



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201152019**
Release Date: 12/30/2011

Date: October 6, 2011

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.33-00; 501.35-00

Dear :

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

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

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

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

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

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



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: August 10, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = President
C = Vice President
D = State
E = Date
F = State Agency
G = State Funding Source

UIL:

501.33-00
501-35-00

Dear _____ :

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

Issues

- Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the requirements under section 501(q) of the Code? No, for the reasons described below.

Letter 4036 (CG) (11-2005)

Facts

You were incorporated on E as a non-profit corporation under D law. Your Articles of Incorporation ("Articles") state, in Article IV, that your specific purpose is to:

".. provide loss mitigation assistance for consumers at risk to lose their homes. Also providing neighborhood housing assistance to provide occupants for vacant homes."

Your Articles also provide:

This corporation is organized for charitable, religious, educational, and scientific purposes within the meaning of Section 501(c)(3), Internal Revenue Code, including, for such purposes the making of distributions to corporations that qualify as exempt corporations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Notwithstanding any other provisions of these articles, this corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law.

Your Bylaws state, in Article 2, that your specific purposes are to provide:

"Loss Mitigation Services, credit analysis, neighborhood housing assistance, pre-purchase counseling, post-purchase counseling and debt management services. Furthermore, all programs will be provided to everyone without cost with the exception of a small fee for items such as credit reports, etc."

Your Bylaws also provide in Article 8, "officers shall by virtue of their office be members of the Board of Directors."

Your Form 1023 ("application") indicated you will provide the public with loss mitigation assistance and neighborhood housing information. You are an organization that assists existing homeowners in jeopardy of foreclosure through loss mitigation and foreclosure prevention counseling. You will provide clients with negotiation assistance to achieve workouts/loan modifications from their lenders to avoid foreclosure. You will also refer people to local attorneys, CPAs and realtors as situations warrant. However, you do not have a referral list at this time. Also, you will not advertise or promote the products/services of any company.

Everyone needing your services can participate in your credit counseling activities. You do not charge a fee for your services. Any fees charged will be governed by HUD regulations.

You plan to solicit funds via mail, email, personal solicitation and website as well as applying for foundation and government grants. You have not applied to National Foreclosure Mitigation Counseling Program or HUD for funding. However, you do plan to apply to HUD in the future. Upon receipt of tax-exempt status you plan to apply to F for funding.

You currently have two volunteer counselors providing services to clients. Your counselors are certified by G which is a state organization. All employee training will be delivered utilizing materials from Fannie Mae, HUD, F and G. You plan to hire up to a 15 person staff. Amounts of proposed compensation were included for the officers and directors. None of your directors have special knowledge or expertise in credit or financial education or are public officials/community leaders acting in that capacity. Your administrators are currently obtaining their certification to perform credit repair services. None of your officers or directors has served on the board of or has an ownership interest in any for-profit organization with whom you do business. Also, your officers, B and C are related by marriage. A conflict of interest policy has been adopted.

You anticipate helping 25-100 individuals per month and are temporarily operating out of a home office until a permanent location is found. Life skills educational sessions that include personal budgeting, managing credit card debt and repairing credit will be provided as well. Currently, credit counseling materials that will be given to participants have not been developed. Additional services that may be offered include debt management, debt repayment, debt consolidation or debt negotiation to individuals.

The programs will be advertised by word of mouth, the internet, community bulletin boards and mail out materials. You do not have a website.

In response to our correspondence, you submitted additional information regarding your operations. You have not conducted any workshops or seminars to date. You may utilize alternative methods to provide educational information to the community at large. However, those plans have not been solidified as of yet. You are no longer planning on providing any of the services listed on your Form 1023, other than mortgage mitigation services. You will provide referrals for all other services to local agencies providing such services.

In correspondence you also stated your board members will no longer be compensated. While B and C are compensated officers, they are not members of the board. You

charge clients a credit report fee if the lender does not provide their own copy. You submitted two pamphlets, one from Fannie Mae and one from F, which are given to clients during the mitigation process. You spend 5% of your time on the initial contact with the clients and analysis of their situation and 95% of your time on preparation of documents and the negotiation process with the lender.

Your services are not limited to a particular class of individuals. You do not currently offer any workshops because you have found it difficult to get the necessary attendance to make it worthwhile to set up a workshop. Future educational programs will be available to the general public and clients and will be offered free of charge. You did not submit copies of any educational materials.

The process you currently follow for mortgage mitigation services begins with an initial review of the potential client's information via a telephone call. If the individual is interested in receiving services from you, an intake form is completed and an appointment is set up to meet with the client. The intake form includes information related to the delinquent mortgage. No other credit or debt information is obtained from the client. The letter of authorization signed by the client is faxed to the lender, and the negotiation process with the lender on behalf of the client is begun. Your clients are required to complete several signed forms including the Client Affirmation, Foreclosure Prevention Agreement and Scope of Services Notice, Release and Acknowledgement. The Foreclosure Prevention Agreement states that the Counselor will provide professional assistance negotiating with their lender/mortgage company to facilitate a repayment/workout plan. Furthermore, the client is required to complete an intake form to determine what options may be available to the client, and this will be used to negotiate with the mortgage company. Finally, the client agrees to provide all documentation necessary to complete a workout package.

You obtain income and mortgage information from each client to assist in the mortgage mitigation process. Your presentation to clients includes information regarding you and your services as well as an explanation of the foreclosure process, including the client's options. The client's current finances, debt to income ratios, and budgets are covered. Their options are discussed based upon their current situation. A written budget analysis is provided to each client through the Fannie Mae Home Counseling Online software. Clients are not required to engage in an ongoing educational program during the mitigation process. Each client is met with at least twice before a recommendation is made for a particular approach. The initial contact via the telephone averages 30-45 minutes and the in-person appointment averages 2 hours. Subsequent follow-up inquiries are typically short as clients are just dropping off documents or items needed for the modification process. You do not obtain clients through the purchase of leads or lists. You do not receive or pay referral fees.

Law

Section 501(c)(3) of the Code provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

- (A) The organization--
 - (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
 - (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the

consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

- (D) At all times the organization has a board of directors or other governing body--
- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
 - (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
 - (iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).
- (F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

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

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

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

Section 1.501(c)(3)-1(b)(4) of the regulations requires an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

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) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It is necessary for an applicant organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

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

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised

of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

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

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

The Service compared this holding with the holding of Rev. Rul. 65-299, which holds that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from Federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)).

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. 178 (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.

Rev. Proc. 86-43, 1986-2 C.B. 729, describes the methodology test the Internal Revenue Service uses to determine when the advocacy of a particular viewpoint or

position is educational under sections 501(c)(3) of the Code and 1.501(c)(3)-1(d)(3) of the regulations. The revenue procedure states that the focus of section 1.501(c)(3)-1(d)(3) is on the method the organization uses to communicate to others, not the content of its communication. The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." One factor indicating the method is not educational is as follows: "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter." The remaining factors relate specifically to advocacy organizations and the "full and fair exposition" part of the regulation.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

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

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The litigant, "Consumer Credit Counseling Service of Alabama, Inc.", is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these

services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The 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. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." *See also, Credit Counseling Centers of Oklahoma, Inc. v. United States*, 79-2 U.S. Tax Case. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner * * * because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and spouse were the only directors, the founder was the

only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of private interests.

Finally, the Tax Court held the facts in the previously cited Consumer Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) "stand in stark contrast" because "the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal."

Application of Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) as stated in the regulations, section 1.501(c)(3)-1(a)(1). Based on the information you provided in your application and supporting documentation, you fail both tests.

Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes, as provided in section 1.501(c)(3)-1(c)(1) of the regulations. The actual purposes of an organization may be discerned by the activities it conducts. You are similar to the organization in B.S.W. Group, 70 T.C. 352 (1978) in that you failed to establish that you are operated exclusively for one or more exempt purposes. In B.S.W. Group, Inc. v. Commissioner, the court found that a corporation organized to provide counseling services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on as a commercial venture organized for profit.

Your Activities Are Not Educational

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities. You stated that the process you follow for mortgage mitigation services includes an initial telephone review with the potential client. If the individual is interested in your services an intake form is completed. An in-person appointment is then scheduled. Your presentation to the client includes information regarding your services, the foreclosure process including the client's options, as well as the client's

current financial situation that includes a written budget analysis. However, unlike the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441, *supra*, you do not offer counseling sessions that are structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. You provided no evidence your employees do anything other than sit down with your clients to fill out the information needed to submit a statement of their financial condition to the lender. None of your directors have special knowledge or expertise in credit or financial education or are public officials/community leaders acting in their official capacity. While your counselors are certified by a state agency in foreclosure, they are not certified or trained to provide housing or personal finance counseling. Finally, you stated only 5% of your time is spent on the intake process while 95% is spent on preparation of documents and negotiation with the lender. Communicating with a homeowner to fill out a financial worksheet and an intake sheet is not an educational activity because the communication does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process as described in Rev. Proc. 86-43, *supra*. Therefore, you failed to establish that your interactions with clients provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

You do not operate a substantive on-going educational program. You have not conducted any seminars or workshops to date, nor do you require your mortgage mitigation clients to participate in an ongoing educational program. You may utilize alternative educational methods in the future. However, you have not submitted any information regarding those educational programs. The only educational materials submitted included two pamphlets from government agencies that are provided to clients during the mitigation process. The educational content delivered via the pamphlets is incidental to the modification service provided to the client. You do not dedicate any revenue to activities involving educational programs. You do not allocate any expenses to training employees. Like the organization in Solution Plus, *supra*, you did not provide evidence you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems. You provided no evidence you intend to establish long-term counseling relationships with your clients.

While you do not charge a fee to your clients, you will either be reimbursed by a government agency for your services or apply for grant funding. Your operational focus is on generating fees from your consulting activities through the receipt of grants and donations rather than fees charged to clients. Similar to the organization in Solution Plus, *supra*, your efforts are focused on informing potential clients about the mortgage mitigation service available and signing them up for your services. In fact, your client agreement states that the counselor is only providing assistance with negotiating a loan modification. Like the organizations described in Solution Plus, *supra* and Better Business Bureau, *supra*, your activities have an underlying commercial motive that

distinguishes your activities from those carried out by a section 501(c)(3) organization. Thus, your activities are not educational within the meaning of section 501(c)(3).

Your Activities Are Not Charitable

All of your time and resources are devoted to providing mortgage modification services to individuals who are not necessarily part of a charitable class. Helping homeowners at risk of foreclosure negotiate a modification to the terms of their mortgage does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable.

The foreclosure consulting services you provide to individuals do not further charitable purposes. You represent that everyone is eligible for your services regardless of income. Therefore, your services are not directed exclusively to low-income individuals. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. Thus, you have failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The mortgage mitigation services you provide to homeowners do not necessarily serve a public interest. Nor are the beneficiaries of your services limited to the poor or distressed. Your services benefit the private interests of the individual homeowners by relieving them of the burden of negotiating a modification with their lender. Your services also benefit the private interests of the lender when loan repayment plans reinstate previously delinquent mortgages. Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Section 501(q) of the Code

An organization providing educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Therefore, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

You do not comply with certain provisions of section 501(q) of the Code. An exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to a consumer for services are reasonable and allows for the waiver of fees if the consumer is unable to pay, as stated in Code section 501(q)(1)(C). You charge a credit report fee to your clients. However, you failed to establish that you have a fee waiver policy for those clients who cannot afford to pay the credit report fee.

You do not provide credit counseling services tailored to the specific needs and circumstances of consumers as specified in section 501(q)(A)(i) of the Code. You do not provide educational information to the public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of credit. Nor do you assist individuals and families with financial problems by providing them with counseling as required in Code section 501(q)(4)(A). You have provided no educational seminars or workshops to the general public and the educational materials distributed to your clients receiving mortgage mitigation services are limited to two pamphlets from government agencies. You spend 95% of your time negotiating with lenders and only 5% on your "counseling" sessions with clients. Therefore, you do not meet the requirements under section 501(q).

Finally, you identified B and C as officers but not directors. However, your Bylaws state that all officers are also directors by virtue of their position as officers. Therefore, more than 20% of the members of your Board of Directors are also compensated as employees. This is inconsistent with the requirements of section 501(q)(D)(ii) of the Code. Therefore, you have not demonstrated that you are organized and operated in accordance with the requirements of section 501(q) of the Code.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations because you are spending most of your time negotiating with lenders to obtain mortgage modifications, an inherently commercial activity. Also, you do not limit your services to the poor or distressed, and you do not provide any educational activities. You are not operated exclusively for an exempt purpose as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations because you do not limit services to the poor or distressed. Therefore, you are not described in section 501(c)(3).

The descriptions you provided of your mortgage mitigation services, which are within

the meaning of Code section 501(q)(4)(A), are not consistent with the requirements of that section or sections 501(q)(1)(C) and 501(q)(A)(i) with respect to addressing the specific needs and circumstances of consumers, and your governing body is inconsistent with the requirements of section 501(q)(D)(ii) of the Code.

Therefore, had you established that you otherwise met the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code, and you must file federal income tax returns. Contributions to you are not deductible under section 170.

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

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

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

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

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

Your appeal will be considered incomplete without this statement.

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

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

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

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

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

Mail to:

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

Deliver to:

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

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure, Publication 892