

Internal Revenue Service
Appeals Office

Department of the Treasury

Taxpayer Identification Number:

Release Number: **201249016**
Release Date: 12/7/2012
Date: September 13, 2012

Person to Contact:

Tel:
Fax:

Tax Period(s) Ended:

UIL: 0501.03-00

Certified Mail

We considered your appeal of the adverse action proposed by the Director, Exempt Organizations, Rulings and Agreements. This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code (the "Code") section 501(a) as an organization described in section 501(c)(3) of the Code.

Our adverse determination was made for the following reason(s):

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. You have not established that you are organized exclusively for exempt purposes described in section 501(c)(3) of the Code. The purposes in your articles of organization are broader than the exempt purposes described in section 501(c)(3) of the Code. You have not established that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code. Providing free investment advice to the general public is not a charitable activity. You also have not established that you carry on any substantial educational activity. You have not established that you meet the requirements of section 501(q) of the Code. You also have not provided sufficient detail about your intended operations.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120 for the tax periods stated in the heading of this letter and for all tax years thereafter. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer

Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: November 14, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = individual
C = state
D = 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

Letter 4036 (CG) (11-2005)

You were incorporated on D under C non-profit law. Your Articles of Incorporation ("Articles") state your specific purpose is to:

...provide educational and charitable assistance, through guidance and advice, improving the investment knowledge and financial literacy of the general public. By integrating money with core human values, this corporation will assist the general public to become consumers with a conscience, aware that every dollar spent is a vote that can uphold and sustain a healthy economy without sacrificing sufficient rates of return on long term investments for retirement planning and college savings.

Your Articles also provide that you are organized and operated exclusively for educational and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

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

- (a) to provide financial advice to the general public
- (b) to provide financial advice to the general public (freely at no cost)
- (c) to provide financial advice to the general public (value based factors emphasized)
- (d) to provide the general public an awareness of how their spending directly affects the economy (in a nonsustainable versus healthy way)
- (e) to provide the general public socially responsible investment choices (socially screened mutual funds, municipal bonds, credit unions, community development banks and loan funds, etc.)
- (f) to provide the general public basic financial literacy and financial planning (emphasis on reducing unwanted debt and saving for retirement or college)

Your operations will be based in two geographic areas of State C. You will provide investment advice to the general public. Your business will be conducted initially and primarily by B, your president, and a registered investment advisor with the Securities and Exchange Commission and State C. Your primary business activity of providing investment advice to the general public will be provided at no cost. You expect to mainly provide help for the underserved population which may have limited discretionary income. You will also provide general assistance with financial literacy and debt reduction.

You strive to access those in need of assistance with investment matters, concentrating mainly on screened mutual funds, to meet retirement and college savings goals. You will provide investment opportunities that are values-based and promote a healthier and sustainable economy. Your goal is to educate the general public on spending and saving

money in a socially responsible way, for the good of themselves and the world as a whole.

You have not conducted any advertising, however, you plan to reach the general public through flyers and bumper stickers as well as booths outside of various public gatherings. You will seek support from government grants, public agency funding and individual contributions. You are currently operating out of the B's home until you are more successful.

You have three officers and two directors. Due to B's experience as an investment advisor he will provide and be compensated for his services. B is an officer but not a director. B will be compensated no more than \$75,000 for the current year and two succeeding years.

You will provide investment opportunities that are values-based and promote a healthy and sustainable economy, such as banking with a credit union or investing in a socially screened municipal bond fund. You will recommend mutual funds to your clients as an investment vehicle of choice as well as bonds for those closer to retirement and community investment projects. You will not charge a fee for advice given to the public and expect mainly to provide help for the under-served population striving to access those in need of assistance with investment matters. You define "underserved" persons as those transitioning from the criminal justice system, substance abusers, unemployed and low income population, however, no individuals shall be refused investment advice should they seek it. You did not provide the percentage of your clients that will be underserved. You will determine which clients are underserved through the use of a cash flow questionnaire. You understand that the under-served population may have limited discretionary income and you will provide general assistance with financial literacy and debt reduction. You submitted copies of materials that you plan to give to clients. The submitted information included auto insurance buying tips, financial recordkeeping, sample budgets and tips for high school/college students.

Your investment advice will differ from traditional investing in its approach to selecting or rejecting potential investment candidates. You will have no involvement in the actual investment transactions. Traditional investing involves selecting an investment based upon criteria such as: industry, size, growth projections, and earnings estimates. You will pay attention to the above listed criteria but will also give weight to those areas that are important to your client's values, such as environmental impact, or if they make/sell alcohol or tobacco products. The extra layer of scrutiny means that two companies may look about the same by the numbers, but one will fail the socially response test. The socially responsible company will be chosen for your client's investment. You will also make similar recommendations to the general public. You will select investment candidates based upon the socially responsible test in addition to traditional criteria. You

did not explain how you will make your advice available to the general public, however, you did submit a sample of written investment advice that you will provide. The advice consists of two pages of general information regarding opening a online brokerage account. You will provide one-on-one advice utilizing some type of computer aided program to provide financial plans. The financial planner will gather extensive information from the client including family and financial information to be entered into the software program. Clients will be put in touch with other trusted financial professionals in order to execute those parts of a financial plan that requires the purchase of registered securities.

You plan to start an internship and volunteer program, providing valuable experience and insight to students seeking careers in financial planning. B will provide the training to the interns and volunteers. No compensation will be provided to interns. A computer program will be used to prepare financial plans for clients, personalized to address their specific needs. Extensive information will be gathered on the client, client's family and finances. You plan to advertise through the use of flyers, bumper stickers, community events, churches and schools, although you have not yet prepared any advertising materials.

You will not enter into contracts with the investment opportunity entities. You do not provide credit repair, credit counseling, debt consolidation, debt repayment or debt negotiation services. You feel that your directors have proven skills in business administration and facilitation as well as sufficient knowledge of financial planning business in order to conduct your operations. B was employed in the financial planning industry for 10 years, however, B was laid off several years ago and has been unemployed to date. B was not an officer with his former employer, however, he performs the same duties of providing investment advice.

Law

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

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

- (A) The organization--
 - (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,

- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
- (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
- (D) At all times the organization has a board of directors or other governing body--
- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
 - (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment

of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

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

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

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

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

Section 1.501(c)(3)-1(b)(4) of the regulations 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(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: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

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.

Rev. Rul. 65-299 - The instant organization was formed to assist individuals and families with financial problems to work out those problems and to check the rising incidence of personal bankruptcy in the community. The objectives and activities of the organization contribute to the betterment of the community as a whole. Accordingly, it is held that the organization is entitled to exemption from federal income tax as an organization described in section 501(c)(4) of the Code.

Rev. Rul. 67-138 - The organization's training of low-income families on various aspects of house-building and homeownership is "educational" since the training is useful to and develops the capabilities of the individuals who receive it and benefits the community. The organization's other activities in assisting families in need to obtain adequate housing are "charitable" since they provide relief to the underprivileged, lessen the burdens of government, and are a means of combating community deterioration. Accordingly, the organization is exempt from federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 68-16 - A fund set up as an adjunct to a school of business administration that is exempt from federal income tax for the sole purpose of providing business students with instruction and experience in managing securities may be exempt from federal

income tax under section 501(c)(3) of the Internal Revenue Code of 1954. The fund is used by the students as an adjunct to their course of instruction to obtain knowledge and experience in security portfolio management. Thus, the fund contributes to their education. Accordingly, the organization is exempt from federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 68-167 - Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes. Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations states that the term 'charitable' includes relief of the poor and distressed. An organization can relieve the poor and distressed other than through direct grants, such as by providing necessary services. This organization provides a necessary service for needy women by giving them a market for their products and a source of income. In assisting needy persons in this manner, the organization serves a charitable purpose. Accordingly, the organization is exempt from federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 69-441 - 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 is relieving the poor and distressed. Furthermore, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization is instructing the public on subjects useful to the individual and beneficial to the community. Accordingly, the organization is exempt from federal income tax under section 501(c)(3) of the Code. Compare Revenue Ruling 65-299, C.B. 1965-2, 165, which holds that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)). In that case the organization was not engaged in any educational activities, and the families or individuals eligible for assistance were not limited to those who were in need of such assistance as proper recipients of charity.

Rev. Rul. 70-585 – Provides four situations where an organization is formed for charitable purposes and accomplishes its charitable purposes through a program of providing housing for low and, in certain circumstances, moderate income families, it is entitled to exemption under section 501(c)(3) of the Code. Situation 1 - By providing homes for low income families who otherwise could not afford them, the organization is relieving the poor and distressed. Thus, it is held that this organization is organized and operated exclusively for charitable purposes, and it is exempt from federal income tax under section 501(c)(3) of the Code. Situation 2 - the organization's activities are designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, it is engaged in charitable activities within the meaning of section 501(c)(3) of the Code. Situation 3 -

the organization's purposes and activities combat community deterioration by assisting in the rehabilitation of an old and run-down residential area, they are charitable within the meaning of section 501(c)(3) of the Code. Situation 4 - The organization plans to erect housing that it to be rented at cost to moderate income families. The organization is financed by mortgage money obtained under federal and state programs and by contributions from the general public. Since the organization's program is not designed to provide relief to the poor or to carry out any other charitable purpose within the meaning of the regulations applicable to section 501(c)(3) of the Code.

Rev. Rul. 72-559 - The organization was formed to provide legal services for economically depressed communities. Its sole activity is the operation of a legal program for the benefit of low income residents of these communities. By inducing lawyers to establish practices in economically depressed communities and to provide substantial free legal services to low income residents of such communities, the organization is relieving the poor and distressed. The fact that the recipients of the organization's financial assistance, the legal interns, are not themselves members of a charitable class does not mean the organization is not operating primarily for charitable purposes. The interns are merely the instruments by which the charitable purposes are accomplished. Therefore, the fact that they derive personal gain from the arrangement does not detract from the organization's charitable purposes. Accordingly, it is held that the organization's activities are charitable and, since it otherwise qualifies for exemption the organization is exempt under section 501(c)(3) of the Code.

Rev. Rul. 75-283 - By providing information and technical assistance to local tenant groups in public housing projects regarding the rights and responsibilities of tenants and the effect of existing laws and regulations concerning public housing, and by representing such groups before state and federal housing authorities, the organization is aiding individuals whose income is too low for them to obtain decent, safe, and sanitary housing. Such activities can be expected to result in improved living conditions, fair rental and lease agreements, and more knowledgeable tenants. The cumulative effect of the organization's activities is the relief of the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of such regulations. Accordingly, it is operated exclusively for charitable purposes and qualifies for exemption 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 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 member's of the organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

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

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

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). Section 1.501(c)(3)-1(a)(1). You fail both tests.

Organizational Test

To demonstrate that it is organized exclusively for exempt purposes, thus satisfying the organizational test, an organization must have a valid purpose clause and a valid dissolution provision. Sections 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations. 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. Section 1.501(c)(3)-1(b)(1)(i) of the regulations.

Your Articles provide that your specific purpose is to:

"...provide educational and charitable assistance, through guidance and advice, improving the investment knowledge and financial literacy of the general public. By integrating money with core human values, this corporation will assist the general public to become consumers with a conscience, aware that every dollar spent is a vote that can uphold and sustain a healthy economy without sacrificing sufficient rates of return on long term investments for retirement planning and college savings."

Your Articles do not limit your purposes to one or more exempt purposes. Specifically, integrating money with core human values, assisting the general public to become consumers with a conscience, aware that every dollar spent is a vote that can uphold and sustain a healthy economy without sacrificing sufficient rates of return on long term investments for retirement planning and college savings are not exempt purposes. Therefore, you do not have a valid purpose clause. Accordingly, you are not organized for exempt purposes.

Operational Test

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

Your Activities Are Not Charitable

All of your time and resources are devoted to providing investment advice. You will provide investment opportunities that are value-based and promote a healthy and sustainable economy, such as banking with a credit union or investing in a socially screened municipal bond fund, recommending mutual funds to your clients as an investment vehicle of choice as well as bonds for those closer to retirement and community investment projects. You will not charge a fee and expect mainly to provide help for the "underserved", those in need of assistance with investment matters. You define "underserved" persons as those transitioning from the criminal justice system, substance abusers, the unemployed and the low income population, however, no individuals seeking advice shall be refused. Providing investment advice services 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.

Your advice is not limited to low income persons. While you intend to mainly provide help to the "underserved", some of whom may be considered charitable beneficiaries, you will provide advice to anyone who seeks it. In fact, the persons that you define as underserved, by their very nature, do not have the funds to engage in investment activities. Therefore, your services are not directed exclusively to low-income individuals. Accordingly, you are unlike the organizations described in Rev. Rul. 67-138, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. You are similar to the organization described in Situation 4 of Rev. Rul. 70-585 in that you are providing advice to individuals that are not poor and distressed. You are also similar to the organization described in Rev. Rul. 65-299 in that you are providing information that contributes to the betterment of the community as whole by encouraging socially responsible investment choices. However, the organization in that case qualified for exemption under section 501(c)(4) rather than (c)(3).

You are unlike the organization in Rev. Rul. 68-167, where the organization provided a necessary service for needy women to give them a market for their products and a source of income. Providing investment advice is not a necessary service to provide a source of income to your clients. Nor are you like the organization in Rev. Rul. 72-559, where the organization is relieving the poor and distressed by providing substantial free legal services to low income residents. The recipients of the free legal services are low income individuals. Finally, the organization in Rev. Rul. 75-283, was aiding individuals whose income was too low for them to obtain decent, safe, and sanitary housing. Such activities can be expected to result in improved living conditions, fair rental and lease agreements, and more knowledgeable tenants. The cumulative effect of the organization's activities is the relief of the poor and distressed. Your activities do not provide assistance in obtaining

needs of everyday life such as a source of income, decent and affordable housing or legal services. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

Your Activities Are Not Educational

You are distinguishable from the organizations in Rev. Rul. 68-16 and Rev. Rul. 69-441 because you are not conducting an educational program. Although you stated that your goal is to educate the general public on spending and saving money in a socially responsible way, you have not provided any evidence of an educational program. Your sole activity is recommending investment options such as mutual funds, bonds or credit unions based upon a "socially responsible test" as well as traditional criteria. You did submit a few materials that include information such as auto insurance buying tips, financial recordkeeping and tips for high school/college students, however, the minimal educational content is incidental to your activity of providing investment advice. Recommending which mutual fund to invest in does not provide instruction or training for the purpose of improving or developing the advisee's capabilities within the meaning of section 1.501(c)(3)-1(d)(3)(i). Nor do you provide any instruction of the public. You do plan to start an internship program to provide instruction to the interns seeking careers in financial planning, however, the program is not operational at this time. Unlike the organizations Rev. Rul. 68-16 *supra*, and Rev. Rul. 69-441, *supra*, you do not offer counseling sessions that are structured primarily to improve your clients' understanding of their financial problems or their skills in solving them nor do you provide instructions to students. You provided no evidence that your financial advisor does anything other than gave family and financial information in order to provide advice as to which investment vehicles are appropriate. Communicating with a homeowner to fill out a financial worksheet and an intake sheet is not an educational activity because the communication does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process. Rev. Proc. 86-43..

You have not held any seminars or workshops to date, nor have you begun your internship program. Your "counseling" sessions are used to solicit the information required to provide advice regarding appropriate socially responsible investment options in which to invest.. Finally, the few educational materials that you distribute are incidental to your activity of providing investment advice. 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. Thus, your activities are not educational within the meaning of section 501(c)(3).

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Your provision of investment advice is a service that your clients would otherwise have to provide themselves, either through their own efforts or through the payment of fees to a third party. Finally, you benefit 3rd party financial professionals through referrals of clients required services to purchase registered securities.

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).

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. 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 provide credit counseling services tailored to the specific needs and circumstances of consumers. Section 501(q)(A)(i). You do not provide educational information to the public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of credit. Nor do you assist individuals and families with financial problems by providing them with counseling. Section 501(q)(4)(A). You have provided no educational seminars or workshops to the general public and no educational materials distributed to your clients. Your programs are tailored towards teaching people how to soundly invest as well as choosing socially responsible companies to invest with. Therefore, you do not meet the requirements under section 501(q).

Finally, you indicated B, your president, is projected to receive compensation from you as an employee. Therefore, more than 20% of the members of your Board of Directors are also compensated as employees. Section 501(q)(D)(ii).

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. You are not organized exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations because your Articles of Incorporation do not restrict you to section 501(c)(3) purposes. 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 because you are not educating your clients nor do you provide your services to poor or distressed individuals. 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