



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201215012**
Release Date: 4/13/2012
Date: January 18, 2012
UIL Code: 501.32-00
501.32-01
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.

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



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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.

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 29, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Officer/director
C = Predecessor Organization
D = Board member
E = Board member
O = State
P = Date

UIL:

501.32-00
501-32-01
501.33-00

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.

Facts

You are an organization that offers free credit repair to all in need.

Letter 4036 (CG) (11-2005)

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

...assist the general public especially the under privileged in improving their credit rating, provide free credit counseling and free credit repair. To educate consumers and provide necessary trainings on credit ratings, credit maintenance and relevant information necessary to keeping good credit scores. To assist consumers in monitoring adverse credit information on their credit reports with credit reporting agencies. To train consumers on how to negotiate for settlements with creditors without negative effects on their credit reports. To assist our clients in reading and understanding credit reports. To educate and train our clients on activities that has(sic) negative effects on their credits(sic).

Your organizing document also includes the required provisions stating you are organized exclusively for charitable, religious, educational, and scientific purposes, that net earnings shall not inure to the benefit of your members, trustees, officers, or other private persons, and that upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code

Your Bylaws state, in Article 1, Section 2, that your specific purposes are to:

"Create an educational environment on credit for our communities, to help people suffering with bad credit, those who are not financially stable, those who unfortunate to learn or understand credit, and to reach out to as many as possible to make them be fully aware of how credit really works."

Your Form 1023 ("application") did not include an activity description. You did submit one of your brochures. Your brochure states that you are dedicated to offering "FREE CREDIT REPAIR" to all in need. Also included in the brochure is a list of bad credit items that you can get deleted including: judgments, bankruptcy (discharged), charge-offs (paid or unpaid), collections (paid or unpaid), repossessions, foreclosures, child support, student loans, tax liens and late payments. You also provided copies of WebPages from your website.

Your Board of Directors has 3 members, two of whom are related by blood. You also indicated on Form 1023 that you are providing credit services to the public in carrying out your exempt purposes. You plan to solicit funds through mail, email, phone, personal solicitations and donations via your website. You expect to receive donations from another organization's website, and you will apply for government grants. Finally, you indicated that your officer/director compensation arrangements were approved and followed provisions of a conflict of interest policy, which you did not submit.

In response to our correspondence, you submitted a description of your current and proposed activities. Your activity description included only one activity, a free credit repair service. Once a client signs your agreement form, credit reports are ordered from the three major credit bureaus. You will then work with the credit bureaus to get bad/negative credit, outdated credit, inaccurate credit, obsolete credit, erroneous credit, or incomplete credit removed from the client's credit

report or otherwise upgrade the credit report under the law. You will do the following to reach out to as many people as possible who are in need of your services: working at your office with churches, doing seminars in malls and shopping centers; advertising on TV, radio, in the newspaper and on the internet. The program is ongoing and has already started constituting 100% of your time.

Your President and director, B, will have sole authority and will be the only one to conduct any and all activities pertaining to "credit repair" within the organization. Two to three other employees will be employed to handle clerical duties. B's resume includes past ownership and operation of C for ten years. Duties with C included credit counseling, debt management, working with credit bureaus in getting bad/negative credit, outdated credit, inaccurate credit, obsolete credit, erroneous credit, or incomplete credit deleted from the credit report. B will be compensated by you for providing "free credit services."

You initially stated that C will cease to operate once you are granted tax-exempt status. Subsequently, you stated that C will not cease to operate because the economy is getting a little better, which brings in the funds to operate better financially. C was being dissolved because people could not afford to pay for credit services and the company was not making money. You started the non-profit organization to help those people who have bad credit but can't afford to pay a fee for such services. By starting the non-profit organization you can help people with bad credit by applying for grants and accepting donations. C will continue to operate as a separate entity and do business as usual. Finally, you stated that the only difference between you and C is that C charged a fee and you do not. You will solicit donations from clients as well as the general public.

You submitted a lease agreement signed by B. The office space has been used by B to conduct insurance sales on a for-profit basis. The lease amount is at least \$ a year. Your budgets include over \$ annually in occupancy costs. Your budget indicates that approximately % of your expected income is allocated to B's salary and occupancy expenses.

There are no fees involved in the provision of your services. However, your brochure and your website solicit donations from both clients and the general public. You have had at least 24 customers. Eight of them made donations to you totaling slightly less than \$ The only funds you have received to date are the "donations" made by those eight customers. Clients can donate at any time and will be provided with services regardless of whether or not they have anything to donate. You have had three clients come in to the office in person while the others were served in some other manner.

You will offer credit repair only, you will not offer debt management plans, debt repayment, debt consolidation, debt negotiation services or any similar type of services to anyone. You submitted a "pamphlet" that includes 18 "topics" regarding various aspects related to credit. The 18 topics are brief statements contained on four standard sized pages. The summary on the last page includes information regarding your credit repair services as well as contact information. Your client agreement solicits personal information such as name, address, social security number (SSN), date of birth, employer, etc. Income or other financial information is not solicited. You have not yet held any seminars because you can not "afford" to do so.

Your website includes: "Credit FAQs", which is basic information regarding credit, credit bureaus, how to improve a credit rating and getting bad/negative information removed from a credit report; "Do's and Don'ts" related to the use of credit; and "Get Free Help" which is an online form that potential clients complete that solicits their name, address, SSN, date of birth and other contact information. Your website response to the completed form submission is the indication that someone will contact them shortly. The clients are directed to mail their credit reports to your address, but there is no mention of how clients are supposed to obtain the reports on your website.

You submitted resumes for D and E, your other two board members. Neither, D nor E has any experience or background in financial education. E is related to B through a blood relationship.

Law

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

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)(2)(A)(i) provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if it does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

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 provides that 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(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 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. Thus, to meet the requirements of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term “charitable,” is used in section 501(c)(3) 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 that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, 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.

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 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 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.

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 People of God Community v. Commissioner of Internal Revenue, 75 T.C. 127 (1980), the court found that part of an organization's net earnings inured to the benefit of private individuals because their compensation was based on a percentage of the organization's gross receipts with no upper limit. The court held that the petitioner was not exempt as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) 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 the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident 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).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals 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 non-exempt commercial purpose, rather than for a tax 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. 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." (Debt Management Plans) 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 that the facts in 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 specified in section 1.501(c)(3)-1(a)(1) of the regulations. You fail both tests.

Organizational Test

As noted in sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations, to demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause and a valid dissolution provision. You do not have a valid purpose clause. Therefore, you do not meet the organizational test. 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. This is stated in section 1.501(c)(3)-1(b)(1)(i) of the regulations.

Your Articles provide that your specific purpose is to:

...assist the general public especially the under privileged in improving their credit rating, provide free credit counseling and free credit repair. To educate consumers and provide necessary trainings on credit ratings, credit maintenance and relevant information necessary to keeping good credit scores. To assist consumers in monitoring adverse credit information on their credit reports with credit reporting agencies. To train consumers on how to negotiate for settlements with creditors without negative effects on their credit reports. To assist our clients in reading and understanding credit reports. To educate and train our clients on activities that has(sic) negative effects on their credits(sic).

Your Articles do not limit your purposes to one or more exempt purposes. Specifically, providing credit repair can serve a nonexempt purpose. Even though a standard purpose clause is included in your Articles of Incorporation, your organizing document also includes language that is too broad. Thus, your Articles do not limit your purposes to one or more exempt purposes. Therefore, you do not have a valid purpose clause.

Operational Test

To satisfy the IRC section 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes, as stated in section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you are operated exclusively for one or more exempt purposes.

Your Activities Are Not Educational

You stated that you will conduct only one activity, a free credit repair service. You will work with the credit bureaus to get bad/negative credit, outdated credit, inaccurate credit, obsolete credit, erroneous credit, or incomplete credit removed from the client's credit report or otherwise upgrade the credit report under the law. 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. Unlike those organizations, 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 that your employee does anything more than review a client's credit report and send letters to the credit bureaus regarding the removal of specific items from the report. Repairing a client's credit report is not an educational activity because it 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*.

You submitted a "pamphlet" that you distribute that contains basic facts about credit. In addition, your website contains some information regarding various credit-related topics. While, the pamphlet and website do contain some educational information, these activities are incidental to your credit repair service. Furthermore, you did not indicate who provides any educational aspect of your program, and your only employee does not have education, instruction, or training as a responsibility. 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 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 that 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 that you intend to establish long-term counseling relationships with your clients.

Your operational focus is on generating revenue in the form of donations from your credit repair activities. Your efforts are focused on repairing the bad credit of clients in exchange for "donations." Like the organizations described in Solution Plus, *supra*, Better Business Bureau, *supra*, and Easter House, *supra*, your activities have an underlying commercial motive that distinguishes your activities from those carried out by a university. Thus, your activities are not educational within the meaning of section 501(c)(3).

Your Activities Are Not Charitable

Most of your time and resources are devoted to providing credit repair services to individuals who are not part of a charitable class. The credit repair services you provide to individuals do 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.

You represent that you offer free credit repair services to “all in need.” You submitted no evidence that you limit your services to low income individuals or to any charitable class of individuals. “All in need” is not synonymous with “poor and distressed”. 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.

While you do not charge a fee, per se, to your clients for your services, you do solicit donations while services are being provided. The so-called donations are a de facto fee in that the provision of the service is connected to the solicitation of the donation. Unlike the organizations in Consumer Credit Counseling Service of Alabama; *supra*, and Rev. Rul. 69-441, *supra*, you solicit donations for your services. “[P]rimarily providing services for a fee ordinarily does not further charitable purposes.” Solution Plus, *supra*. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Commercial Purpose

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. See e.g., B.S.W. Group, *supra*; Easter House, *supra*; Airlie, *supra*; Living Faith, *supra*. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business.

Your only activity consists of providing credit repair services to individuals. Your clients do not receive any educational programs or services beyond a pamphlet and basic information about credit on your website. Helping clients remove bad/negative credit, outdated credit, inaccurate credit, obsolete credit, erroneous credit, or incomplete credit from the client’s credit report or otherwise upgrade the credit report under the law is not an exempt purpose, as recognized by statute or by case law, but rather a substantial nonexempt commercial purpose. This is evidenced by the fact that C, your director B’s for-profit entity, is operated in just the same manner except for the fact that C charges a fee while you solicit “donations” for exactly the same services. Providing the same services as those provided by a for-profit also demonstrates that you are operating like a commercial organization seeking to maximize profits, rather than a charitable or educational organization seeking to serve the public. Your income is used to pay B’s salary and the expenses for a lease agreement that B entered into 16 years ago to conduct his personal, and similar, for-profit business activities. Your use of funds also demonstrates that you are focused on paying B’s salary and costs under the lease agreement. Thus, similar to the organization in Easter House, *supra*, the profit-making fee structure of your consulting services overshadows any of your other purposes.

Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You indicated that you will fundraise and solicit government grants. However, you have not received any government grants, and you do not have a substantive plan to solicit grants in the future. There is also no evidence that you have received contributions or gifts from disinterested members of the public. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra*, that received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way (only an incidental amount of their revenue was from fees). Your operations are financed entirely by "donations" earned from providing services to clients. As noted in Easter House, *supra*, receiving support primarily from donations solicited while providing services is indicative of a nonexempt purpose.

Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. In fact, you conduct the same activities as a related commercial firm in the same leased space. You conduct many of your activities in the same manner as commercial enterprises. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose.

The activities you identify as "educational" are merely incidental to your business of providing credit repair services. Thus, more than an insubstantial part of your activities is in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

Inurement

Section 501(c)(3) of the Code and section 1.501(c)(3)-1(c)(2) of the regulations state 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.

Your net earnings inure to the benefit of B. You provided a lease agreement entered into between B and a lessor. The lease calls for B to pay annual rent of more than \$4,500 per year. You stated that B previously used the space for his personal for-profit business. Your budgets indicate that you will pay the full amount of the rent due under a lease entered into by your director, B, for his personal use. Thus, by paying the expenses for a lease entered into by B, you conferred a direct benefit on your director.

B's compensation was determined under a conflict of interest policy, which was not submitted. You have three directors: B, D and E; B and D are related. Under the circumstances only one director does not have a conflict of interest. The initial fixed compensation of B exceeds 40% of your projected revenues. B's salary is budgeted to increase each year as your income increases, with no indication of an upper limit. Due to the fact that B's compensation is budgeted to increase as revenues increase, the compensation is essentially based on a percentage of revenues with no limit, which has been held to be inurement in People of God Community, *supra*. Essentially, your compensation structure results in you having owners. The fact that your

net earnings are paid out in the form of salary rather than dividends does not change the substance of the arrangement.

Your net earnings inure to the benefit of your directors. You have paid certain expenses of B. In addition B's compensation arrangement essentially provides the director with an ownership interest because B's compensation increases as revenue increases. In addition, two of your three directors have a conflict of interest as to determining B's compensation. Therefore, your earnings inure to the benefit of B, your director.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest as stated in section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You are serving a private interest by providing credit repair services to individuals at no cost. Your clients are not limited to a charitable class. Therefore, the benefit of the service provided does not serve an exempt purpose, nor is the benefit incidental because the credit repair service is the sole activity of the organization. The credit repair service relieves your clients of the responsibility of contacting the credit bureaus themselves. 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 that provides educational information on financial topics or financial counseling is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Providing a credit repair service and information regarding credit may fall within the parameters of the above definition. Thus, even if you had established that you engage in educational 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 would not comply with certain provisions of section 501(q) of the Code.

IRC section 501(q)(1)(D) states 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. Two-thirds of the voting power of your board of directors is vested in persons who are employed by the organization or related. More than 20% of the voting power of your board is vested in individuals 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 of directors 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 percent of voting power that is allowed to be vested in financially interested persons.

Furthermore, your solicitation of donations through your website and brochure is inconsistent with the requirements of section 501(q)(2)(A)(i) which states that an organization providing

credit counseling services as a substantial purpose may be exempted from tax only if it does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

Therefore, had you established that you provide educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure as a substantial purpose, and 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).

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You are not organized exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations. 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. You are organized and operated for commercial purposes in contravention of section 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 have not demonstrated that you do not allow your net earnings to inure to private individuals as required by section 1.501(c)(3)-1(b)(2) of the regulations. 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. Therefore, you are not described in section 501(c)(3).

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