



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Number: **201218021**  
Release Date: 5/4/2012

Date: February 10, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.32-00; 501.32-01; 501.33-00

Dear :

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

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

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

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

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

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

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

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



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: November 10, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = Date  
C = State  
D = City

**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.

**Facts**

Letter 4036(CG) (11-2005)

You were incorporated on B as a non-profit corporation under C law. Your Amended Articles of Incorporation ("Amended Articles") state, in Article VII, that your specific purposes are, in part:

to provide home ownership and credit counseling services for members of the public with emphasis on individuals and families with low to moderate income; to advise persons seeking homeownership or already owning homes on credit, budget and financial advice; to cooperate with public and private agencies, organizations and associations; to assist families and individuals with their financial problems; to provide foreclosure intervention assistance and transitional housing, when possible, where foreclosure intervention was not successful.

Your Bylaws state in Article II that you're organized and operated "exclusively for charitable, civic and educational purposes." You also submitted a copy of an unexecuted Conflict of Interest Policy (COI). You have three members on your Board of Directors, one of whom is compensated as an employee. One of your board members has experience in credit counseling. Your funding is expected to be solely received through grants and donations. Your activities will be conducted by certified housing counselors. Your target delivery area is the greater D area including all adjacent counties. Program services will include telephone and in-person counseling.

You will provide housing counseling and education to individuals. Programs will include both one-on-one counseling and group workshops on the following: pre-purchase counseling, homebuyer education, delinquency/default counseling, non-delinquency post-purchase counseling, reverse mortgage counseling, non-delinquency post-purchase education, rental counseling, fair housing education and homeless/displacement counseling. Attendees will receive literature and action plans, but you did not provide copies or samples of any such documents.

You will make grants/gifts in the form of one-time gas or gift cards to clients as assistance to help cover the cost of travel to your facility for counseling and as utility assistance to low income households.

We requested additional information regarding your listed counseling and education programs; however, you simply resubmitted copies of the attachments submitted with your initial application that did not include copies or samples of any documents as evidence of your educational methodology. You did state that you will not offer debt management plans.

Subsequently, you indicated that client interactions will be handled by certified housing counselors over the phone or face-to-face. Information collected from clients will include

biographical and contact information, housing information as well as financial data. Housing counselors will determine which services are needed based upon the information provided by the client. A budget analysis will be provided for those clients progressing into a counseling session versus those obtaining general information. You have not yet developed client contracts, questionnaires, educational materials or sample budget analysis; however, you did indicate that you will use Fannie Mae's home counselor online system to input and track information. You have not yet established relationships with other entities nor have you held any educational seminars/workshops/classes. You did not provide requested information regarding your counselor training/supervision/compensation, the time spent by your counselors speaking with each client, your outreach/advertising, details regarding your anticipated funding sources, board meeting minutes or board members duties/compensation.

You provided limited information regarding your foreclosure counseling and loss mitigation activities. You meet with the client initially for 30 to 45 minutes to obtain information related to the client's situation. Subsequent follow-up inquiries last 1 to 2 hours. Your services are not limited to any particular class of individuals and no fees are charged. You plan to offer educational workshops on homebuyer education, 20% of your time will be spent on these sessions. You will not provide ongoing educational programs to mortgage mitigation clients. You will only make referrals to other non-profit organizations such as United Way. You submitted a copy of one flyer indicating that you provide free counseling under HAMP/HAFA. You did not submit any educational materials or other written materials used during your counseling program or your homebuyer education workshops.

You did not submit information detailing each activity/program that you conduct along with the percentage of time spent on that activity. Nor did you submit the requested information regarding your plans to provide educational programs.

Your projected budgets show revenue minus expenses of over \$200,000 for 2010 and over \$1,000,000 for 2011.

## **Law**

Section 1.501(a)-1(a)(2) of the Income Tax Regulations ("regulations") states that an organization is not exempt from tax merely because it is not organized and operated for profit. In order to establish its exemption, it is necessary that every such organization claiming exemption file an application form with the Internal Revenue Service.

Section 1.501(a)-1(a)(3) of the regulations states that an organization claiming exemption under section 501(a) and described in any paragraph of section 501(c) (other than section 501(c)(1)) shall file the form of application prescribed by the Commissioner

and shall include thereon such information as required by such form and the instructions issued thereto.

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

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(d)(2) of the regulations defines the word "charitable" as including 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.

New Dynamics Foundation v. United States, 70 Fed. Cl. 782 (2006), the organization failed to establish an administrative record that showed it was operated for exclusively exempt purposes. The court found instead that it was part of a tax avoidance scheme and primarily provided private benefits.

Church in Boston v. Commissioner, 71 T.C. 102, 1978 U.S., an organization made grants to various individuals, including officers of the church. The grants carried no legal obligation to repay any interest or principal. Although the church contended that the grants were made to assist the poor who were in need of food, clothing, shelter, and medical attention, the church failed to provide any documented criteria demonstrating the selection process of recipients and the reasons for the specific amounts given. The court affirmed the determination that the church failed to establish that its grant program constituted an activity in furtherance of an exempt purpose.

La Verdad v. Commissioner, 82 T.C. 215 (1984), an organization was organized to provide education and charity, but failed to provide sufficient details regarding its

proposed operations. The court held that it failed to prove that it would operate exclusively for exempt purposes under section 501(c)(3) of the Code.

Peoples Prize v. Commissioner, T.C. Memo 2004-12 (2004). Petitioner has, for the most part, provided only generalizations in response to repeated requests by respondent for more detail on prospective activities. Such generalizations do not satisfy us that petitioner qualifies for the exemption.

Section 3.08 of Rev. Proc. 2011-9, 2011-1 C. B. 283 provides that an organization seeking recognition of exemption under section 501 (c)(3) must submit a completed Form 1023. A substantially completed application, including a letter application, is one that includes a detailed narrative statement of proposed activities and a narrative description of contemplated expenditures.

Section 4.03 of Rev. Proc. 2011-9, 2011-1 C.B. 283 provides that exempt status may be recognized in advance of an organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed. An organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

### **Application of Law**

The information you submitted is insufficient for us to conclude that you are organized and operated exclusively for charitable purposes as specified in section 501(c)(3) of the Code. To be exempt, an organization must provide a substantially complete application. Section 1.501-1(a)(2) and (3). In addition, an exempt organization must show that it is both organized and operated exclusively for one of more of the purposes described in section 501(c)(3) of the Code. Section 1.501(c)(3)-1(a) of the regulations.

Exemption from federal income tax is not a right; it is a strictly interpreted matter of legislative grace and the burden rests with the applicant to prove that it is entitled to exempt status. *New Dynamics Foundation*, supra. Your application did include some information required by the form and its instructions such as copies of your bylaws, organizing document and an activity description. However, the activity description did not include detailed information regarding your one-on-one counseling and group workshops on the following: pre-purchase counseling, homebuyer education, delinquency/default counseling, non-delinquency post-purchase counseling, reverse

mortgage counseling, non-delinquency post-purchase education, rental counseling, fair housing education and homeless/displacement counseling. You did not provide information about how any of your programs will be operated. Your application does not satisfy the requirements of sections 1.501(a)-1(a)(2) and (3) of the regulations and Rev. Proc. 2009-9, 2009-2 I.R.B. 259 and 260.

An organization must also satisfy the organizational and operational tests described in the regulations to qualify for recognition as an organization exempt from federal taxation. In order to meet the organizational test, you must have a valid purpose clause that limits the organization's purposes to one or more exempt purposes and does not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes. Your Articles do not limit your purposes to one or more exempt purposes. Your Articles of Incorporation provide that you are organized for several purposes including: to advise persons seeking homeownership or already owning homes on credit, budget and financial advice; to cooperate with public and private agencies, organizations and associations; to assist families and individuals with their financial problems; to provide foreclosure intervention assistance and transitional housing, when possible, where foreclosure intervention was not successful. Finally, you have not provided enough information to demonstrate that you operate exclusively for charitable or educational purposes. An applicant must establish an administrative record showing that it operates primarily to accomplish an exempt purpose(s) described in section 501(c)(3) of the Code.

You are not presently operational and do not intend to commence operations until you are recognized as an exempt organization. The Service may recognize exempt status in advance of operations if an applicant describes its proposed operations in sufficient detail to permit a conclusion that it will clearly meet the requirements for exemption in accordance with section 501 (c)(3) of the Code. However, a mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. *La Verdad v. Commissioner*, supra.

Based on the information you provided, you have failed to establish that your operations will be charitable through relief of the poor and distressed. The regulations define the word "charitable" as including relief of the poor and distressed or of the underprivileged. Section 1.501(c)(3)-1(d)(2) of the regulations. Nor have you established that your operations will be educational within the meaning of Section 1.501(c)(3)-1(d)(3)(i) You state that you do not limit your services to a particular class of individuals; however, you do have a grant/gift card program for clients that cannot afford the cost of travel to your facility for counseling and utility assistance that appears to be for low income individuals. Similar to the church described in *Church in Boston v. Commissioner*, supra, you did not provide information about how clients are made aware of your



services, how you determine if clients are indeed low income or how you provide assistance. You have not demonstrated that the grants will be made in an objective and nondiscriminatory manner and that the distribution of such grants will be made in furtherance of an exempt purpose.

Additional information was requested multiple times regarding your proposed activities; however, you failed to provide the requested information similar to the organization in *Peoples Prize v. Commissioner*, supra. You just stated that you will not offer debt management plans and client interactions will be handled by certified housing counselors over the phone or face-to-face. You will collect information such as biographical and contact information, housing information as well as financial data in order to determine which services are needed by the client. A budget analysis will be provided for counseling clients only; however, you have not yet developed client contracts, questionnaires, educational materials or sample budget analysis. You did indicate that you will use Fannie Mae's home counselor online system for information input and tracking, but you have not yet established relationships with other entities with which to use this information. You have not held any educational seminars/workshops/classes nor have you provided information regarding your counselor training/supervision/compensation. You provided no details about the time spent by your counselors speaking with each client, the manner in which you conduct your outreach and advertising, the details regarding your anticipated funding sources and provided no board meeting minutes or details of board members' duties/compensation. You will not provide ongoing educational programs to mortgage mitigation clients. You have not submitted copies of any educational materials, agendas, curriculums, schedule of classes or instructor information. You failed to demonstrate that your activities are or will be conducted in a charitable or educational manner as required.

### **Conclusion**

An organization that fails to provide a substantially completed application and meet the organizational and operational tests described in the regulations is not exempt. You have not provided sufficient evidence to demonstrate that you are organized and operated for exempt purposes within the meaning of section 501 (c)(3) of the Code. You have failed to establish that your program constitutes an activity that furthers a charitable purpose by actually providing relief to persons who are poor and distressed or underprivileged. You have not established that you will operate for charitable purposes nor have you established that your programs are educational. Accordingly, you do not qualify for exemption under section 501(c)(3).

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](http://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  
Rulings & Agreements

Enclosure, Publication 892