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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201205012**
Release Date: 2/3/2012
Date: November 10, 2011
UIL Code: 501.03-30
501.32-00
501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear

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

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

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

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

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: **September 21, 2011**

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #'s:
501.03-30
501.32-00
501.33-00

Legend:

C = State
D = Date
E = For-profit
G = Third Party
m = Amount # 1
n = Amount # 2

Dear

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

Facts

You provide foreclosure related services. You incorporated on **D** as a non-profit corporation under **C** law. Your Articles of Incorporation ("Articles") state that the specific purpose for which you were formed is:

> WE ARE NOT FOR PROFIT ORGANIZATION THAT HELPS DISTRESSED HOME HOME OWNERS – WE MODIFY EXSISTING HOME LOANS OF PEOPLE THAT ARE GOING THROUGH A FORCLOSURE AND ARE ABOUT TO LOSE THEIR HOMES.

Your bylaws provide that you are "organized exclusively for charitable, scientific and education purposes" and your purpose is: "to support and conduct non-partisan research, education, and informational activities to increase public awareness of mortgage modification; to contribute to child protection agencies; and contribute to animal abuse organizations..."

Your Form 1023 ("application") initial submission did not include any narrative details regarding your activities and operations. Your application shows that you have three directors, who are to receive annual compensation for serving as directors. You indicated you will make grants to child protection agencies and to national and/or local animal humane societies. You also provided projected financial information for your first three years indicating revenue and expenses.

You provided additional information that shows you do not actually represent clients during the mortgage loan modification process, but rather promote and sell proprietary web-based software of an unrelated for-profit company that enables clients to represent themselves in the modification process. You indicated that your time and funds are spent on addressing inquiries from potential clients and then directing and assisting those that qualify to the software program for self-directed loan modification. You promote your services on your website by asking: "Why Pay Attorneys Thousands of Dollars...." Your activities also include training clients in the use of the software and providing ongoing technology support for its use. Clients are often obtained through paid referrals and leads.

You explained your step-by-step counseling and modification process as follows:

> (W)e work with individuals and families who wish to apply to their lender for a loan modification. We offer them a web based software program where they can enter all the required information to apply for a loan modification. Once they have entered their information our processor will review the file online. We read the hardship letter to make sure it makes sense. We review the income and expenses to be sure all information is entered correctly. Once everything is good we email the necessary documents for the client to print and prepare their modification package to submit to the lender.

You currently have 22 counselors. No information related to their educational backgrounds or training has been provided. Counselors and clients generally have contact only once. However, you may provide additional assistance if needed. You do not limit your counseling to any particular class of individuals, stating that "(w)e will help anyone that is in need of assistance."

All potential clients are evaluated through a phone call to the number listed on the website and the completion of a one-page intake form. To determine if a client "qualifies" for your services, you evaluate "debt to income, assets, available credit, liquid holdings, length of employment, family size, etc..." You state that if a counselor determines that "even with modification, the homeowner can't possibly afford to continue with a mortgage," a client would not qualify and therefore would not be offered the software for purchase.

You estimate you will have 12 to 28 clients per month. You provided the following estimates regarding the number of clients that have qualified for your services thus far:

Non-qualified clients	15,000
Qualified clients	8,000

You have not applied for funding and/or training courses from any government sources. You will not offer any educational programs, stating that "(t)here are no workshops or other such activities planned at this time." You do not require clients to attend any continuing educational programs.

Qualified clients pay an upfront non-refundable licensing fee of **m** for the use of the "do it yourself" loan modification software tools. A software license agreement was submitted. The agreement describes the web tools provided to your clients as follows:

- Financial management component (walks clients thru process)
- Financial calculators (debt to income ratio, total expense ratio, etc…)
- Financial statement creator (creates personal financial statement)
- Letter management system (creates correspondence)
- Document manager (uploads documents)
- Secure online account (encrypts information)

The creator and owner of the software is **E**, which is owned by **G**. **G** is unrelated to your directors. You did not indicate any income from fees initially, but later disclosed that you will receive a portion of fees charged by the unrelated for-profit for sale of its proprietary web-based software. For each **m** fee received, **E** is paid 44.4% and you are paid 55.6%. This is your main source of support.

Compensation for counselors is based on a percentage of the funding you receive for software placement licensing. The counselors are not employees but are subcontractors paid a "stipend" based upon the overall production of the company rather than individual production. The "stipends" are estimated to be **n** per year.

You later modified your compensation projections to indicate two of your directors are officers of the organization and the only salaried employees. Although you have yet to compensate either director/officer, each will make around seven times **n**, per year. No information is provided regarding the roles and duties and/or job descriptions of the compensated employees to determine the reasonableness of the stated compensation.

Per your first year financial report, you had total revenue of more than $449,000 and expenses of more than $441,000. The majority of revenue came from "loan mod fees", which provided 60% of revenue, and "do it yourself kits", which provided 36% of revenue. "Loan mod fees" refers to clients making payments over time for use of software and "do it yourself kits" refers to your one-time payments received for use of the software. The majority of expenses (53.5%) were for subcontractors/counselors and information technology (20.6%). Information technology is the expense for training and support of counselors and clients to use the software. The financial report did not indicate any grants or similar amounts paid.

You submitted year-to-date actual financial information for your second year, which showed revenue and expenses of over one million dollars each. The majority (over 98%) of the revenue came from "do it yourself kits". The majority (59%) of expenses was for subcontractors/counselors and "leads and data" expenses (24%). Leads and data expenses were for paid referrals described as "contact information fees". The year-to-date financial information did not indicate any grants or similar amounts paid.

You stated you may waive the **m** fee based on hardship (medical bills, health reasons, job change, etc…). You stated that 40% of your 8,000 clients did not pay the full price (average reduction of 25%),

and 197 clients paid no fee. There is no evidence of this fee waiver or fee reduction policy on your website or promotional materials.

In an attempt to clarify your fee waiver policy, you were asked if you have or will refuse to provide services to a consumer due to the inability of the consumer to pay. You stated that "we will work with anyone that does not have the ability, but we refuse to work with people that do not have the willingness to pay." You later clarified that "the waiver is granted for crucial hardship (medical bills, health reasons, job change (move, demotion, etc)) and is expected to be granted daily."

Law

Section 501(c)(3) of the Internal Revenue 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 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 states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

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

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states it is necessary for an organization to establish that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.
Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) 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.

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) of the Code 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 501(q)(4)(B) of the Code defines, for purposes of section 501(q), the term "debt management plan services" to mean services related to the repayment, consolidation, or restructuring of a consumer's debt, and to include the negotiation with creditors of lower interest rates, the waiver or reduction of fees, and the marketing or processing of debt management plans.

Rev. Rul. 61-170, 1961-2 C.B. 112, held that a nurses' association which maintains an employment registry primarily for the employment of members is not entitled to exemption as a charitable organization under IRC section 501(c)(3).

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public 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. 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 under section 501(c)(3) of the Code.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973), provides a decision upheld by the U.S. Circuit Court of Appeals finding that Operating for the benefit of private parties constitutes a substantial nonexempt purpose.

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 that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

Consumer Credit Counseling Service of Alabama was 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. As such, the community and education counseling assistance programs were the agencies' primary activities. 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.T.C. 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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that 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 that the organization's financing did not resemble that of 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, while to some extent the fees charged reflected ability to pay, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Easter House v. United States, 12 Cl. Ct. 476 (1987), aff'd, 846 F. 2d 78 (Fed. Cir. 1988) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the health-related services were merely incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), concerned a school that trained individuals for careers as political campaign professionals. The court held that the organization did not exclusively serve purposes described in section 501(c)(3) of the Code because it operated on a partisan basis, thereby serving private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with a particular political party and that most of the organization's graduates worked in campaigns for that party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferring of benefits on disinterested persons who are not members of a charitable class may serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

In International Postgraduate Medical Foundation v. Commissioner, T.C.M. 1989-36, the court held that an organization that had the substantial nonexempt purpose of benefiting a related for-profit travel agency, from which it purchased travel services, did not qualify for exemption under IRC 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the U.S. Court of Appeals for the Seventh Circuit upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

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

> Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial

promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

In 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 ("DMPs"). 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 to provide 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 his 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 the private interests of creditors as well.

Finally, the Tax Court held that the facts in Consumer Credit Counseling Service 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. As specified in section 1.501(c)(3)-1(a)(1) of the regulations, in order to qualify for tax-exemption, an organization must be both organized and operated exclusively for purposes described in section 501(c)(3). You fail both tests.

Organizational Test

To demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause. As described in section 1.501(c)(3)-1(b)(1)(i) of the regulations, a valid purpose clause limits the organization's purposes to one or more exempt purposes and does 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. Your

Articles of Incorporation do not limit your purposes to one or more exempt purposes. Therefore, you do not have a valid purpose clause.

Section 1.501(c)(3)-1(b)(4) of the regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. Your Articles do not ensure that upon dissolution assets will be dedicated to an exempt purpose. Therefore, you do not have a valid dissolution clause. Consequently, you are not organized for exempt purposes.

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. 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. As clarified in B.S.W. Group, Inc. v. Commissioner under the operational test, the purpose towards which an organization's activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization's right to be classified as a section 501(c)(3) organization. Your activities are not directed exclusively toward one or more exempt purposes. You are not operated exclusively for educational or charitable purposes. Your operations have a substantial non-exempt commercial purpose, which also shows evidence of inurement and private benefit. In addition, your operations do not meet the requirements described in section 501(q) of the Code.

No Exclusively Educational Purposes

Your activities demonstrate that you do not operate exclusively for educational purposes within the meaning of section 501(c)(3) of the Code. You will not offer any educational programs, stating that "(t)here are no workshops or other such activities planned at this time." The activity you have clients conduct is to just answer questions in conjunction with intake and administration of your online, fee based service. Clients use your software to generate loan modification documents. You state that your software is self-directed and you only have one contact with most clients. Other references to educational activities were actually just training to use your software as part of your service agreement.

Like the organization in Solution Plus, Inc. v. Commissioner you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems.

Your methodology distinguishes you from the exempt organizations in Consumer Credit Counseling Service of Alabama, Inc. v. United States and Rev. Rul. 69-441. These exempt financial counseling organizations primarily informed the public on budgeting, buying practices, and the sound use of consumer credit. Unlike financial counseling that has been recognized as exempt, your counseling sessions are not structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. Rather, they are structured primarily to enable clients to use your fee based software to generate loan modification documents. These activities, then, are not primarily offered to 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.

Thus, you have not demonstrated that you are operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

No Exclusively Charitable Purposes

Your activities demonstrate that you do not operate exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. You stated that you serve all people in need of foreclosure consulting services. Helping people with incomes well above the median income level for the area 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. Accordingly, you are unlike the organization described in Rev. Rul. 69-441, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

With respect to the fee based counseling and foreclosure intervention services you are unlike the organizations in Consumer Credit Counseling Service of Alabama, Inc. v. United States and Rev. Rul. 69-441, because you charge fees for the majority of the services provided. As noted in Solution Plus, Inc. v. Commissioner "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Thus, you have not demonstrated that the provision of these services exclusively furthers charitable purposes within the meaning of section 501(c)(3) of the Code.

You intend to make grants to child protection agencies and to humane societies. However, in your financial information there was no indication of any grants or similar amounts paid. Regardless, such projected activity is insubstantial in relation to your non-exempt activity.

Substantial Non-Exempt Purpose - Commerciality

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization does not qualify for exemption if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. A nonexempt purpose may be evidenced by activities that are conducted in a commercial manner or for a commercial purpose. Indeed, in discerning whether an organization has a substantial nonexempt commercial purpose, courts focus on a number of factors related to the nature of the activities and how an organization conducts its business, including pricing policies, funding sources, and the organization's competitiveness with and similarity to other commercial ventures. A substantial part of your activities consists of benefitting private interests and thus serves a substantial nonexempt commercial purpose. You conduct many of your activities, which are normally carried on by commercial enterprises for a profit, in the same commercial manner and in direct competition with commercial businesses, like the organizations in Easter House v. United States, Airlie Foundation v. Commissioner and Living Faith, Inc. v. Commissioner. You provide access to software, for a fee, to your clients. The services you provide are in direct competition with banks and other commercial firms that provide these services. You failed to establish that the fees charged to provide your foreclosure intervention services entitle your clients to any educational programs or services beyond those that are offered by commercial firms. Furthermore, you have not established that you provide these services on different terms, at prices significantly below market, or in any other way that deviates from normal commercial practice.

Your finance structure also demonstrates that you operate for a substantial nonexempt commercial purpose. You are unlike the exempt organization described in Consumer Credit Counseling Service of Alabama, Inc. v. United States, which received support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. Your revenue is almost exclusively from service fees. While you indicated that you will fundraise and solicit government grants, you have not applied for nor received any government grants and there is no evidence that you have received contributions or gifts from disinterested members of the public. Your funding is similar to that of

the organization involved in the B.S.W. Group, Inc. v. Commissioner decision that cited lack of solicitation of contributions and sole support from fees as factors disfavoring exemption.

The activities you identify as educational and charitable are merely incidental to your business of providing consulting services for a fee. Thus, more than an insubstantial part of your activities are in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Accordingly, your activities, as well as the activities performed by your members, evidence a substantial nonexempt commercial purpose.

Inurement

As required by section 501(c)(3) of the Code and as specified in section 1.501(c)(3)-1(c)(2) of the regulations, an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Your net earnings will inure to the benefit of your directors in the form of compensation. You have failed to establish that the projected director compensation is reasonable. Therefore, your net earnings will inure to the benefit of your directors.

Private Benefit

As described by section 1.501(c)(3)-1(d)(1)(ii) of the regulations, an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. You are controlled by a board of directors composed of financial professionals without public participation of any kind. This indicates that you are operated for the benefit of your directors rather than the public, unlike the organization described in Rev. Rul. 61-170. Your operations substantially benefit your directors. Your board of directors is composed entirely of persons who stand to gain financially from your organization's activities, unlike the organization in Rev. Rul. 69-441, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. You benefit, by more than an insubstantial amount, the private interests of your directors. In Solution Plus, Inc. v. Commissioner the Tax Court found that an organization operated for private rather than public benefit when its directors, like yours, personally gained from the organization's activities.

Your operations substantially benefit **G**. You will pay **E**, which is owned by **G**, 44.4%, of the **m** received from each client. Like the organization in American Campaign Academy v. Commissioner, you are operated to benefit private interests more than incidentally.

You are not in compliance with section 1.501(c)(3)-1(d)(1)(ii) of the regulations which assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. The interrelationships between you and for-profit entities demonstrates a substantial non-incidental private benefit and a substantial non-exempt purpose similar to the operations of the organizations in International Postgraduate Medical Foundation v. Commissioner and Old Dominion Box Co. v. United States . Your payments to subcontractors such as **E** (owned by **G**) constitute a sufficient single non-exempt purpose which precludes exemption, similar to the situation exemplified by the U.S. Supreme Court ruling in Better Business Bureau of Washington, D.C., Inc. v. United States.

Because your operations substantially benefit **G**, 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 that provides 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. An organization that engages in such activities as a substantial purpose must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q). You do not meet the requirements of section 501(c)(3). Even if these requirements had been met, the operations of your organization do not meet the requirements of section 501(q).

Section 501(q)(1)(C) states that 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.

In an attempt to clarify your fee waiver policy, you were asked if you have or will refuse to provide services to a client due to the inability of the client to pay. You stated that "We will work with anyone that does not have the ability, but we refuse to work with people that do not have the willingness to pay". You did not explain how you determine if a client does not have a "willingness to pay".
You charge clients **m** to access your foreclosure related software program. You provided no evidence that the **m** fee was reasonable.

60% of your clients paid the full fee, 38% paid the discounted fee and 2% paid no fee. You provided no evidence that this discounted fee was reasonable. You also do not advertise such policy anywhere on your website or in your promotional materials.

Therefore, you failed to establish that you have a fee waiver policy that complies with section 501(q)(1)(C) of the Code.

Section 501(q)(1)(D) of the Code requires that credit counseling organizations must be governed by a board controlled by persons representing the broad interests of the public rather than by persons who benefit from the organization's activities. All of the voting power of your board is vested in persons 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). Accordingly, you do not have a board that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i). You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percentage of voting power that is allowed to be vested in financially interested persons.

As noted in section 501(q)(1)(F) of the Code, an exempt credit counseling organization must receive no amount for providing referrals to others for debt management plan services and pay no amount to others for obtaining referrals of consumers. You pay lead fees to third parties for referrals. As a consequence of these payments you do not comply with section 501(q)(1)(F) of the Code.

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

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes because you fail both the organizational and operational tests. You are organized and operated for a substantial nonexempt purpose because you operate in a commercial manner. Any public purposes for which you may operate are only incidental to your primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals. You do not serve a public rather than a private interest because your operations substantially benefit **G**. Therefore, you are not described in section 501(c)(3) of the Code. In addition, you do not meet the requirements of section 501(q) because you do not have an appropriate fee waiver policy or appropriate governance, and you pay fees for referrals.

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

Appeal Rights

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.

Your protest statement should be accompanied by the following declaration:

> *Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.*

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative,* if you have not already done so. For more information about representation, see 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 protest 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 this 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 also 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: Pub. 892