing board members are compensated, 3 board members with backgrounds in personal finance, 1 board member with background in education, and 2 in nonprofit organizations.

A review of the return revealed that the return was signed by President on March 12, 20XX and the officers listed were the same as ORG. A review of the cover letter attached to the correspondence disclosed the State Credit logo, address, telephone number, and operating hours were the same as ORG. The State Credit logo on the letterhead showed as follows:

ORG
A Comprehensive Credit Counseling Service
Non-Profit Organization

Conclusion

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In order to qualify for exemption under 501(c)(4) an organization must be both organized and operated to achieve a purpose that is described under that Code section. ORGs has failed to demonstrate that it is operated in accordance with Internal Revenue Code 501(c)(4) and 501(q) governing qualification for tax exemption under the Code. Accordingly, the tax-exempt status of ORG as an organization described in 501(c)(4) of the Code should be revoked.

ORG is required to file income tax returns on Form 1120 for all years beginning after December 31, 20XX.