Internal Revenue Service
Appeals Office
1375 E. Ninth Street, Suite 815
Cleveland, OH 44114-1739

Release Number: **201139013**
Release Date: 9/30/2011
Date: June 29, 2011

Department of the Treasury

Person to Contact:

Employee ID Number:
Tel:
Fax:
Refer Reply to:

In Re:

Tax Period(s) Ended:

Form Required to be Filed:

Employer Identification Number:

UIL:
501.03-08

Certified Mail

Dear :

This is a final adverse determination as to your exempt status under section 501(a) of the Internal Revenue Code (IRC). It is determined that you do not qualify as exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code, effective January 1, 2001.

Our adverse determination was made for the following reason(s):

> You operate substantially for non-exempt purposes. You are not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. You should file these returns within 30 days from the date of this letter, unless a request for an extension of time is granted. File the returns in accordance with their instructions, and do not send them to this office. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of

Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217.

We will notify the appropriate State officials of this action, as required by Code section 6104(c). You should contact your state officials if you have any questions about how this determination may affect your state responsibilities and requirements.

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

Sincerely,

Karen A. Skinder

Karen A. Skinder
Appeals Team Manager

DEPARTMENT OF THE TREASURY
Internal Revenue Service

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

September 29, 2005

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 revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain 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.

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

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

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:

30 East 7th Street, Stop 1005 STP
Saint Paul, MN 55101
(651) 312-7999
(651) 312-7872-FAX

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,

R.C. Johnson
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A (Rev. January 1994)	Explanation of Items		Schedule No. or Exhibit
Name of Taxpayer **XXXXX**		Tax Identification Number XXXXX	Year/Period Ended XXXXX

Issue:

1. Whether XXXXX is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):

   a. Whether **XXXXX** is engaged primarily in activities that accomplish an exempt purpose?

   b. Whether more than an insubstantial part of **XXXXX**'s activities are in furtherance of a non-exempt purpose?

FACTS

Background

XXXXX was incorporated under the laws of the State of XXXXX as a non-stock, nonprofit corporation on XXXXX. XXXXX submitted organization's application for exemption (Form 1023) on XXXXX. Organization was determined to be exempt from federal income tax as an organization described in IRC Section 501(c)(3) in a determination letter dated XXXXX. A Foundation Follow-Up Letter 1050 was issued XXXXX that confirmed its exempt status under IRC Section 501(c)(3) and further defined as not being a private foundation under IRC 509(a)(2).

In its Articles of Incorporation, XXXXX stated its purpose is

2. To operate exclusively for charitable, scientific, literary or educational purposes, included but not limited to making gifts and contributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code of 1954, (or the corresponding provision of any amendment to the United States Internal Revenue Code).

3. To do and engage in any lawful activities that may be incidental or reasonably necessary to any of the foregoing purposes.

4. To provide that in all events and under all circumstances the following provisions apply:

C. This corporation shall never be operated for the primary purpose of carrying on a trade or business for a profit.

XXXXX prepared and filed its Articles of Incorporation on XXXXX with the XXXXX Secretary of State. XXXXX's Board of Directors / Officers consisted of four individuals: XXXXX, President, XXXXX, Director, XXXXX, Director, and XXXXX, Director.

XXXXX, was also original incorporated of XXXXX (XXXXX) as a for-profit corporation established XXXXX, which provided the same services as XXXXX XXXXX and XXXXX were stockholders of XXXXX, a C-Corporation and both worked for XXXXX

Additionally, XXXXX and XXXXX each owned a 30% and XXXXX owned 40% of XXXXX, an S-Corporation that provided software development and support for such programs as lead tracking, trust software to enable direct transfer of funds from clients to credit card companies. XXXXX, was sold to XXXXX in XXXXX.

XXXXX was formed as part of a common enterprise that included XXXXX and XXXXX, a for-profit company started and part-owned by XXXXX, and XXXXX, among others.

During parts of XXXXX to XXXXX, XXXXX conducted business in multiple office locations: XXXXX, XXXXX, XXXXX, XXXXX, XXXXX, XXXXX and XXXXX per information provided by organization.

Application 1023 – Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code

In its application for exempt status, Internal Revenue Service Form 1023, XXXXX stated that its activities would provide instruction and training of individuals for the purpose of improving their handling of financial matters. Activities to be performed include the following:

(1) Budget analysis
(2) Income verification
(3) Analysis of secured and unsecured debt
(4) Development of a financial plan for the individual

Other activities to be performed include educational seminars or educational forums for the public on budgetary, credit, and money management issues.

Organization listed its financial support in order of size as follows:
(1) "Fair Share" Contributions of Creditors
(2) Individuals Fees
(3) Corporate Donations
(4) Individual Donations

The XXXXX Form 990, Part III, Statement of Program Service Accomplishments states: "Counselors interviewed approximately 28,108 individuals to discuss Financial and Credit Problems. Counselors work with families and individuals to tailor a budget to individual needs and goals. 2,243 individuals were enrolled in our Debt Repayment Program. Enrollee's creditors are worked with to accept reduced monthly payments. Program works to eliminate judgments; garnishments and help clients regain financial balance in their lives."

In response to Information Document Request (IDR) # 16, Revenue Agent requested the percentage of time spent of each activity for XXXXX and XXXXX and XXXXX responded with the following percentages:

	TY XXXX	TY XXXX
Lectures, Seminars, Workshops	5.4%	5.8%
Telephone Counseling	66.7%	69.2%
Pamphlets, Brochures, & books	2.3%	2.3%
Face to Face Counseling	8.8%	6.4%
General Administration	16.8%	16.3%
Total	100.0%	100.0%

XXXXX, CFO indicated that these percentages are estimates on best guesses at this time. The overall time available to activities included three individuals whose duties were totally administrative in nature plus one individual whose duties were split between counseling activities and administrative duties.

Outreach Activity

XXXXX provided a summary of educational outreach seminars that they had engaged in during XXXXX, XXXXX and XXXXX. Three individuals, XXXXX, XXXXX and XXXXX did most of the presentations during XXXXX and XXXXX. XXXXX is the founder and president of XXXXX and XXXXX and XXXXX are certified Counselors at XXXXX. The following information was summarized based on calendars of presenters and copies of some agendas and outlines provided by XXXXX. XXXXX listed 20 events for XXXXX and 16 events for XXXXX and 54 in XXXXX. The number of attendees at each event varied significantly and was based on best guess estimates of XXXXX. XXXXX was unable to provide any documentation on registration forms or other proof of who attended the seminars.

Many of the seminars in XXXXX, were not directed to the general public, but to organizations that could possibly provide future leads, this included the University of XXXXX (Trustee's), XXXXX Hospital, XXXXX Hospital, Patients account staff, XXXXX Hospital, VP Finance and staff. Additionally, XXXXX listed training of XXXXX staff and XXXXX staff, which provide leads or Housing Counseling referrals to XXXXX.

One of the presenters was XXXXX who joined XXXXX in XXXXX and was a six term member of the XXXXX House of Representatives. Many of his presentations were conducted within his constituency, or he was a member or some other affiliation with respect to the group. Presentations included the XXXXX Men's Club, Rotary Club of XXXXX, XXXXX Chamber of Commerce, Jewish Community Center and Board of Trustee of XXXXX. Other seminars included the XXXXX National Guard troops getting families ready for reduced income and XXXXX High School finance class. Representative XXXXX received the XXXXX Award from the XXXXX Association of the United States, which is given to civilians who have distinguished themselves over an extended period of time. Representative XXXXX was chair of the XXXXX and XXXXX Committee in the XXXXX House of Representatives.

In conjunction with the seminars, XXXXX, had compiled various hand-outs such as "XXXXX", this handbook was intended to serve as an informational resource in taking steps towards a healthy financial future. The handbook serves as an overview of information and services that are available to Individuals. Additional information on the services XXXXX provide is available on the internet at: XXXXX Other handouts include "XXXXX", Public Housing Agency, XXXXX Financial Seminar. This handout covers three types of Financial Categories: Productive, Preventive and Remedial.

Advertising:

Based on records and information provided by XXXXX, and interviews conducted, XXXXX engaged in a number of advertising and marketing activities during XXXXX, XXXXX and XXXXX: Specifically, XXXXX utilized radio, publications, yellow pages, internet (including its own website) to advertise its services.

Lead Generation Companies and Internet:

In some cases, individual debt management plans (DMP) clients were enrolled by "contractors" who were paid commissions. Specifically, XXXXX (XXXXX) enrolled clients. A contract signed XXXXX indicates an agreement to pay XXXXX a monthly commission check in the amount of 3.75% of client deposits. In addition, other documents indicate that leads were purchased from XXXXX for $5.00 each. XXXXX operates a website XXXXX and redirects leads to XXXXX. Per organization's Vendor Ledgers, purchases from XXXXX totaled $ in XXXXX, $ in XXXXX and $ for XXXXX. The XXXXX amount is from client deposits for DMPs in the amount of $. The fee decreased to 2% of client deposits in XXXXX.

Other leads were obtained from XXXXX and XXXXX (XXXXX) and (XXXXX), XXXXX (www.XXXXX.com), XXXXX, XXXXX (www.XXXXX.com), and XXXXX (www.XXXXX.com), and XXXXX via www.XXXXX.org. Per organization's Vendor Ledgers, XXXXX and XXXXX purchases totaled $ in XXXXX and $ in XXXXX. XXXXX purchases totaled $ in XXXXX and $ in XXXXX. XXXXX also received calls from XXXXX National Referral Line which was XXXXXed through XXXXX Corp. at $10 per lead.

XXXXX cost of purchasing potential leads ranged from $7.50 - $30 per usable lead in XXXXX through XXXXX. Generally, if the call lasted less than five minutes there was no charge. In some of the contracts for lead purchases, XXXXX could reject a lead if it involved only secured debt.

XXXXX's Website:

XXXXX dba as XXXXX utilized its website to provide information to the general public regarding its services. The home page for XXXXX of XXXXX featured fifteen various topics with hot links: Credit Counseling, Debt Management Program, Financial Education, Financial Charts, Immediate Debt Help and Stop Collection Calls. One of the head lines is "XXXXX Problems? What's YOUR Next Move?" and below it is Debt Management Program in a highlighted link Debt Consolidation and Credit Counseling". In the middle of the first website page in highlighted orange is "Debt Management Program"

Debt Management Program: ***Consolidate Debt Without a Loan***
The website states that you could consolidate your unsecured debts into one payment and stop the collection calls without getting a loan, would that help you? It may be possible with a Debt Management Program."
The page listed the benefits of Debt Management Program as including:

- Make only one monthly payment
- Stop the harassing phone calls
- Save thousands in interest
- On average, our clients are debt free in 3 to 5 years, rather than 10-12 years without the program
- Clients who complete the DMP have learned how to live comfortably without credit cards
- XXXXX is a consumer advocate

Based on searching http://web.archive.org/web/*/XXXXX.org, XXXXX's website has changed very little in content or appearance between XXXXX and XXXXX.

Yellow Page / Periodicals:

XXXXX used several methods of advertising and promoting the products and services that they could provide to potential clients. Yellow page advertising was typically purchased in locations near offices that could handle telephone and walk-in clients and in states they were register or licensed to conduct business in. XXXXX incurred $ in XXXXX per account #5003 of general ledger for yellow page advertising. In XXXXX, yellow page advertising accounted for $ for yellow page ads in various locations throughout the country. In XXXXX, yellow page advertising accounted for $ per account #5003 of general ledger.

The examples listed below tend to promote debt management plans, non-profit status, free consultation and get out of debt with one monthly payment and an urgency to get out of debt.

A Qwest yellow page advertisement taking approximately 1/6 page in XXXXX read "Get Out of Debt Now! Stop Harassing Phone Calls ~ XXXXX Consolidation With One Payment ~ State Licensed & Bonded ~ FREE CONSULTATION ~ Money Management Help ~ Customized Programs to Fit Your Needs. A Non-profit Agency ~ www.XXXXX.org XXXXX ~ Call Now! Sleep Better Tonight ~ XXXXX.
If Busy Call XXXXX." On the same page, there was also a single line advertisement for XXXXX with the same telephone number XXXXX. A June 1, XXXXX Invoice from Yellow Page Planning indicated that the XXXXX advertisement cost $ after an incentive discount. The total amount due for the monthly Yellow Page Planning invoice was $.

Organization advertised in various media including The XXXXX Guardian, City Pages, XXXXX Women's Press, and XXXXX Media. A XXXXX Guardian ad reads "Get out of debt! Stop harassment, reduce interest rates & fees. Let us deal with your creditors. Free consultation call XXXXX www.XXXXX.org."

City Pages (XX) advertisement reads "GET OUT OF DEBT! Free Debt help. Loss of income? Monthly payments too high? Worried about your credit report? Stop harassing phone calls. Let us deal with your creditors. Local non-profit agency. Call at XXXXX. XXXXX. www.XXXXX.org."

XXXXX Women's Press advertisement reads "XXXXX Problems? What's your next move? ~ Know your options ~ Stop harassing phone calls ~ One simple monthly payment ~ Confidential consultation XXXXX (formerly XXXXX Financial) a XXXXX-based non-profit organization ~ Call XXXXX at XXXXX or XXXXX for a free consultation. I care and I can help! www.XXXXX.org"

XXXXX Magazine advertisement reads "XXXXX Problems... What's Your Next Move? ~ Credit Card & Unsecured Debt Consolidation ~ Save Thousands in interest ~ Make One Monthly Payment ~ Eliminate Late Fees ~ Stop Collection Calls. For a private, non-judgmental consultation XXXXX XXXXX Certified Counselor out of XXXXX call Toll Free XXXXX FREE Budget Counseling XXXXX Non-profit State Licensed agency Member XXXXX."

XXXXX Press Advertisements read "STOP COLLECTOR CALLS! We Can Help. Lower Payments. Reduce Interest. Stop Late Fees. Debt Consolidation. Free Debt Counseling. Non-profit. Call XXXXX. XXXXX. www.XXXXX.org. A March 29, XXXXX Insertion Order had a Rate per week of $ for XXXXX, XXXXX, XXXXX, and XXXXX. It required a prepaid check in the amount of $. Per organization's Vendor Ledgers, purchases from XXXXX Press Service totaled $ in XXXXX.

Per general ledger for XXXXX, organization purchased $ per account # 5004 in publication ads and $ for newspaper advertising per account #5005. In XXXXX, newspaper ads accounted for $ and newspaper ads of $. Per general ledger for XXXXX, organization purchased newspaper ads in the amount of $ and $ for publication ads.

Radio Advertising:

Analysis of the Vendor ledger for XXXXX revealed that XXXXX paid XXXXX $ for radio ads, theses ads aired on January 1-3,6,15-17, 20, 29-31 & February 1, XXXXX. In XXXXX, XXXXX contracted with XXXXX Radio again to air sixty second advertising spots and a link to XXXXX 101.3 and K102 radio stations in the amount of $. XXXXX paid for live ads to be run from July 14-27, XXXXX, August 11-24, XXXXX and September 8-21, XXXXX. XXXXX also paid for link from radio website to XXXXX website.

The script for XXXXX radio promotion was as follows:
"OK, SO HERE'S WHAT HAPPENED TO ME…I JUST LOVED MY CREDIT CARDS…OH AND THEY LOVED ME! BECAUSE AS NOW, THE MORE YOU CHARGE THE MORE CREDIT YOU GET! THEN IT JUST ALL PILED UP…AND I WAS CHARGING MY GROCERIES…THAT'S SMART. 19.8% INTEREST OVER THE NEXT EIGHT YEARS FOR A CARTON OF MILK AND A FROZEN PIZZA…AND LET ME TELL YOU, DOING THE "CREDIT CARD SHUFFLE" IS NOT THE ANSWER EITHER, YOU KNOW. WHEN YOU SHIFT ONE CARD'S BALANCE TO ANOTHER…..THEN I MISSED A COUPLE PAYMENTS…ALL OF THE SUDDEN THE CREDIT CARD PEOPLE STARTED CALLING. AND THEN HARRASING……HEY, I'M A GOOD PERSON, I'VE JUST HAD SOME BAD LUCK! THEN A FRIEND TOLD ME ABOUT XXXXX……XXXXX HAS COUNSELORS THAT GAVE ME A FREE NONJUDGEMENTAL, CONSULATATION! WE WORKED OUT A PAYMENT PLAN THAT GAVE ME ONE LOWER MONTHLY PAYMENT AND A LOWER INTEREST RATES ON MANY OF MY CREDIT CARDS, GETTING THOSE CREDITORS OFF MY BACK AND PAYING OFF MY DEBT FASTER…..XXXXX WILL PUT AN END TO YOUR CREDIT PROBLEMS TOO…CALL XXXXX TOLL FREE PHONE NUMBER XXXXX FOR AN EASY, PRIVATE FREE CONSULTATION…THAT'S XXXXX…YOU'VE GOT NOTHING TO LOSE BUT YOUR DEBT! CALL XXXXX"

A portion of voice over spot for XXXXX is as follows:
"WAKE UP FROM THE DEBT NIGHTMARE, LOG ON TO XXXXX.COM, AND CLICK ON THE XXXXX LOGO TO SIGN UP FOR A FREE, CONFIDENTIAL CONSULTATION. XXXXX IS A LOCAL XXXXX CITIES COMPANY THAT HAS MANY PROGRAMS TO GET YOU OUT OF DEBT. FIND OUT HOW. GO TO XXXXX.COM AND CLICK ON THE XXXXX LOGO TO FILL OUT AN APPOINTMENT FORM, AND YOU'LL INSTANTLY BE REGISTERED TO WIN CONCERT TICKETS FROM XXXXX! LOG ON TO XXXXX.COM NOW, AND CLICK ON THE XXXXX LOGO. YOU'VE GOT NOTHING TO LOSE BUT YOUR DEBT."

Public Relations:

On May 1, XXXXX, XXXXX entered into an agreement with XXXXX, Inc. to serve as public relations counsel for the 24-month period beginning July 1, XXXXX and ending June 30, XXXXX. The agreement calls for a total not to exceed $ billable in 24 equal monthly installments of $ each, XXXXX will continue its area local, regional and national public relations program on behalf of XXXXX Included in public relations agreement is a detailed review and update of XXXXX Press Media Kit. The budget did not include travel, lodging or reasonable meals and expenses. Travel/media destinations in XXXXX included XXXXX, XXXXX scheduled for late May, XXXXX, XXXXX, scheduled for late July, Greater XXXXX, scheduled for late August/early September and XXXXX, XXXXX scheduled for October. In review of XXXXX's travel reimbursement information for XXXXX and XXXXX it was noted that on average at least once a month Mr. XXXXX provided paid dinners or lunches to XXXXX, President and in some instances his wife to dinners paid for by XXXXX. It would appear that XXXXX being the client would not be entertaining the vender. The agreement did not call for local meals to be provided by XXXXX.

Leads, yellow page advertising, and public relations consultant accounted for 11% - 12% of total expenditures for XXXXX – XXXXX.

Enrollment of Consumers in DMPs by XXXXX employees

Employees' Qualifications and Training

Leads that were acquired were distributed to XXXXX's employees for phone contact with the consumers. XXXXX regularly engaged 20-30 leased employees who purportedly operated as "counselors." (hereinafter referred to as employees). Many of the employees have social service backgrounds and experience in medical-related industries. Advertisements for counselors requested that counselor candidates have strong communication and problem solving skills.

The position description provided by XXXXX for its "Counselor" listed the following responsibilities and duties dated XXXXX ( )

1. Always keep the client as the main focus of counseling by
   - Assuming that the client is in financial crisis
   - Consistently using the counseling model in talking to the client
   - Attain at least level two counseling skills consistently within the first six months of employment
   - Enter all leads into the lead tracking system
   - Capture all data needed to determine the best option for the client as well as information needed by the creditors
2. Cover/handle appropriate share of all leads including phone calls, internet leads and face-to-face appointments
3. Follow-up with contacts already in lead tracking
4. Early morning counselors to be available for phone consultation during the first 3 hours of their workday, late evening counselors to be available for phone consultation during the last 3 hours of their workday

5. Available to receive incoming counseling phone calls an average of 4 hours per day
6. Minimum of 30 new clients enrolled per month
7. Participate in Counseling Evaluation Process as described
8. Collect accurate client information from the client during the counseling session to include:
   - Names and addresses spelled properly
   - Correct grammatical conventions used
   - Obtain all available locating information such as: home phone, work phone and fax, email address and social security number
9. All packets are to be complete and ready for processing before being sent to Data Processing
10. Help the client through the initial enrollment process by following up to make sure that materials were received, calling if materials are not returned within two weeks, and answering client questions until the transfer to account management has been completed
11. 40 hour work week
12. Involved in the rotation of Saturday work schedule
13. Be punctual and ready to work when scheduled
14. Manager must approve all vacations, sick time and personal out of office appointments
15. To become a certificate holder from the Institute of Personal Finance (or equivalent) within 12 months of hire and to take the test for certification within 6 months of hire

Basic qualifications and requirements for the position are listed as follows:

a. College degree preferred
b. Excellent communications skills
c. Ability to see situations in terms of numerous variables and present a holistic picture of the situation
d. Ability to use personal computer, willingness to learn new software as necessary

The advertisements for “Counselor” - XXXXX office, accepting inbound calls, seeks person w/ strong communication skills. Person must be multitask oriented, possess problem-solving skills, and have the ability to develop customer relations. Compensation range is $24 - $45K with excellent benefits.

No minimum level of education was required for applicants to be hired. No certification, license, or prior experience in the field of counseling was required. Per response to IDR #22 item #9, “XXXXX does not require any specific past skills, training, or schooling, although we have some preferred skills sets such as strong oral communications and either a psychology, sociology or counseling background."

Per agenda for new counselor training, XXXXX provided one week of training for new hires for XXXXX and XXXXX. The first day was mainly an overview of training, employee paperwork, and counselor technique and community involvement. Day two consisted of listening to other counselors on the telephone. Day three consisted of evaluation process, lead tracking, funds management and data processing. Day four, listen to counselors, role playing, listen to tapes, take calls, marketing and lead distribution and International Standards for Quality Management Systems (ISO) requirements. Day five was listen with counselors and/or take calls and counselor expectations. Per interviews with current and former employees, they indicated two weeks of training was conducted at the headquarters office in XXXXX, XXXXX, but no agenda was provided for the second week by XXXXX.

XXXXX maintained a Split/Skill Report monthly on all employees to track time spent on different activities. XXXXX tracked the number of ACD Calls per employee, (Automatic Call Distribution) this line is for new incoming calls that are potential new leads. XXXXX also tracked, ACW (Automated Call Waiting) – notes and paperwork, Agent Ring Time, Other Time, Aux Time – includes out-bound calls, Available time – ready for calls and staff time – time logged onto phone.

In an e-mail dated November 4, XXXXX, XXXXX, Director of Counseling, communicated to counselors that they are doing a great job but there are areas of needed focus. The two areas discussed are "Leads Handled" and "Scheduled Coverage". He indicated as a whole they are doing a much better job of entering leads and collecting our clients contact information, but they still are experiencing a significant number of leads that are not being entered. It is critical to XXXXX growth, to capture all of our leads and to improve on data integrity. These two items account for 40% of evaluation rating of employees and are important that they are available for incoming calls – new potential leads and inputting correct information in lead tracking for future potential DMP clients. Financial growth of company is dependent on increasing DMPs.

XXXXX's employees were trained to establish a clear purpose or motive for the counseling session, gather financial information and identify the problem, offer solutions for the client's review, develop a detailed plan for implementation of a solution to resolve their financial problem, and confirm that the solution fits the purpose. Credit Counseling Procedure (CCP-75-01) Possible solutions include a self administered plan, debt management program, personalized plan, and bankruptcy. (CCP-62-01) Counselor development compact disks provide taped telephone calls with examples of questioning by the counselors. Some callers were interested in Debt Management Plans (DMPs) solely for reduced interest rates and payments, but the counselors were instructed to fully develop their financial situation and determine the best solution. They were told that creditors would not accept DMPs from individuals who have adequate cash flow and only want to reduce their interest rates, credit card fees, and payment amounts or would be rejected if their FICO score was too high.

XXXXX's training manual contains instructions for employees on its counseling model and a flow chart for counseling procedure. (CCP-75-01) The Manual contains instructions geared to enrolling individuals in DMPs, including assembling DMP packets and Client Action Plan with necessary educational information. Additional instructions state to provide non-DMP clients with specific educational information and referrals as is pertinent to the client's situation and include a step-by-step accounting of the solution in the Client Action Plan to be sent to the client. Counselors are also instructed to update lead tracking for follow-up. Counselors update lead tracking upon receipt of a completed DMP client information packet. Once a complete DMP client information packet is received, the counselor contacts the client, confirms their plans, and transitions the client to Account Management personnel with XXXXX Inc. a for-profit entity, formally owned by President XXXXX and former President XXXXX.

Included in the Manual is "Counselor" position description (CCF-55-03), "Counselor Call Evaluation Process (CCP-62-01)," "Counseling Procedure (CCP-75-01)," and "Counseling Performance & Compensation (CCP-62-02)." Counselor position description requires a counselor to attain at least level two (of four) counseling skills consistently within the first six months of employment. In addition, it requires a "minimum of 30 new (DMP) clients enrolled per month." Current Counseling Performance & Compensation document requires a minimum of 100 Client Action Plans (CAPs) per month, and every CAP must be presented to the client with contact information including e-mail, address, and telephone numbers. This is to ensure that all clients receive a documented overview of their situation with an action plan.

Employees were evaluated based upon counseling call evaluations, leads handled, availability to clients, schedule coverage, and retention of DMP clients. Employees were compensated based upon points awarded for the performance categories. Compensation may be adjusted up or down after three out of four consecutive ratings are achieved. Employees were required to enroll a minimum number of DMP accounts to keep their jobs. Employees were also required to pass The Institute For Personal Finance Counselor Certification Exam within eighteen months of hiring date as a counselor. Passage is now required within twelve months of commencing employment.

Form 886A (Rev. January 1994)	Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer **XXXXX**	Tax Identification Number XXXXX	Year/Period Ended XXXXX

E-mails from the Director of Counseling reflect revisions to Counseling Performance & Compensation documents and a continuing concern about the productivity of the employees and methods to measure quantity over quality of counseling sessions. Personnel Action Notices indicated warnings for failure to reach the minimum standard for clients signed onto DMPs for a month (30).

Counseling Performance was measured and evaluated in five categories: Counseling call evaluation ratings 40%; Leads handled 20%; Availability to counsel the client 20%; Schedule coverage 10%; and Client retention 10%. (CCP-62-02 Rev. A) Performance and compensation tabulations take the points given from the above categories. According to The Counseling Performance document (CCP-62-02 Rev. D) points awarded for the performance categories could result in advancement in compensation level. However, in order to advance from level to level the minimum number of signs (DMPs) must be achieved for that increased level.

The Counseling Performance document (CCP-62-02 Rev. D) provided the following compensation structure to employees:

$45,000 level requires a minimum average of 45 signs per month
$38,000 level requires a minimum average of 38 signs per month
$30,000 level requires a minimum average of 30 signs per month

Example 2 states that if a counselor's score in the five categories was qualified for $38,000 a year and the counselor was at the $30,000 level and had an average number of 39 signs, they would advance to the compensation level of $38,000. Example 1 stated that if a counselor's score in the five categories was qualified for $38,000 a year and the counselor was at the $30,000 level and had an average number of 36 signs, they would remain at the $30,000 compensation level.

Compensation of employees was geared toward increasing sales of DMPs. Some employees were eligible for overtime pay, but the management claims that there were no bonuses or incentives offered.

Although the organization's general ledger showed overtime and no bonuses or incentive pay, the XXXXX dba XXXXX Payroll invoice for the period June 29, XXXXX shows bonuses paid in the amount of $ to five leased employees XXXXX, XXXXX, XXXXX, XXXXX, and XXXXX who work as counselors. XXXXX provided leased employees and provided human resources and payroll for XXXXX for a monthly fee.

The taped phone conversations in counselor development recordings disclosed a $25 enrollment fee for its program. This enrollment fee facilitates the payment of leads and incentives to the employees.

In a typical call with a potential client, the employees introduce themselves as employees of XXXXX, a non-profit corporation, and advise that they can help the potential client with paying their debts. Employees begin by telling prospective clients they have helped thousands of clients in similar situations, and they drastically reduce the time it takes to pay off their XXXXXs (30-60 months to pay off all debts). They advise that instead of clients paying individual creditors, they only have one payment to XXXXX, which will pay creditors at the lowest rates, normally with no penalties. They further advise that the program will pay the potential client's debts off faster and save thousands in interest. Employees go down the list by creditor name, credit type (credit card/auto loan, secured/unsecured), total debt balance, whether current or late, and use creditor provided minimum balance tables to arrive at a proposed payment. Employees ask clients how much income they have coming in each month, how much their living expenses are (rent/utilities/telephone/food/etc) and how much is left that can be used to pay XXXXXs. Employees enter the responses to the income and expense questions on their computers. Employees mail a Client Action Plan with an agreement document and an "Authorization to Release Information" document to the client to complete and mail back to the employee. Counselors update lead tracking upon receipt of a completed DMP client information packet. Once a complete DMP client information packet is received, the counselor contacts the client, confirms their plans, and transitions the client to Account Management personnel with XXXXX

When a customer agreed to a DMP, the individual signed an Agreement, which provided for the monthly payments on the debt balances. It also provided for an additional 10 percent over disclosed debt balances for undisclosed debts and service fees.

XXXXX advertised its services on its website, www.XXXXX.org. It also had two brochures, in which it advertised its services to the general public, a 'HOUSING COUNSELING" and a "XXXXX Problems" brochure. The brochures are used to generate client interest in its debt management program. In the brochure XXXXX claims: "XXXXX offers a Debt Management Program that helps the consumer consolidate all unsecured debt. We work directly with creditors to lower or waive interest rates and late fees. Our clients pay off their debts in a shorter amount of time. Debts that qualify for the debt consolidation program include credit cards, medical XXXXXs, department store cards, bank lines of credit, collection accounts, NSF checks, unsecured personal loans, student loans, and IRS balances. The brochures are handed out during outreach events and activities. Organization also has a 42-page

Financial Health Handbook, which is distributed for free. Organization also sold a book "XXXXX" for $50.00 each.

Debt Management Plans

The primary activity engaged in by XXXXX during the years XXXXX, XXXXX and XXXXX was telephone counseling of individuals in financial distress. Organization purchased advertisements and leads for telephone solicitation and consultation of clients to enroll in debt management plans (hereinafter DMPs). Potential clients were individuals with unsecured debt. A DMP is a plan whereby a client makes monthly payments to XXXXX to satisfy his/her unsecured debts over a 3-5 year period. Most of the debts handled in a DMP were credit card debts, but other unsecured debts such as hospital XXXXXs, student loans, and payday loans were also managed through some DMPs. The monthly payment made by the client would include the payment to each creditor, plus a monthly maintenance fee.

An example provided by XXXXX of an XXXXX-Debt Management Plan and Budgeting exercise, and Prioritization of debts/finances to XXXXX of XXXXX, XXXXX who had total monthly income of $ and total monthly expenses of $ with total available income of $ and proposed payment of $ with total unsecured debt of $ on six credit cards, all of which pay fair share based on list of fair share creditors provided by XXXXX for XXXXX. John was accessed the maximum $ per month fee for a rate of 5.8% and total amount due to XXXXX of $ over the life of agreement which in effect becomes another creditor for the client

The maintenance (processing) fee varies depending on the amount of the payments. It is based upon 8 percent of the payments and ranges from $0 per month to $35 per month for XXXXX and XXXXX and the amount was changed in XXXXX based upon 10% of the payments and ranges from $0 per month to $50 per month. Increase was due to reduction in the amount of fair share payments by credit card companies. In addition, each client pays a $25 enrollment fee. The organization contracted the for-profit service provider XXXXX dba XXXXX for data processing services at a $17.00 - $18.00 monthly fee for each DMP client. Per organization's Vendor Ledgers, purchases from XXXXX dba XXXXX for Data Processing totaled $ in XXXXX, $ in XXXXX and $ in XXXXX. This accounted for over 40% of XXXXX's expenditures for XXXXX, XXXXX and XXXXX.

Consultation/Screening

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XXXXX	XXXXX	XXXXX

XXXXX generally operated as follows: Contact with a potential client would be made by telephone. During the phone call, the employee would ask probing questions to identify the purpose of the call and the root of the individual's problems. Employee would counsel the individual, determine options, and offer solutions to their problem. If the individual was a good candidate, the call would result in an attempt to enroll the potential client in a Debt Management Plan. The employee would ask the person for information regarding income, expenses, and unsecured debts that the individual currently had. The employee would then prepare a "Personal Information" worksheet and Creditor and Proposal Summary, which contain personal information such as name, address, birth date, etc., employment information, monthly expenses, and a list of all debts to be covered by the plan. The Creditor and Proposal Summary would list the creditor information, total debt, and proposed monthly payment. Based upon a review of some client information sheets, it does not appear that the amount of disposable income in the "budget worksheet" necessarily bore any relationship to the monthly payment required by the DMP; in one case available income was $ and proposed payment was $. In another case, the client's monthly available income after expenses of $ was barely able to cover the proposed monthly payment under the DMP in the amount of $.

Very little active budgeting education or budgeting assistance was offered to the callers. Consultants gathered financial information to determine if individuals and the organization may benefit from their debt management services. Consultants listen, evaluate, and provide free advice, Client Action Plans, and possibly literature to callers who would not benefit from, or qualify for, a DMP including callers without sufficient ability to pay their debts after their living expenses.

On its XXXXX Form 990 XXXXX reported it "interviewed approximately 47,891 individuals" and 5,775 were enrolled in a DMP. On its XXXXX Form 990 XXXXX reported it "interviewed approximately 36,691 individuals" and 3,682 were enrolled in a DMP during the year. On its XXXXX Form 990 XXXXX reported it "interviewed approximately 28,108 individuals" and 2,243 individuals were enrolled a DMP during the year.
XXXXX, CFO, reported total clients under debt management at end of XXXXX was 12,281, and at the end of XXXXX, total was 12,241.

<u>Client Action Plans - CAPs</u>

Client Action Plans (CAPs) included a greeting and information related to the conversation with the individual caller. CAPs summarized the telephone conversation as follows" "The intent of this Action Plan is to impress upon you that your desire to improve your financial situation is an achievable goal. In our recent conversation, we explored and identified the best solution that will Restore Financial Balance in Your Life." It follows with boxes checked of the consultant's perception of the individual's situation and recommendation based upon the consultant's understanding.

The choices for perception are as follows:

- ⌂ Behind in unsecured debt
- ⌂ Reduction or loss of income
- ⌂ Family crisis/Personal crisis
- ⌂ Other
- ⌂ Emergency or unexpected expense
- ⌂ Supplementing income with credit
- ⌂ Behind on secured debt or utilities

The choices for consultant's recommendation include the following:

- ⌂ XXXXX – Debt Management Plan
- ⌂ Increase your income/reduce expenses
- ⌂ Bankruptcy/Legal Counsel
- ⌂ Self-administered plan
- ⌂ Referred to other service
- ⌂ Other
- ⌂ Prioritization of debts/finances
- ⌂ Budgeting exercises
- ⌂ Educational course
- ⌂ Repayment plan for mortgage
- ⌂ Pre-foreclosure/Short sale on mortgage

Self-AXXXXXnistered Plan or Bankruptcy

Revenue Agent found that organization often referred individuals with insufficient income to cover their living expenses to a self-administered plan or bankruptcy. However, those who had sufficient income to cover living expenses and some had unsecured debts were generally referred to DMPs. It appears that the consultants gather financial information to determine if individuals may benefit from a DMP and would meet creditor specifications for acceptance to a DMP.

Client Action Plans were not widely used in XXXXX and XXXXX, however Revenue Agent obtained some samples from the last couple of months of XXXXX. One CAP for dated 8/9/XXXXX stated that perception of situation was ⌂ Emergency or Unexpected expenses and ⌂ Behind on secured debt or utilities. It stated "First step is to contact your landlord. Second step is to call the lease company that you have vehicle with and offer them a voluntary repossession. Third step is to call and request them to stop automatic payment and ask what they are willing to do as far as a payment plan. Fourth step would be to call me back after you get all of these priorities taken care of so we can assist you with all of your unsecured debts (personal loan, LOC, credit card)." Recommendation was ⌂ Self-administered plan and ⌂ Prioritization of debts/finances.

Another CAP recommending a ⌂ Self-administered plan to XXXXX and XXXXX dated 10/28/XXXXX stated that their "current budget doesn't reflect that you have the resources to start paying down this debt." XXXXX's "recommendation is to simply ignore the collector and continue to provide for your family." The consultants also "included some information that will likely help stop some of the collection efforts. When your husband finally gets a wage increase I would recommend that you contact me so we can review your situation again and determine the best plan to resolve the student loan."

A CAP with ⌂ Behind in unsecured debt and ⌂ Other (collection calls) recommends a ⌂ Self-administered plan to XXXXX stated that "I understand that you want to consolidate your XXXXXs but until you have a job and have a steady income that option simply doesn't make much sense. I've enclosed some information on the Fair Debt Collections Practice Act for you so you can understand your rights as a consumer as well as information on how to get him to stop calling you."

Another CAP with ⌂ Behind in unsecured debt recommends a ⌂ Self-administered plan for XXXXX indicating "you are in no financial position to pay ANY of the credit cards, and I am advising you to stop paying them. At your age, the small amount of social security money you get each month just covers your living expenses and it's very important that you keep paying for your house, utilities, food, and medicines. Your social security money is not touchable by any of these credit card companies."

A CAP for XXXXX dated 11/1/XXXXX for ⌂ Reduction or loss of income the counselor recommended ⌂ Bankruptcy/Legal Counsel and stated "I strongly recommend that you file a Chapter 7 Bankruptcy. You simply don't make enough money to support your basic living expenses as well as your debts. When you mentioned that you had fallen behind on your rent but were current with most of your credit cards that was a clear indication that you were sacrificing your basic needs to repay your debts."

Debt Management Plans

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Debt Management Plans (DMP) were marketed as providing benefits and a needed bill-paying service to clients. The recommendation for the debt management program as a solution advised the client that it would allow them to get control over their personal debts by reducing the payment and interest rates, and most importantly reduce the stress that their current financial situation was causing.

Based upon a review of some client information sheets, it does not appear that the amount of disposable income in the "budget worksheet" necessarily bore any relationship to the monthly payment required by the DMP; in one case available income was $___ and proposed payment was $. In another case, the client's monthly available income after expenses of $ was barely able to cover the proposed monthly payment under the DMP in the amount of $.

Written Client Action Plans were not widely used in XXXXX and XXXXX, however Revenue Agent obtained some samples during the later part of XXXXX. One CAP indicated that a standard debt management plan would require only one payment per month, lower their interest, and provide the ability to rebuild their credit due to paying creditors as agreed. However it would not reduce their monthly payments, and they could not use credit while on this program. For example, XXXXX and XXXXX of XXXXX, XXXXX had a "very large" amount of unsecured debt and were perceived as behind in unsecured debt. XXXXX and XXXXX were recommended to enter an XXXXX-Debt Management Plan as the best solution that would "Restore Financial Balance in Your Life." The CAP stated "If you can afford your current payments of about $ per month, this plan should work well for you if your goal is to pay off debt. If you cannot afford a $ payment, there may be another alternative we can discuss that would require much more effort on your part but is capable of getting the payments down to about $ per month." That CAP was signed by XXXXX, President of XXXXX.

XXXXX of XXXXX, XXXXX stated "After you do your budget if you feel that you can still afford a $ payment, I do think our Debt Management Program would be a good fit for you. If you can't afford $ per month, I would recommend that you simply continue to do what you are doing right now and not pay them anything. I understand that you feel a little uneasy with that but as we discussed, there is very little your creditors can do to you, and they certainly CANNOT arrest you."

Another CAP for XXXXX and XXXXX without a "perception of your situation" box checked stated "I would recommend that you do a budget for both the business and personally and determine what it cost you to live and what it costs you to keep the business running. After that let's determine how much you have left over to cover your debt load." It further had an "our recommendation for your situation" box checked

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XXXXX-Debt Management Plan. It stated "as for your personal debts, I do feel that our Debt Management Program would be a great solution for you. It would allow you to get control over them by reducing the payment and reducing the interest rates, and most importantly reduce the stress that your current financial situation is causing you and your family."

Account Management

Upon receipt of a completed DMP client information packet, counselors updated lead tracking. Once a completed DMP packet was received, the counselor contacted the client, confirmed their plans, and transitioned the client to Account Management personnel with XXXXX Inc. (XXXXX).

When a customer agreed to a DMP, the individual signed an Agreement, which provided for the monthly payments on the debt balances. It also provided for an additional 10 percent over disclosed balances for undisclosed debts and service fees.

If offered a DMP, the client usually was required to pay a $ enrollment fee and a monthly maintenance fee for the service. The maintenance (processing) fee varied depending on the amount of the payments. It was generally based upon 6.5 – 8.0 percent of the payments and usually ranged from $0 to $ per month for XXXXX and XXXXX. In XXXXX the maintenance fee was raised from $0 - $ per month up to 10%. The increase in processing fee was due to the reduction in fair share payments received from the creditors. The monthly payment made by the DMP client would ordinarily include a payment to each creditor plus a maintenance fee for the DMP service.

For example, in XXXXX, XXXXX and XXXXX agreed that XXXXX could retain $ of their $ monthly payment for 6.6% of $ debt payment on $ in debts. In January XXXXX, XXXXX agreed that XXXXX could retain $ of her $ monthly payment for 8% of $ monthly payment on $ in debts.

In October XXXXX XXXXX of XXXXX agreed to a monthly maintenance fee of $ of his $ monthly payment for 8.7% on $ in debt payments on balances of $ in debts. XXXXX's case was provided as an example of a XXXXX DMP client who achieved reduced interest rates and other savings through the DMP.

For individuals agreeing to a DMP, the maximum maintenance fee was determined based upon the state in which the clients reside. In July XXXXX, XXXXX of XXXXX agreed that XXXXX could retain only $ (XXXXX maximum) of his $ monthly payment or 4.2% of $ payment on $ in debts. However, in XXXXX

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XXXXX and XXXXX from XXXXX were required to pay a monthly charge of $50 of their $ monthly payment for 6.8% of $ debt payment. Their debts were approximately $.

Free Or Below Cost Services

While DMP services were not limited to low-income or the poor, some DMP clients had their fees waived. XXXXX XXXXX indicated that XXXXX had 572 of 5,284 of clients enrolled in DMPs at no charge in XXXXX, and 480 of 3633 were enrolled at no charge in XXXXX. General ledger enrollment fee income indicates that at least 4,566 paid $ in XXXXX and at least 3,123 paid $ in XXXXX and at least 1,876 in XXXXX. XXXXX also indicated that 838 of 5,284 DMP clients and 505 of 3,633 DMP clients did not pay for monthly services in XXXXX and XXXXX, respectively.

However, some seemingly "low-income" clients were required to pay enrollment fees and monthly maintenance charges. A long-term customer Sally with steady DMP activity ranging from November XXXXX to June XXXXX indicated monthly income of only $, monthly expenses of $, and $ of available income and proposed DMP payment of $. This DMP client had total debts of $ and an agreed total of $. Sally was required to pay a monthly maintenance charge of $ of her $ monthly payment. Her monthly maintenance charge was 8% of her monthly debt payment. XXXXX case was provided as an example of a XXXXX DMP client who achieved reduced interest rates and other savings through the DMP.

XXXXX's Client unable to pay Procedures (AMP-75-02) document implemented in XXXXX discloses a system and instructions on criteria for Account Management to use for evaluating accounts in which clients are unable to afford or make the scheduled payments. There also appears to be a grant/refund or temporary loan for clients who are in "true need and through investigation and interviewing of client determined to be a good risk and candidate for the successful completion of the DMP." This determination was made by Account Management and process completed by Funds Management.

XXXXX's management provided printouts of clients whose enrollment fees and/or maintenance fees were waived in XXXXX and XXXXX. The printouts showed that many individuals who enrolled with the monthly fee waived also dropped from the DMPs before payments were made. The most recent date dropped was in XXXXX. Another distortion of the information is that certain States do not allow Credit Counseling organizations to charge a monthly fee or initiation fee for administering DMPs.

XXXXX sometimes provided DMP services below its cost. For individuals agreeing to a DMP, XXXXX sometimes charged the individuals monthly maintenance fees less than the $ or $ per month paid on the XXXXX contracts. Also, some maintenance fees were waived, but XXXXX still paid XXXXX a monthly fee.

In substance the creditors' fair share payments helped to pay the for-profit's service charges in violation with the credit card companies' requirement that fair share only be paid to organizations exempt under section 501(c)(3).

For example, a January 29, XXXXX Customer Authorization Agreement indicates that an XXXXX client XXXXX agreed that could retain $ per month of her $ monthly payment to XXXXX. Her debts were approximately $. In September of XXXXX, Client XXXXX agreed that XXXXX could retain $ of $ monthly payment to XXXXX. In February XXXXX client XXXXX agreed that XXXXX could retain $9 of $ per month as compensation for aXXXXXnistration of the program. Her debts were approximately $. In these cases, the fair share revenues from credit card companies helped subsidize the monthly service charges of $ or $ per month paid on the XXXXX contracts.

Compliance Report by XXXXX Department of Commerce

The XXXXX Department of Commerce conducted a compliance examination for close of books November 30, XXXXX and the physical review of the books commenced on December 13, XXXXX and close on December 21, XXXXX.
In the report it was noted that budgets of eleven DMP clients did not prove that a repayment plan was feasible for the client. The budgets in file were handwritten and submitted by XXXXX, however a computer inputted budget by the counselor did indicate that a budget was feasible for several of the accounts. Consent to alter payment amount was not documented in file.

The DMP clients are listed below:

Client #	Name	Date of Agreement	Amount Debt	Monthly Income	Monthly Expenses	DMP Monthly	Remaining Income
42823	XXXXX	6/25/XXXXX	$	$	$	$	($)
45289	XXXXX	11/26/XXXXX	$	$	$	$	($)
42814	XXXXX	6/22/XXXXX	$	$	$	$	($)
41822	XXXXX	4/17/XXXXX	$	$	$	$	($)
42822	XXXXX	6/25/XXXXX	$	$	$	$	($)
42826	XXXXX	6/25/XXXXX	$	$	$	$	($)
40895	XXXXX	XXXXX	$	$	$	$	($)

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42147	XXXXX	5/9/XXXXX	$	$	$	$	($)
41844	XXXXX	4/19/XXXXX	$	$	$	$	($)
44585	XXXXX	10/22/XXXXX	$	$	$	$	($)
44585	XXXXX	10/16/XXXXX	$	$	$	$	($)

In reviewing personal information worksheet prepared by an employee of XXXXX for client # 42147, XXXXX, it showed monthly income of $), which included $ of other income and total expenses of $. The expenses listed included rent/mortgage of $ Phone - $60, Car Payment - $, Groceries - $, Utilities - $ Insurance - $ and Miscellaneous $. Available income listed is $ and a monthly DMP of $. Clearly, this is too limited a budget, which has a high potential for failure. This budget does not allow for any unexpected expenses, such as auto repair, entertainment, clothes, etc. No analysis is provided or study done on tracking expenses for a month or two to determine what this client was spending per month to determine if this DMP will work.

In the information provided by XXXXX to XXXXX Department of Commerce in the form of a rebuttal they provided the personal information for account #40895, which showed a change in monthly expense by $ to show available income of $ and a DMP of $ showing an excess of $ after DMP payment. Clearly these two examples show that if a client has positive cash flow, be it minimal, XXXXX will enroll a client in a DMP.

Another area sited by XXXXX Department of Commerce was seventeen client accounts where XXXXX charged fees for dishonored checks of $ per occasion. Based on review of the contracts no mention of a fee being charged for NSF (non-sufficient funds) checks was disclosed on the client authorization agreement. XXXXX was sited for was if a client had an NSF check, there account was charged a $ fee which was not included in the contracted amount. XXXXX in its ACH agreement (Automatic Withdrawal Authorization) they do disclose that a $ fee would be charged for NSF checks (Unless prohibited by state law.) XXXXX also requests authorization to withdraw from my (our) account as indicated above and up to 10% (ten percent) more if required by my creditors, (I understand that I will be notified of any such change). XXXXX was required to refund some of these amounts since trust accounts were under XXXXX statutes for some of its clients.

Board of Directors:

In the Form 1023 Application, the members of the Board of Directors were listed as follows: XXXXX, President, compensated $, XXXXX, Director, XXXXX, Director and XXXXX, Director.

Article 4 – Directors – 4.1) General Powers states that the property, affairs and business of the Corporation shall be managed by the Board of Directors. The Board of Directors shall be elected by the current Board of Directors at their regular meeting and any special meeting. A director elected for an indefinite term shall serve until the director's successor is elected. A Director elected for a fixed term of office, which shall not exceed five (5) years.

Board Members and Officers of XXXXX during XXXXX, XXXXX and XXXXX and their background are as follows:

XXXXX: Director- XXXXX is currently a self-employed medical device product consultant. Until early XXXXX was a Product Resource Manager at XXXXX, an international distributor of medical products. Previously, XXXXX owned and operated a medical manufacturing company, XXXXX. XXXXX received a BA deqree in Marketing from XXXXX College. XXXXX lives in XXXXX. He was paid $ which included board pay and travel reimbursement for XXXXX.

XXXXX: Director – XXXXX joined the Board on August 1, XXXXX, XXXXX retired from XXXXX. where he was Corporate Director of Compensation. During his 38 years with XXXXX, besides working in human resources, XXXXX also held positions in their production facilities and managed their customer service department. Since retiring, XXXXX keeps busy as a volunteer with XXXXX, a consulting group helping start-up companies. XXXXX and his wife make their home in XXXXX, XXXXX.

XXXXX: Director and Chief Financial Officer – XXXXX was Chief Financial Officer at XXXXX, a medical device manufacturer from January XXXXX to June XXXXX. Prior to XXXXX, , XXXXX served as the financial officer fro XXXXX, XXXXX, Inc., and XXXXX, Inc. From XXXXX through XXXXX, XXXXX was employed in financial management at XXXXX, :. XXXXX has also worked in public accounting and as an auditor with XXXXX of XXXXX. XXXXX received a BS degree in Accounting from the University of XXXXX and is a Certified Public Accountant. XXXXX and his wife make their home in XXXXX, XXXXX.

XXXXX: President – XXXXX is the founder of XXXXX. He served as president from XXXXX through XXXXX when he resigned to become president of XXXXX (XXXXX, .), a processing service organization serving the credit counseling industry. In January XXXXX, XXXXX returned to XXXXX as its president. Previously, XXXXX was president of XXXXX and of XXXXX, and additionally worked as a national brand manager for XXXXX and in mergers and acquisitions for XXXXX. XXXXX's formal education includes a BA degree in sociology and a three year concentrated course of study in physics, both at the University of XXXXX. XXXXX and his wife live in XXXXX, XXXXX.

XXXXX: Former Board member – Deceased April 15 of XXXXX. XXXXX was nominated and approved at a board meeting dated XXXXX. "XXXXX has some unique experiences and skills that have already been utilized by the organization relative to determining that the agency desires to be an integrated or open system, not hindered by punitive rules and regulations but rather freeing employees to pursue the agency's mission." XXXXX motioned that XXXXX be nominated to the board of directors of XXXXX." He provided contractual work with XXXXX through his corporation XXXXX, Inc. XXXXX received $ from XXXXX in XXXXX for his consulting services. He also received $ for his duties as a board member. He was part of the compensation committee for XXXXX.

As can be seen above the list of board members they are either officers or business associates. Per minutes dated August 9, XXXXX it was noted a discussion on addition of Board members. "The Board discussed the need to increase the size of the Board. The Directors concluded there was no need to increase the number of Directors at this time." In the January 31, XXXXX board minutes the following was noted. "The directors discussed the possibility of expanding the Board to five (5) members. The Directors acknowledged the desirability of expanding the Board, but only if qualified candidates could be identified. The Directors and XXXXX agreed to review their contacts for possible candidates."

Based on review of the Board minutes it was noted that directors and President XXXXX met between four and six times per year to discuss business concerns and activities of XXXXX. Prior to 2000, the President of XXXXX Financial Management, was XXXXX, who was also chairman of the Board. Some time there after, the position was changed to meet ISO accreditation.

During the June 14, XXXXX, it was noted that only . XXXXX and XXXXX each provided two names of potential replacements for board member XXXXX who passed away on April 15, XXXXX. XXXXX offered names of XXXXX, a retired executive of XXXXX. and XXXXX, a CPA and business consultant.

During board of director meeting held July 25, XXXXX a quorum was declared based on the following directors, XXXXX via telephone,XXXXX, via telephone and also XXXXX, President and XXXXX. After the interview, the Directors and . XXXXX met privately to discuss XXXXX candidacy. The unanimous decision was that the Directors believed XXXXX would be a valuable addition to the Board and was contacted by XXXXX to offer the position. This is another example of the how the Board is not independent of the officers of the organization. XXXXX, CFO found the candidate and the President, XXXXX was involved in the hiring process of who is to be overseen by the board and accountable to the Board.

Back Office Service Provider-XXXXX, Inc.

On XXXXX, XXXXX entered into another agreement with XXXXX, Inc. a for-profit corporation back office service provider owned by XXXXX XXXXX and XXXXX. When this agreement was consummated XXXXX was the President of XXXXX and XXXXX XXXXX was the President of XXXXX, XXXXX has been provided certain services pertaining to the conduct of its credit counseling business from XXXXX, since XXXXX. The agreement is for five year duration and continues on a year to year basis unless otherwise modified in writing. During this period, XXXXX XXXXX and XXXXX were each 50% owners of XXXXX.

The agreement also states that should XXXXX lose the ability or desire to cease involvement in debt management and business and credit counseling, it agrees to allow XXXXX to negotiate the transfer of XXXXX clients to another non-profit agency of its choosing. The agreement calls for a fee of $18 per active client per month. Active clients are defined as those listed in active status on the database at the end of the month regardless of whether they have made a payment during that month.

The agreement goes on to state that: "as XXXXX' largest credit counseling agency customer, XXXXX requests, and XXXXX agrees, that all incoming telephone customer service calls will be answered "XXXXX" to eliminate confusion between the client or creditor and XXXXX customer service personnel. "

The signers of the agreement were XXXXX, Secretary/ Treasurer of XXXXX and currently the CFO of XXXXX and XXXXX XXXXX, President of XXXXX and 50% owner of stock at time of agreement and current President of XXXXX, which became effective in XXXXX.

In XXXXX, XXXXX (Dba XXXXX) purchased the stock of XXXXX (Dba XXXXX). In consideration for each of XXXXX's and XXXXXany XXXXX's fifty percent (50%) of the stock of XXXXX, XXXXX and XXXXX each received from XXXXX $ plus interest for a total of $ plus interest. The payment of the purchase price will be ten percent (10%) on January 2, XXXXX with the remaining payments made monthly over a five year period plus an annual interest at 9% of outstanding balance.

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XXXXX also agreed to a noncompete agreement not to work in the credit counseling business for a period of three years following the closing, XXXXX agreed to pay . XXXXX $ and additionally consideration XXXXX agrees to pay the premium for . XXXXX's COBRA continuing health covered for 18 months.

Additionally, XXXXX purchased the stock of XXXXX, herein after referred to as XXXXX a for-profit corporation that provided computer and software support. XXXXX agreed to purchase 30% of XXXXX's and XXXXX XXXXX's stock and each received $ plus interest. The payment of the purchase price will be ten percent (10%) on January 2, XXXXX with the remaining payments made monthly over a five year period plus an annual interest at 9% of outstanding balance.

Effective March 1, XXXXX, XXXXX repurchased the remaining outstanding common stock, not owned by the Organization, by issuing a note payable of $ to be payable to XXXXX, owner of the 40% redeemed stock and President of XXXXX. After redemption of stock and merger of organization into XXXXX XXXXX became a leased employee of XXXXX.

The acquisitions were accounted for using the purchase method of accounting. The excess cost over net assets acquired in the transactions was $ in XXXXX and $ in which is being amortized on a straight-line basis over five years.

During XXXXX, XXXXX and its outside accounting firm XXXXX., reviewed the value of its goodwill and determined that its goodwill in relation to the purchase of XXXXX and XXXXX was impaired. XXXXX reduced its goodwill by $, bringing the value to zero. The impairment which was recognized in operations in XXXXX is based on the change in business plan for the subsidiaries, XXXXX and XXXXX and their decision to be a service bureau exclusively for XXXXX rather than other credit counseling agencies. By reducing goodwill to zero in XXXXX the organization wrote-off 60% of the perceived value (intangible assets) of XXXXX within two years of purchase of stock.

The Board of Directors approved in the minutes for January XXXXX the appointment of the current XXXXX board to serve as board of XXXXX. Additionally, the board instructed XXXXX to call a shareholder meeting of XXXXX for purpose of electing a new board. XXXXX and XXXXX were nominated as candidates, thus ensuring that XXXXX had effective control over XXXXX . XXXXX was elected to be the vice president of XXXXX.

The merger and takeover of XXXXX was driven by two fold: gain control of board and cash flow from monthly DMP clients. XXXXX prior to being sold to XXXXX, it actively sought exempt 501(c)(3) credit counseling organizations to provide back office client services.

Compensation –XXXXX-President and Founder

Information which has been made available from XXXXX indicates XXXXX's compensation during the time period o XXXXX is as shown in the following table. During this period of time, XXXXX was the Chief Executive Officer of XXXXX.

XVVVV	XXXXX		XXXXX		XXXXX	
$	$	beginning of year	$		$	beginning of year
	$	year end			$	year end

The Board of Directors of XXXXX takes action on salary levels of XXXXX. At the XXXXX meeting, the Board approved an increase in . XXXXX's compensation to $ effective January 1, XXXXX. At the August 9. XXXXX Board of Directors meeting, XXXXX's salary was adjusted to $ annually to be effective on September 1, XXXXX. At the January 31, XXXXX Board of Directors meeting, the Compensation Committee agreed that XXXXX's salary would remain at $ At the Board of Directors meeting of November 10, XXXXX, XXXXX's salary was increased from $ to $ to be effective December 1, XXXXX. These salary increases came at a time when overall revenue was declining from $ in XXXXX to $ in XXXXX.

In response to IDR #19, XXXXX stated that XXXXX compensation benefits for XXXXX and XXXXX reported on Form 990 for XXXXX, XXXXX and XXXXX were determined by the compensation committee. The Compensation Committee of the Board of Directors relied on the "Consumer Credit Counseling Industry 1999 Compensation Survey" conducted and published by R.D. Brown & Company. The Compensation Committee also factored into its decision the cost of living increases into the survey findings.

In the minutes dated XXXXX XXXXX, CFO and Secretary/Treasurer of Board "presented the findings of a salary survey conducted by XXXXX. related to officers' compensation in the consumer credit counseling industry". In previous discussions with XXXXX the agent was informed that he did not know how study was obtained and was not an employee at the time, which seems to contradict the minutes of XXXXX. Board members XXXXX and XXXXX attended meeting via telephone also in attendance at the meeting was XXXXX, President of XXXXX. In this same meeting the board decided on salary for XXXXX and XXXXX.

During the examination of the books and records it was brought to light that XXXXX, CEO, had received several perks, which were not disclosed in the minutes for XXXXX through XXXXX. These included tax preparation and advisory fees for his personal Form 1040 and State tax returns, term life insurance paid by XXXXX with XXXXX's family as beneficiaries. XXXXX also provided internet service and hook-up at this personal residence, cell phone and corporate credit cards. On numerous occasions XXXXX took potential clients to lunch or dinner to discuss debts. On average XXXXX entertained potential clients, when not in out of town travel status three to four nights per week and many times on Friday and Saturday night. What is troubling with this behavior is why is XXXXX providing some potential clients a free meal, while others must call the toll-free number or come into one of XXXXX's offices? Additionally, it is disclosed based on travel vouchers that only CEO, . XXXXX provided debt counseling during dinner meetings. One such person was his future wife XXXXX. She also accompanied him on some trips. This shows a pattern of control and abuse by the founder of this organization with minimal oversight. CFO and Board member, XXXXX approved these vouchers. The compensation listed above for CEO XXXXX did not include all his fringe benefits that he had received. Form 990 part five was incorrectly completed.

Revenue Sources

In response to IDR request # 16, XXXXX indicated that it enrolled 5,753; 4,657 new clients in years XXXXX and XXXXX, respectively. XXXXX also indicated that the number of clients that enrolled for free for XXXXX was 572 out of 5284 or 10% and 480 out of 3633 or 13% enrolled for free in XXXXX. The number of clients that did not pay any portion of the requested fee for monthly services for XXXXX was 838 of 5,284 or 15% and 505 of 3,633 or 13% for XXXXX. These numbers did not separate the fees that could not be charged due to prohibition by some States who do not allow an initiation or monthly fee to be charged. Per interviews with current employees they rarely waived the monthly fee and generally were not based on income but rather the client requesting waiver of fee or from a State that did not allow monthly fees to be charged. It was more common for the initial fee of $25 to be waived versus monthly fee.

Form 886A (Rev. January 1994)	Explanation of Items		Schedule No. or Exhibit
Name of Taxpayer **XXXXX**		Tax Identification Number XXXXX	Year/Period Ended XXXXX

According to its Form 990, XXXXX generated total revenue of $ $ $ 1; and $ for the years XXXXX, XXXXX, and XXXXX, respectively. Revenue was generated from four main sources:

1. Amounts received from creditors which were classified as fair share revenue
2. The monthly fee 8% of debt from $0 to $35 per month for XXXXX & XXXXX and 10% of debt from $0 to $50 per month for XXXXX from each participant who enrolled in a debt management plan.
3. Client enrollment fee of $25 per client enrolled in a debt management plan and waived for hardship or request.
4. Housing counseling – paid $60 per XXXXX mortgage holder for a meaningful call. Housing counseling started in June of XXXXX. The remainder of income was from the sale of the book "XXXXX" for $50 per book sold.

Revenue Type	Amount (TYXXXXX)	% of Total Rev. (XXXXX)	Amount (TYXXXXX)	% of Total Rev. (XXXXX)	Amount (TY XXXXX)	% of Total Rev. (XXXXX)	Amount (TY XXXXX)	% of Total Rev. (XXXXX)
(1) Fair Share Revenue	$	65%	$	62%	$	60%	$	55%
(2) Monthly Fees	$	33%	$	36%	$	37%	$	39%
(3) Client Enrollment Fees	$	2%	$	2%	$	1%	$	1%
(4) Housing Counseling/ Book Sales/Other	$	Less than 1%	$	Less than 1%	$	2%	$	5%
Total	$	100%	$	100%	$	100%	$	100%

For XXXXX, XXXXX, XXXXX and XXXXX, overall amounts paid by consumers to XXXXX for services constitute approximately 35%, 38%, 38% and 40% of total revenue, respectively.

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Name of Taxpayer **XXXXX**		Tax Identification Number XXXXX	Year/Period Ended XXXXX

In a letter dated October 16, XXXXX from XXXXX Bank to XXXXX a leased employee of XXXXX was to advise them of their current Fair Share amount as of November 1, XXXXX. Based on XXXXX Bank analysis they were given a rating of 8% out of a possible 11%. Overall performance determines fair share: 11% for exceptional performance, 9% for outstanding performance, 8% for agencies meeting expectations and 4% for agencies needing improvement. This letter was provided by XXXXX in response to IDR# 18 item #9.

The criteria to meet is percentage (%) of missed payments month to month, size of payment, average risk score at time of set up to come up with overall performance.

The letter goes on to explain how to improve your fair share. The purpose for setting up performance program – to give you reachable objectives that will **help our Card members** and build **revenue** for **your agency and XXXXX**. As can be gleaned from this letter fair share payments do not have a donative intent but are payments for servicing credit card companies.

In a letter dated July 25, XXXXX, from XXXXX, provided XXXXX with an update regarding XXXXX's voluntary fair share requirements. An agency must be compliant with all standards in order to be eligible for voluntary fair share:

a) 501(c)(3)
b) Fair Fees (maximum $100 start up / $50 monthly)
c) RPS Payments
d) Decline Rate <30%
   - Effective with August XXXXX XXXXX fair share payout
e) RPS Full Budget Proposal
f) Accreditation
   - Accreditation process must be completed by August 31, XXXXX to qualify for a fair share payout in September XXXXX.

Since XXXXX missed the RPS proposal with full budget they did not receive any fair share for the period from XXXXX.

Expenditures:

According to the Form 990. XXXXX's total expenditures for XXXXX, XXXXX & XXXXX were $ $ and $, respectively. At minimum, looking at four expense categories that were clearly identifiable as expenses associated with the DMP process – 1) leads/advertising, and 2) XXXXX back- office, 3) interest fees on note payable to XXXXX and XXXXX and 4) amortization of goodwill associated with purchase of back office and interest on notes payable to XXXXX and XXXXX the following was noted.

Expense	XXXXX Expenses	% of Total Expenses	XXXXX Expenses	% of Total Expenses	XXXXX Expenses	% of Total Expenses
Leads/Advertising	$	11%	$	12%	$	12%
XXXXX Back Office	$	41%	$	42%	$	47%
Interest fees to XXXXX and XXXXX (DP's) for Notes payable for purchase of XXXXX	$	2%	$	2%	$	3%
Amortization – goodwill from purchase of back office - XXXXX	$	4%	$	5%	$0	0%
Overall		58%		61%		62%

Excluding any payroll expenses, the annual average amount of XXXXX's overall expenditures on the DMP process plus purchase of back – office represented 60% of its total expenses. This figure does not include the labor costs of XXXXX involved in the processing of DMPs nor does it include the postage and overnight delivery costs or the telephone fees billed by XXXXX if included would cause this figure to be even higher.

Mortgage Counseling

During the course of the examination XXXXX provided copies of U.S. Department of Housing and Urban Development (HUD) approval for XXXXX to operate as a Housing Counseling Agency to provide Mortgage Delinquency, Loss Mitigation and Money/Debt Management Counseling, the approval covers two-years. The name and address of XXXXX will appear in HUD approved housing counseling agencies and be included in the toll-free 1-800 number referral service provided by HUD. Mortgage assistance income from XXXXX accounted for 1% of revenue for XXXXX and 5% for XXXXX.

In the Board of Director minutes for XXXXX, dated January 31, XXXXX, XXXXX discussed there involvement with XXXXX (XXXXX). The XXXXX was established in mid-XXXXX as a consortium of three credit counseling agencies and XXXXX to provide third party intervention for home owners who had fallen behind in their mortgage payments. XXXXX pays a flat fee to the agencies for counseling their clients, no matter what the outcome. The XXXXX is looking to expand the number of creditors involved as sources of referrals. XXXXX proposed that all three Credit counseling agencies to contribute up to $60,000 to help fund the expansion with the contribution being paid over six months out of the fees generated. The motion was passed by the board.

In an article written by XXXXX, titled: "Money Troubles: XXXXX is blazing new trails in helping delinquent borrowers get out of financial trouble. Its partnership in XXXXX is saving borrowers from foreclosure. Next stop is XXXXX, XXXXX and XXXXX for its innovative programs" in Mortgage banking dated June 1, XXXXX, discusses XXXXX and credit counseling organizations involved in the joint venture. XXXXX, managing director of the company's XXXXX(XXXXX) stated that they had found three agencies; XXXXX, XXXXX, XXXXX; XXXXX, XXXXX; and XXXXX, XXXXX, XXXXX that together gave XXXXX nationwide, 24/7 coverage through transfers from its own loan servicing call centers. The overreaching concept of XXXXX was to transform loss mitigation and keep families in their homes. The article goes on to state, "Since the start of XXXXX, it has engendered 25,000 counseling sessions, Says XXXXX. As to the effectiveness of counseling, the company hasn't yet completed a control-group study because that usually involves a two-year look back to see whether a program has worked. The majority of the loans referred to counseling were seriously delinquent, and 51 percent of the loans we counseled are now current," XXXXX says. However, I couldn't say that is was specifically because of counseling that those loans are current."

XXXXX is providing a service to XXXXX to work with their clients, which is really outsourcing their work to a non-profit organization. The clients are being referred by XXXXX and XXXXX receives a $60 fee. The fees collected are not being used for education but rather to generate more business and revenue. Foreclosure costs to XXXXX could amount up to 47% of the outstanding loan balance which includes delinquent interest that does not get paid and the expenses over an average of 18 months it takes to foreclose, fix it up and resell a property, so the cost savings to XXXXX is enormous.

TAX-EXEMPT CREDIT COUNSELING ORGANIZATIONS

	XXXXX Alabama	Rev. Rul. 69-441 501(c)(3)	Rev. Rul. 65-229 501(c)(4)	XXXXX
Free Public Education	Yes: Major activity	Yes	No	Yes, Nominal in XXXXX,

Form 886A (Rev. January 1994)	Explanation of Items	Schedule No. or Exhibit

Name of Taxpayer	Tax Identification Number	Year/Period Ended
XXXXX	XXXXX	XXXXX

				XXXXX, and XXXXX
Free Individual Counseling	Yes: Major activity	Yes	Yes	Yes
Debt Management Plans	'Yes: 12% of counselors' time	Yes	Yes	Yes, about 10% of calls end in DMP – Large percentage of calls come from paid leads through web-sites. EO pays a fixed amount per lead.
Fees for DMPs	Yes: nominal waived for hardship	No	Yes: nominal	Yes: waived for hardship, must request reduction or waived fees. No sliding scale. Formal procedures started in XXXXX.
Amount of Revenue from Fees	Incidental amount	None	Minor: main support from Fair share and contributions	XXXXX – 62% Fair share, 36% monthly fees and 2% initiation fees XXXXX – 60% Fair Share, 37% monthly fees, 1% initiation fees and 1% XXXXX counseling fees XXXXX – 55% Fair share, 39% monthly fees, 1% initiation

				fees, and 5% XXXXX ($60/substantive call) counseling fees
Public Support	Contributions from gov't, private found., & United Way	Some: amount not specified	Some: amount not specified	No, only fair share and enrolled clients
Community Board	60% from general public	All members represent the public	n/a	Not a public board - 3 Board members, one Board member is also CFO.

LAW

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) is exempt from income tax. 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 the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c) (3)-1(d) (2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

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

Section 1.501(c)(3)-1(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. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). 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 purposes, 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.

Similarly, in American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it 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 the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs were also educational and charitable; the debt management and creditor intercession activities were "an integral part" of the agencies' counseling function and thus were charitable and educational. Even if this were not the case, the court viewed the debt management and creditor intercession activities as incidental to the agencies' principal functions, as only approximately 12 percent of the counselors' time was applied to debt management programs and the charge for the service was "nominal." The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-

2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

The organizations included in the above decision waived the monthly fees when the payments would work a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way.

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

An organization formed to educate people in Hawaii in the theory and practice of "est" was determined by the Tax Court to a part of a "franchise system which is operated for private benefit," and, therefore, should not be recognized as exempt under section 501(c)(3) of the Code. est of Hawaii v. Commissioner, 71 T.C. 1067, 1080 (1979). Although the organization was not formally controlled by the same individuals who controlled the for-profit entity that owned the license to the "est" body of knowledge, publications, and methods, the for-profit entity exerted considerable control over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court stated that the fact that the organization's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit entities were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether the for-profit entity benefited substantially from the operation of the organization. The court determined that there was a substantial private benefit because the organization "was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations."

The Service has issued two rulings holding credit counseling organizations to be tax exempt. Rev. Rul. 65-299, 1965-2 C.B. 165, granted exemption to a 501(c)(4) organization whose purpose was to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy. Its primary activity appears to have been meeting with people in financial difficulties to "analyze the specific problems involved and counsel on the payment of their debts." The organization also advised applicants on proration and payment of debts, negotiated with creditors and set up debt repayment plans. It did not restrict its services to the needy. It made no charge for the counseling services, indicating they were separate from the debt repayment arrangements. It made "a nominal charge" for monthly prorating services to cover postage and supplies. For financial support, it relied upon voluntary contributions from local businesses, lending agencies, and labor unions.

Rev. Rul. 69-441, 1969-2 C.B. 115, granted 501(c)(3) status to an organization with two functions: it educated the public on personal money management, using films, speakers, and publications, and provided individual counseling to "low-income individuals and families." As part of its counseling, it established budget plans, i.e., debt management plans, for some of its clients. The debt management services were provided without charge. The organization was supported by contributions primarily from creditors. By virtue of aiding low income people, without charge, as well as providing education to the public, the organization qualified for section 501(c)(3) status.

The Credit Repair Organizations Act (CROA), 15 U.S.C. § 1679 et seq., effective April 1, 1997, imposes restrictions on credit repair organizations, including forbidding the making of untrue or misleading statements and forbidding advance payment, before services are fully performed. 15 U.S.C. § 1679b. Significantly, section 501(c)(3) organizations are excluded from regulation under the CROA.

The CROA defines a credit repair organization as:

(A) any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer's credit record, credit history, or credit rating, or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

15 U.S.C. § 1679a(3). The courts have interpreted this definition broadly to apply to credit counseling agencies. The Federal Trade Commission's policy is that if an entity communicates with consumers in any way about the consumers' credit situation, it is providing a service covered by the CROA. In Re National Credit Management Group, LLC, 21 F. Supp. 2d 424, 458 (N.D.N.J. 1998).

Businesses are prohibited from cold-calling consumers who have put their phone numbers on the National Do-Not-Call Registry, which is maintained by the Federal Trade Commission. 16 C.F.R. § 310.4(b)(1)(iii)(B); 47 C.F.R. § 64.1200(c)(2). Section 501(c)(3) organizations are not subject to this rule against cold-calling. Because 501(c)(3) organizations are exempt from regulation under the CROA and the cold-calling restrictions, organizations that are involved in credit repair have added incentives to be recognized as section 501(c)(3) organizations even if they do not intend to operate primarily for exempt purposes.

GOVERNMENT POSITION

The Primary activity of XXXXX was not "educational" or "charitable" as defined under Internal Revenue Code, its Regulations, or legal precedence. The primary activity was the enrollment of debtors in debt management plans. XXXXX operations were not consistent with organizations described in section 501(c)(3) of the Code and its exemption should be revoked. Enrolling clients on a DMP is not an educational activity.

XXXXX is not engaged primarily in activities that accomplish an exempt purpose. It did not exclusively serve a charitable class such as low-income individuals. It did waive fees and provide some services free or below cost if a DMP was desirable to creditors. Organization operations have an inherently commercial nature and it provides services to any caller accepted by the creditors. If a caller has ability to pay, then services are provided at market rates allowed within the State of residence. It operated to serve a substantial non-exempt purpose.

The purpose of XXXXX's activities differs substantially from those of the organizations in Rev. Rul. 65-299, Rev. Rul. 69-441, and Consumer Credit Counseling Service of Alabama, Inc. v. U.S. In this case, XXXXX engages in minimal activities which further an exempt purpose. Its "counseling" activity is nothing more than an interviewing activity; XXXXX screens consumers to market and sell DMP services. There is very little education provided to consumers who contact, or are contacted by XXXXX from lead tracking. Employees were evaluated not on the ability to provide good education or counseling services to clients, but on their ability to identify the appropriate solution for their problem through mass screening. The evaluation of employees encouraged interviewing potential DMP candidates, producing the required 100 monthly or 300 quarterly client action plans, and signing and retaining 30 new DMP clients each month. Counselor compensation rewarded enrollments of consumers in DMPs and did not encourage any meaningful education or credit counseling to take place. The training manual reinforces this work environment by setting production goals for employees to produce 100 CAPs and enroll 30 new DMP clients per month. This equates to 30% of client calls ending up on DMPs as organization goal. Unlike the credit counseling organizations described in the Revenue Rulings referred to above, and in Consumer Credit Counseling Service of Alabama, Inc. v. U.S., XXXXX provides very little counseling or education to its clients.

Many of the changes that XXXXX has implemented during XXXXX through XXXXX have been a direct result of catering to the requirements of credit card companies and the amount of fair share they will pay for servicing their clients. The credit card companies are looking for credit counseling organizations that are efficient in transferring funds and retaining clients on DMPs including size of payment and FICO risk of client which will enrich both organizations. It is in the best interest of the credit card companies to retain card holders, since it can cost up to $400 in promotions to obtain new clients.

XXXXX claimed to have engaged in educational outreach activity with various community groups. However, much of the activity was not geared directly to the individuals but, organizations that could provide potential future leads which are needed for XXXXX to grow through the increase in DMPs.

XXXXX engaged in extensive advertising activities in order to generate clients. The procurement of clients was essential to the organization's objective to market its debt management plan (DMP). Only by having clients sign up for DMPs could XXXXX generate revenue by having such client pay fees and creditors pay fair share and provide business to XXXXX. XXXXX did not otherwise have an active program of soliciting charitable contributions. They used the monthly fees and fair share revenue to purchase new leads at $7.50 - $30 per usable lead in XXXXX through XXXXX. Generally, if the call lasted less than five minutes there was no charge. Clearly, the only reason to expend these funds was to obtain potential DMP clients which would in turn increase revenue, which enables the CEO and CFO to increase their salaries.

The magnitude of XXXXX's advertising is reflected in the percent that advertising expenses represent to the overall expenditures of the organization. Specifically, 11%, 12%, and 12% of the overall expenditures were spent on advertising, marketing and

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public relations during XXXXX, XXXXX and XXXXX, respectively. The primary advertising expense was the purchase of leads and yellow page advertising and an increase in purchases of 60 second spots of airtime on local radio stations in XXXXX. In some instances, the radio advertisement spoke directly about DMPs. For example, an advertisement on radio station XXXXX read in part, "XXXXX HAS COUNSELORS THAT GAVE ME A FREE NONJUDGEMENTAL, CONSULATATION! WE WORKED OUT A PAYMENT PLAN THAT GAVE ME ONE LOWER MONTHLY PAYMENT AND A LOWER INTEREST RATE ON MANY OF MY CREDIT CARDS, GETTING THOSE CREDITORS OFF MY BACK AND PAYING OFF MY DEBT FASTER." This describes a DMP and not counseling.

In addition, XXXXX was provided DMP clients by contractors who were paid a commission. Specifically, XXXXX (a for-profit entity) (XXXXX) enrolled clients. Both organizations needed each other, XXXXX enrolled them with creditors in order to use their exempt status to obtain fair share, provide clients to back office service provider to collect $17 or $18 fee and pay a commission to XXXXX as long as clients continued there enrollment in a DMP through XXXXX. This relationship had started in XXXXX and had continued through XXXXX. These clients were not provided educational training or information by XXXXX. In XXXXX, $ of client deposits into XXXXX trust accounts was from XXXXX provided clients. These clients were tracked by XXXXX in order to determine if the clients remained on DMPs. This is clearly evidence that XXXXX was more concerned in obtaining clients for DMPs rather then educating clients on budgeting and finances. Clearly this is an example of operating in a commercial manner instead of educational or charitable.

XXXXX employees were compensated based on the amount of business they brought in, and were threatened with being fired for not bringing in enough business. Employees received minimal training on how to provide educational counseling to clients on personal money management. For the most part, the employees had communication or social service backgrounds, and they were trained to sell DMPs to consumers, whether the consumers' situations warranted it or not. In fact, the training did not enable an employee to even know whether a DMP would serve the best interests of a potential customer. The employees are required to take a self study course on financial counseling which is paid for by XXXXX, however, most new counselors are on the telephone taking calls within weeks of being hired with no financial counseling background or education and generally will take them 6 -12 months to pass the test and become certified. The course is equivalent to a four credit college course.

XXXXX dba XXXXX merged with XXXXX, in December of XXXXX due to a change in XXXXX Statutes that no longer required a non-profit to be incorporated in

XXXXX to operate a credit counseling business. XXXXX dba XXXXX, which % of its stock was purchased by XXXXX in December XXXXX and liquidated its assets into XXXXX in XXXXX. This enabled the founders, XXXXX and XXXXX to cash out of business and leave XXXXX with a considerable debt load. If XXXXX had set up its own processing center as part of the exempt organization function they would have only been able to remove the funds of the charity through compensation. Both XXXXX and XXXXX had very limited risk of loss with for-profit business XXXXX, since there investment was only furniture and $ in capital. In addition, XXXXX had bought assets (client accounts on DMPs) from exempt organizations in XXXXX and XXXXX. The value of these organizations was the cash flow of clients on DMPs.

XXXXX was not operated with public support and public control. It was controlled by XXXXX XXXXX as CEO, and XXXXX the CFO who is also chairman of board. The Board has had minimal turnover, the CEO no longer is a Board Member as of 2000 due to meeting ISO (International Standards for Quality Management Systems) requirements. Currently there are three board members and one is an officer of XXXXX. It was written in the board minutes the discussion of expanding the number of board members but has never moved forward. Some of the Board Members have worked as consultants to XXXXX, so they have had a personal business interest of being on the board. XXXXX was privately supported in aggregate by credit card companies with over percent of its income in the form of fair share coming from credit card companies. The control by the credit card companies of the credit counseling industry was evident by the review of applications of fair share XXXXX had submitted, and responses to the applications. The applications required that they be exempt under IRC 501(c)(3), fair fees charged to clients, RPS payments, retention of clients, accreditation and size of payments and risk of client determined the amount of fair share received. Because XXXXX is so dependent DMPs, fair share they are indirectly controlled by the credit card companies and not necessarily looking out for the best interests of clients.

The reason XXXXX is organized as an exempt organization is to avoid the regulatory scheme of the Credit Repair Organizations Act (CROA), 15 U.S.C. section 1679, et.seq. CROA was enacted to protect consumers by banning certain deceptive practices in the credit counseling industry. If XXXXX was a for-profit company, the CROA would prohibit it from charging fees in advance of fully providing services. In addition, if XXXXX were for-profit, federal law would prohibit it from purchasing leads and making cold calls to potential customers. Because section 501(c)(3) organizations are exempted from the provisions of CROA, XXXXX is able to engage in deceptive business practices that Congress intended to prohibit when it passed the CROA law. As such, XXXXX is operated for a substantial non-exempt purpose that of carrying on a business while avoiding federal regulation. In addition, XXXXX could not collect "fair share" payments from creditors if it did not have exempt status. The entire DMP business depended on an organization having tax-exempt status.

Exempt Organization's Position

The exempt organization's position has not been determined.

CONCLUSION

In summary, XXXXX was not operated exclusively for educational or for any other exempt purposes within the meaning of section 501(c)(3) of the Code since its primary activity is the sale of debt management plans. XXXXX conducted minimal educational activities within the community, provided minimal educational training or counseling to individuals on credit or debt management issues, and did not provide education in the context of sales of its debt management plans. The debt management program was not limited to a charitable class and XXXXX did implement a formal procedure AMP 75-02, "Client Unable to Pay Procedure" some time in XXXXX to waive or reduce the fees for the indigents or to waive the fees for those to whom such fees would create financial hardship, but managerial approval was required insuring its limited use. In some cases clients with very low monthly income paid a higher percentage fee based on debt owed to creditors than some wealthier clients who had large amounts of debt and paid a maximum fee of $35 or $50 dollars. Consequently, the debt management program did not serve a charitable class. Since the primary activity of XXXXX was the sale of debt management plans which lacked substantial educational or charitable aspects, its exemption under section 501(c)(3) of the Code should be revoked effective January 1, XXXXX.