



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201217019**

Release Date: 4/27/2012

Date: February 2, 2012

UIL Code: 501.00-00

501.03-30

501.32-00

501.33-00

504.50-00

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.

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

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 Lerner
Director, Exempt Organizations

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: December 14, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #;s

501.00-00

501.03-30

501.32-00

501.33-00

504.50-00

Legend:

B: date

C: state

D: individual

E: individual

u: dollar amount

v : dollar amount

w: dollar amount

x: dollar amount

y: dollar amount

z: dollar amount

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.

Issues

Do you qualify for recognition of exemption under section 501(c)(3) of the Code? No, for the reasons specified below.

Facts

D, your founder and executive director, worked as a sole proprietor offering consulting services until date B, when you were formed. These services are the same as those that you will provide including counseling distressed homeowners to avoid foreclosure and negotiating loan modifications with lenders. D provided a client list dating back three years as well as a balance sheet including payroll taxes and an overdraft balance carried forward from the sole proprietorship. D indicated that as he had provided these services in the past he believed it appropriate to continue offering the services through a non profit. Prior to providing these services as a sole proprietor, D worked for another non-profit organization that provided similar services.

You were incorporated on B in the state of C as a nonprofit corporation. Your Articles of Incorporation state you are organized “exclusively for spiritual, charitable or educational purposes, including for such purposes, by providing quality housing counseling for distress property owners who are attempting to stave off foreclosure”. You have no bylaws.

You help homeowners, primarily in the north C area, avoid foreclosure by enforcing government protocols to prevent foreclosure. You educate homeowners about their options to avoid foreclosure, negotiate loan modifications with the mortgage lender, and refer homeowners to legal counsel if necessary. You assist individuals who are delinquent with their mortgage loans, including sub prime, conventional, VA, and FHA loans with mortgage amounts ranging from \$ to \$. D interviews the homeowners, helps them determine their best course of action, and initiates the negotiation of loan modification with the lender. Other employees will process the loan modification documents and perform administrative tasks. Local attorneys may be engaged to protect the homeowners’ rights. You usually provide services to homeowners before the foreclosure occurs, however, you may also aid homeowners in rescinding foreclosures. After foreclosures are stopped, homeowners are required to attend housing counseling, which consists of home maintenance education, job resources, family values and savings. Currently, these activities are funded by consulting fees paid by the homeowners. You have expressed a desire to apply for government grants in the future.

You use the services of a for-profit referral service who debits your banking account for v dollars each month. In return for this fee, you are given access to the names and contact information of homeowners who are scheduled for foreclosure within one month. You provided a letter you send to those potential clients informing them of your services and include contact information. The letter is signed by D as chief counselor

and loss mitigation specialist.

You are governed by three directors. Two of your directors, D and E, are brothers. You expect to pay compensation of w dollars per year to D, x dollars per year to E, and y dollars per year to the third director. By letter dated September 6, 2010, you stated that directors are not currently being paid compensation, however, you have outlined hourly pay schedules. D is set to be paid u dollars hourly for consulting services.

You provide twenty hours of one-on-one counseling sessions for a fee of z dollars. According to your Payment Refund Policy, half of the fees must be paid within 24 hours of the initial consultation and signing of a Confidentiality Agreement. You will not proceed if the homeowner does not supply the necessary information within 48 hours. The homeowner is not entitled to a refund if he or she fails to provide this information within this allotted time. You state that about five percent of your clients have not paid for your services after having received an agreement. You have not advertised your Payment Refund Policy to the public.

An initial inquiry lasts 45 minutes. The number of subsequent follow-up inquiries varies from 10 to 20 per client, depending on the mortgage company's response time. Each follow-up meeting lasts thirty minutes on average. You stated that your fees are based on a "scale to scale basis" which "depend[s] on the homeowner's financial circumstances and how long the homeowner will be in [your] program; not to exceed z dollars." You state, however, that additional charges will apply "[i]f the mortgage company becomes complex in resolving the homeowner's request within thirty days." Also, you did not indicate how you will determine who is eligible for a reduced fee or what the amount of the fee reduction will be.

Law

In order to be described in section 501(c)(3) of the Code a corporation must be organized and operated exclusively for charitable or educational purposes and no part of its net earnings may inure 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 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 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 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 is not organized exclusively for one or more exempt purposes unless its assets are 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 an applicant organization must establish 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.

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. Creditors were not required, though, to make such contributions as a condition of participation.

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.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (individual and group counseling of widows, where fees charged for services were based on ability of the widow to pay); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 178 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (personal marriage counseling and public seminars supported by area churches, clients' fees, and contributions); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free or below-cost, and the organizations were supported by contributions from the public.

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 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 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 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 described in 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 provided to unwed mothers and their children 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).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the 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 was not described in 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 described in 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 were 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 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 Tax 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). Section 1.501(c)(3)-1(a)(1) of the regulations. Based on the information you provided in your application and supporting documentation, we conclude that you fail both tests.

Organizational Test

To satisfy the organizational test, an organization must have a valid purpose clause. Your Articles provide that your specific purpose is

. This is not an exclusively 501(c)(3) exempt purpose. A valid purpose clause limits an 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 do not limit your purposes to one or more exempt purposes. Therefore, you do not have a valid purpose clause. Accordingly, you are not organized for exempt purposes

Operational Test

To satisfy the 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. 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. Section 1.501(c)(3)-1(c)(1) of the regulations. 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. B.S.W. Group, supra. Your activities are not directed toward one or more exempt purposes. While you engage in personalized discussions with homeowners that may, in part, further educational or charitable purposes, your activities primarily further the substantial nonexempt purpose of selling financial services to homeowners for a fee. Thus, you have failed to establish that you are operated exclusively for one or more exempt purposes.

You Are Not Operated Exclusively for 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 stated that you educate homeowners about their options to avoid foreclosure and help them determine their best course of action. Your methodology distinguishes you from the exempt organizations in Consumer Credit Counseling Service of Alabama, supra, and Rev. Rul. 69-441, supra. These exempt financial counseling organizations primarily informed the public on

budgeting, buying practices, and the sound use of consumer credit. Any debt management programs were incidental to these primary educational activities. Unlike these exempt financial counseling 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 educational process does anything more than prepare you to provide debt management services on behalf of the homeowners. You state that, as part of your foreclosure prevention program, that you provide certain housing counseling. This counseling, however, is given to homeowners who have engaged you to provide debt management services, rather than the general public. Furthermore, you solicit clients from a database of homeowners who are within 30 days of foreclosure. This outreach is not directed to the general public; rather it is designed to solicit business for your consulting services. You have not demonstrated that your programs will serve to educate the general public in sound financial management practices. Thus, you have not demonstrated that you engage in these discussions primarily to further an educational purpose.

Indeed, your operational focus is on generating fees from your consulting activities. Like the organization that failed to qualify for exemption in Solution Plus, *supra*, your efforts are focused on informing potential clients about the range of services available and signing them up for your services, rather than on conducting a meaningful educational program. You did not provide evidence that you help clients develop an understanding of the cause of their financial problems. You provided no evidence that you intend to establish long-term counseling relationships with your clients. You only have further contact when the client has further contact with the bank and needs more consulting assistance.

Therefore, you have failed to demonstrate that your interactions with clients and the community are designed 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 are not operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

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

You also provide foreclosure consulting services to individuals who are delinquent with their mortgage loans, including "sub prime, conventional loans, VA Loans, and FHA loans with mortgage amount ranging from \$ _____ to \$ _____." Therefore, your

services are not directed exclusively to low-income individuals. Accordingly, you are unlike the organization described in Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Moreover, you charge fees for the majority of your services. Though you assert that “fees are based on a scale to scale basis and depend on the homeowner’s financial circumstances”, you did not indicate how you will determine who is eligible for a reduced fee or the amount of the fee reduction. This distinguishes you from the exempt organizations in Consumer Credit Counseling Service of Alabama; *supra*, and Rev. Rul. 69-441, *supra*, which relied upon contributions to provide their services for free or, at most, for only a nominal fee. Indeed, “primarily providing services for a fee ordinarily does not further charitable purposes.” Solution Plus, *supra*.

Thus, you have failed to establish that your activities exclusively further charitable purposes within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Purpose

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. See B.S.W. Group, *supra*; Easter House, *supra*; Airlie Foundation, *supra*; Living Faith, *supra*.

Like the organization in Solution Plus, *supra*, a substantial part of your activities consists of the promotion and delivery of financial and other services to individuals for a fee. Your fee structure demonstrates that you are operated in a commercial manner and for a commercial purpose. You charge z dollars to provide consulting services, and require a payment of one half of the fee within 24 hours of the initial consultation and signing of a Confidentiality Agreement. These fees are not refundable if the homeowner does not supply the necessary information within 48 hours. The services provided for these fees are indistinguishable from those provided by for profit consultants. Further, these activities are not distinguishable from those performed by the sole proprietorship operated by D prior to your formation.

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 practices. When asked the number and percentage of clients who have received your services free of charge, you responded that “about % have not

paid our services after they have received an agreement.” This statement only indicates a percentage of clients who have failed to pay the fee; it does not establish that any of your fees have been waived or reduced because of an inability to pay. You have provided no evidence of your fee waiver policy.

The lack of public support for your activities further demonstrates that you operate for a substantial nonexempt commercial purpose. The exempt organization described in Consumer Credit Counseling Service of Alabama, *supra*, received support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. While you indicated that you will solicit government grants, the financial data that provided shows that you have not, and do not expect to, receive any gifts, grants, or contributions at all. There is also no evidence that you have received contributions or gifts from disinterested members of the public. See B.S.W. Group, *supra* (citing lack of solicitation of contributions and sole support from fees as factors disfavoring exemption). Rather, your operations are financed entirely by revenue earned from selling services to homeowners. Receiving support primarily from consulting fees is indicative of a nonexempt purpose. Easter House, *supra*.

The activities you identify as educational are merely incidental to your business of providing foreclosure 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. Therefore, you are not operated for an exempt purpose.

Inurement

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Your board of directors is composed of only three persons, two of whom are related by blood. Furthermore, all members of your board of directors are compensated. The composition of your board is in stark contrast to the exempt organization in Rev. Rul. 69-441, *supra*, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. The fact that your board lacks public participation of any kind indicates that you are operated for the benefit of your directors, rather than the public. In addition, you do not have bylaws to ensure that your governing body serves a public rather than private interest. Because your operations substantially benefit your directors, 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). Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q). You do not meet the requirements of section 501(c)(3) and you do not meet the requirements of section 501(q).

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. Section 501(q)(1)(C) of the Code. You failed to establish that you have such a fee policy.

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. Section 501(q)(1)(D) of the Code. All of the voting power of your board of directors is vested in persons who are employed by you and who will benefit financially, directly or indirectly, from your 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.

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

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes as required by sections 1.501(c)(3)-1(b)(1)(i), 1.501(c)(3)-1(a)(1), and 1.501(c)(3)-1(c)(1) of the regulations. You are organized and operated for a substantial nonexempt purpose 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 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). In addition, you do not meet the requirements of section 501(q).

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.

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, Publication 892