



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201252026**
Release Date: 12/28/2012

Date: October 3, 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.

Because 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. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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

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

Sincerely,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

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: August 8, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
D = State
E = State
P = Name of Program
r = \$
s = \$

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 meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.
- Do you meet the requirements under section 501(q) of the Code? No, for the reasons described below.

Facts

You were incorporated on B in D. Your Articles of Incorporation state that your purpose

is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of D. Your articles also contain the necessary 501(c)(3) language.

You will promote wealth creation and financial self-determination within and among low and moderate income households and communities by developing and distributing adult financial education and literacy tools and services., You will also provide member products and services to small businesses located within or serving low and moderate income households and communities, and advocate on behalf of the collective interests of low and moderate income households and communities.

You will develop services and programs aimed at three groups of stakeholders; low and moderate income households, employees of corporations and stakeholders of other types of institutions, and small businesses of 100 employees or less, located within or primarily serving low and moderate income communities.

You solicit funds from the public in order to defray costs of program development and operations, create supportive networks of households, businesses and organizations concerned with wealth-creation among low and moderate income households and communities, participate in conferences and community based activities that support wealth creation among low and moderate income households and communities, and advocate on behalf of the collective interest of low and moderate income households, and the small businesses that serve them.

Some of your products such as technology based tools and education materials on credit card use, debt load management, household budgeting, home ownership and mortgage costs etc will be distributed free of charge. As a means of augmenting the learning experience for the recipient households you will provide niche social networking environments where similar households may receive additional web based learning opportunities, cost effective products and services and information aimed at further financial self-determination. For corporations and institutions you will charge the sponsoring institution or employer a one-time fee. For small businesses you provide these services for a one-time fee. This is a membership fee which entitles the small business to become a life time member. Small business members will receive services such as entity selection and creation, drafting governance related documents, business valuation, competitive benchmarking, business plan creation, succession planning and exit strategies, risk and strategy analysis etc. You provide small business consulting and advisory services on a member only basis. Your financial literacy and education products will be distributed free of charge but will be priced according to common pricing conventions for the purpose of measuring the cost of production such as labor, materials and overhead. Some products and services, such as those provided to your small business membership or those sponsored by companies or organizations on behalf of their employees or stakeholders, will be priced below market prices set by for-profit providers of similar products and services. Members will be eligible for discounts based on their size. Companies and organizations purchasing sponsored products and services

will also be eligible for a price discount based on an organization by organization basis.

In developing, marketing and distributing your products and services you referred to three "service groups"; adult financial literacy, corporations and institutions and small business services.

Adult Financial Literacy

You will provide research and technology based adult financial literacy tools and services to low and moderate income households beginning with the State of E, free of charge to the recipient household. The tools will include material on credit card use, debt load management, household budgeting and savings, home ownership and mortgage costs and related topics. You will also develop multimedia products and Web2.0 products that instruct on various topics (retirement planning, investor education and related topics). To augment the learning experience you will provide niche social networking environments where additional web-based learning opportunities, cost-effective products and services, and share information aimed at further financial self determination. You will develop original research on various topics related to financial services access among low and moderate income households, the unbanked and under banked and related topics. Every sponsored product is developed to address the information and literacy needs of target specific audiences.

Your principal initiative is the P network. The P network is the centerpiece of your adult financial literacy program and is the technological embodiment of your information, education, advocacy and action philosophies. Your primary expense in the first few years of operation will be the development and implementation of the digital learning and literacy platform. You will pay a for-profit third party for the creation of the platform. You will retain all rights and powers associated with any intellectual property you develop.

We asked for specific details (syllabus, material, etc...) regarding the educational programs you offer. You indicated that the adult financial literacy program is under development.

Corporations and Institutions

You will provide research and technology based adult financial literacy tools and services to workforce employees and stakeholders within other types of organizations and institutions beginning with the State of E. You will charge a one-time fee (a fee schedule for this service was not provided). The tools will include pension analysis and retirement planning, investor education seminars and related products. To augment the learning experience you will provide niche social networking environments where additional web-based learning opportunities, cost-effective products and services, and share information aimed at further financial self determination.

Small Business Services

You are a membership organization. Only small business members are required to pay a membership fee. Annual memberships are up to r. A lifetime membership can be purchased for s. You will not charge service fees to you membership. The annual or lifetime membership provides free access to your services. Non-members will be provided services with a fee based on the type of service requested.

You indicate that you provide your membership with "superior "market-grade" professional service for a fraction of market price in a membership fee." Your members can avail themselves, free of charge, to a growing network of lawyers, accountants, marketing professionals, financiers and fellow members. Members have three categories of services; Foundation, Growth and Network. Foundation services include start-up services (business plan, creating a legal entity, filing for licenses and registrations, etc...) and post-establishment services (trademark monitoring and notification services, assistance with employment laws, loan application assistance, etc...). Growth services assists members evaluate, plan, implement and manage growth and provide access to investors. Network services provide access to your professional list server, network of professionals, original research, monthly newsletter, and other services.

In response to our question whether you will charge fees, you responded you will not charge a fee of your clients for your services. You will however charge a membership fee in return for which your members will be entitled to a suite of consulting and advisory services. In addition companies and institutions will be provided company specific services and the price charged to each company will be determined on a case by case basis. You also stated that if a company or organization is unable to pay for the company specific financial program they requested the program will not be provided to their employees or constituents.

You will develop web-based and mobile based products, tools and services and purchase tools and services developed for you by third party software designers. You also intend on creating or purchasing marketing materials that contain proprietary trademarks and service marks such as t-shirts, hats, sweatshirts, pens, pencils, notepads and ornamental objects.

Approximately 50% of your time will be spent providing your small business members services such as drafting operating agreements, shareholder agreements, agreements between partners etc. You also state that since the activities you will provide in the future are all based on the areas of adult financial literacy and small business consulting it is impossible to imagine all of the activities you will engage in. Services provided to your small organization members are provided by volunteers with professional experience in the area or areas of need facing the member. A potential small organization contacts you via phone or e-mail one of your volunteers fields their questions and takes additional information regarding the client. The potential member is then provided with information regarding your membership dues and types. You will provide the potential member with a

summary of needs and an application for membership. Upon return of the application and the dues the member is matched up with a volunteer with specific experience.

You do not have any employees and do not plan to hire any employees. You do not provide personal financial counseling services. The vast majority of your activities will be digitally based and distributed via web-based, mobile-based and notebook-based devices. You will rely heavily on pro-bono and volunteer services of professionals and donated resources.

Currently, you do not receive client referrals from any organization. However, you intend to establish referral arrangements with various non-profits and similarly situated service providers. We asked for information regarding the for-profit entities for which you now have or plan to have a relationship. You responded by indicating that you intend to utilize both for-profit and non-profit organizations and it is "completely impossible to anticipate even a sampling of the for-profit" organizations with whom you will do business.

Your website indicates that you promote "wealth creation and financial self-determination within and among working families and communities by developing and distributing adult financial education and literacy tools and services, providing member products and services to small businesses located within or serving our communities, and by advocating on behalf of the collective interests of working families, and the communities in which they reside." You have developed a web based learning content management system P, a personalized website that integrates niche networking, RSS web feeds, financial literacy tools, investor education tools, and related news and information designed to address the specific needs of your client's households, aimed at increasing financial literacy and elevating financial decision making. Your website describes P as the centerpiece of your adult financial literacy program and is the digital embodiment of your financial self-determination model. You are currently accepting requests from for-profit and not-for-profit companies interested in providing your stakeholders with a complete and long lived adult financial literacy program.

When asked about the nature of your advocacy activities and whether you plan to conduct legislative or lobbying activities you answered that these questions were not applicable to you.

You have nine directors two of whom are related and the majority of whom are employed or involved in the financial industry.

Your funding comes from corporate and small business membership fees, consulting fees, foundation grants and donations. You submitted budgets for your first four years of operations. Approximately 50% of your income is from membership dues.

Your growth strategy as per your Annual Board meeting agenda from Feb 2011 shows that you plan to establish a physical office during year four and expand your services to include bankruptcy and credit counseling services. However you did not provide any

details regarding these activities.

Law

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

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

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

- (A) The organization--
 - (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
 - (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

- (D) At all times the organization has a board of directors or other governing body--
- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
 - (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
 - (iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

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(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 that an applicant organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

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."

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

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.

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 the 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, 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 Bethel Conservative Mennonite Church v. Commissioner, 746 F. 2d 388, 391 (7th Cir. 1984) the court considered how a medical plan conducted by a church affected its exempt status. In analyzing the facts of the case the court stated that "The facts in each case must be explored to ascertain the predominant or primary purpose for which the organization was formed, and also the manner of its operation."

In Church by Mail, 765 F. 2d 1387 (9th Cir. 1985), affg. TCM 1984-349, Tax Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. Furthermore, the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9th Circuit Court of Appeals, in affirming the Tax Court's decision, stated that "the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church".

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

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

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

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only 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. 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 the 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 Educational

You were formed to promote wealth creation and financial self-determination. You will provide services to low and middle income clients, corporations and your membership. While some of your activities may have an educational component and you plan to provide some free services, your operational focus is on generating fees from your membership and other activities. Similar to the organization in Solution Plus, *supra*, your efforts are focused on informing potential clients about the range of services available and signing them up for one of your programs.

The products, tools and services you will provide appear to contain some educational content. However, most of the access to this information is limited based on ability to pay or membership status. When we asked for specific details regarding your educational programs you indicated that the programs were under development. This is not sufficient to establish that you exclusively 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.

Like the organizations described in Solution Plus, *supra*, Better Business Bureau, *supra*, and Easter House, *supra*, your activities have an underlying commercial motive that distinguishes your activities from those carried out by an educational organization.

Your Activities Are Not Charitable

You provide services to low and moderate income households and communities and corporations. However, most of your time and resources are devoted to servicing your membership. You are not described under section 1.501(c)(3)-1(d)(2) of the regulations as your services are primarily marketed and available to those who can afford your fees or dues rather than those who are poor and distressed.

Your services do not further charitable purposes as you do not limit your services to low-income individuals.

You do not waive your fees for those clients who cannot afford to pay for your services. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Unlike the organizations in Consumer Credit Counseling Service of Alabama; *supra*, and Rev. Rul. 69-441, *supra*, you charge fees (member and non-member fees) for most of your services. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Solution Plus, *supra*.

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

You Have a Substantial Nonexempt Commercial Purpose

The courts have consistently held that an organization's purposes may be inferred from its manner of operations (Bethel Conservative Mennonite Church, *supra*). Your manner of operations is commercial in nature.

Your activities primarily consist of providing consulting and other services to dues paying members and fee based clients. Your activities do not further an exempt purpose, as recognized by statute or by case law, but rather a substantial nonexempt commercial purpose. You provide services similar to those provided by for-profit entities. It is significant that you are in direct competition with for-profit entities that provide similar services. "Competition with commercial firms is strong evidence of the predominance of non-exempt commercial purposes." B.S.W. Group, *supra*. Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit.

Like the organization described in Old Dominion Box Co, *supra*, your operation for the benefit of private parties, your membership and fee paying clients, constitutes a substantial nonexempt purpose.

The activities you identify as "charitable" and "educational" are incidental to your primary purpose of providing services and tools in return for dues or 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.

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 primary expense will be to pay a for-profit entity to create your financial tools. It is not necessary for us to determine whether such payments are unreasonable (Church by Mail, *supra*). Your enterprise is carried on in such a manner as to substantially benefit the for-profit entity.

You will make referrals to for-profit entities and refused to provide details regarding this planned future activity, indicating it is completely impossible to anticipate even a sampling of the for-profit institutions you will have relationships with. The referrals are a single non-exempt purpose which precludes exemption similar to the organization in Better Business Bureau of Washington, D.C., *supra*.

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

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. Therefore, for the purposes of section 501(q) you provide credit counseling as a substantial purpose, and 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 comply with certain provisions of section 501(q) of the Code. 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). You failed to establish that your membership dues and other fees are reasonable. Also, you do not have a fee waiver policy.

Therefore, even if 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 operated exclusively for exempt purposes.

You do not pass the operational test. You are not educational, you are not charitable, you have a substantial non-exempt purpose, you have not demonstrated that your operations serve a public rather than a private interest and you have failed to meet the requirements of section 501(q).

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.

Appeal Rights

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. 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, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following 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."

The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.

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
Group 7827
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations
550 Main Street, Group 7827
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,

Holly O. Paz
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892