



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201303019**  
Release Date: 1/18/2013  
Date: October 25, 2012

UIL: 501.32-00; 501.31-01; 501.33-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear \_\_\_\_\_ :

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

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

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

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

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

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

Sincerely,

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: September 6, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

**LEGEND:**

B = date  
C = date  
E = state  
F = program  
G = program  
H = individual  
J = individual  
K = individual  
O = business  
Z = dollar amount

**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 under E law. Your Articles of Incorporation ("Articles") state, in Article IV, that:

"The business and purpose of the corporation shall be to support and promote efforts to deliver personal finance information and education."

Your Bylaws state, in Section 2, that you are:

"(O)rganized exclusively for charitable, scientific and educational purposes, more specifically to facilitate, educate, unite and collaborate with diverse people and organizations to enhance and strengthen the inclusive nature of our community."

You were created in response to the recommendations made by the President's Council on Financial Literacy. You will create and implement a plan to make the fight against indebtedness a national priority, that begins by coordinating the disparate efforts of financial education companies and organizations, as well as partner with currently existing financial services industries, to create an army of educators and messengers that will serve as front-line, grass-roots, intermediaries that will reach as many as 10 million people every year.

You have three directors; H, J, and K. H and J are financial professionals. K is a personal assistant and elderly caregiver. Currently, H and J are not compensated. When you begin to generate revenue, you will compensate H and J in a manner that is commensurate with the risk and investment associated with the business as well as industry standards.

H and J own 100% of O, a for-profit entity, creator of the software program G. You will enter into a wholesale, distribution and licensing agreement with O. The licensing agreement will enable you to make available certain financial teaching materials and tools, such as G, to financial intermediaries for free, or nearly free. The intermediaries will use the tools to deliver financial information and education. The terms of the licensing agreement will be negotiated and representative of an arm's length transaction. You will ensure that all negotiations result in paying no more than fair market value by only agreeing to a license fee that is 50% or more below the retail price of the product(s). The agreement will further stipulate that you cannot sell "mark-up" and sell the licensed product as a stand-alone item.

You will transform currently existing networks of hundreds of thousands of financial service providers into personal finance educators. These providers will be your membership. They in turn will act as your intermediaries and integrate the industry specific tools and information you provide into their core business. The providers will promote good financial habits that will enable consumers to retain wealth.

To effectively create change you have adopted a marketing brand and message called F. F represents the consolidated and fundamental principles being taught by hundreds of thousands of financial advisors and forms the foundation, starting point and self-assessment tool for every person who seeks to embark down a path of being financially responsible.

F is a universal and standardized means of making personal finance decisions by assessing and measuring an individual's financial foundation and their commitment to managing their financial life. F simply says individuals should:

- Establish and/or maintain an emergency reserve/cash cushion to help manage day-to-day cash flow to avoid living paycheck to paycheck and/or relying on credit cards.
- Have zero non-mortgage debt (credit card balances, auto loans, student loans) which steals away money that otherwise could be saved and invested.
- Establish, or improve on, a savings habit which begins by accumulating the equivalent of a years worth of household income.
- Endeavor to own a home and put themselves in a position to pay off the mortgage in the shortest possible time.

Your primary efforts will be to arm existing networks of financial services professionals with just-in-time personal finance teaching and education information and tools, based on F. These professionals will then deliver the financial education information to consumers.

The mortgage industry, and its nationwide network of financial service providers, represents your initial target industry. The mortgage industry provides services to 6 to 10 million consumers annually and is uniquely positioned, and motivated, to adopt F to reach the 92% of Americans who do not work with a financial advisor. The mortgage industry is the ideal way to reach consumers because:

- Mortgage consumers will view F as a solution that clearly serves their needs
- The mortgage industry will see F as a means to regain public and Wall Street confidence and reestablish the mortgage industry as a vibrant component of the U.S. Economy
- Wall Street will use F as a means of improving the quality of the borrower and reducing default risk.

You will be distributing an insightful and visual personal finance teaching and education program through G. There are three versions of G; basic, professional and premium. You will offer only the premium version. You will acquire a license to distribute G as an added value for your mortgage industry membership. G has been designed specifically for you by the mortgage industry to be used at the point-of-sale for every mortgage transaction in America. G will transform the mortgage process into a teaching and education event. G will ask:

- Did the transaction create and/or maintain an emergency reserve for the consumer?
- Did we eliminate and/or help the consumer avoid carrying consumer debt balances?

- Were we able to help the consumer create and/or maintain a consistent savings plan?
- Have we enabled the homeowner to put himself in a position to pay off the mortgage sooner?

You intend to begin by distributing G. This will allow you to put in place the “seed corn” for your nationwide branding and marketing efforts to promote F. Next, you will conduct an 18-month, broad based, multi-event, nationwide public awareness promotion intended to do the following:

- Make financial literacy a national priority
- Involve up to 10 million Americans
- Provide financial issue education
- Help revitalize the mortgage and housing industry
- Promote G
- Award prizes to 100,000 individuals

Your third project will be an upbeat and interactive e-newsletter and magazine distributed to millions of Americans. The publication will promote the value of thriftiness, the importance of being self-reliant, savings as a personal responsibility and looking forward to a satisfying retirement.

Your fourth project will be a series of nationwide television and radio public service announcements that promote F.

You estimate that you will spend 60% of your time conducting outreach activities, 30% supporting your membership and 10% conducting administrative duties. Your website will be the primary tool by which people will connect with you and vice-versa.

Your website indicates, in part, that your mission is to support a member base of like-minded groups and individuals and to create a nationwide corps of financial educators. You will promote F and the creation and use of a nationwide personal banking system for the purchase of major non-mortgage consumer goods and services. You promote consumer rights and create and distribute, either directly or through strategic partnerships, personal finance information and tools based on F. The website briefly summarizes your projects (G, a nationwide promotion campaign, magazine and videos) and indicates the benefits and financial costs of membership.

Currently, you have no facility and board members are donating the use of their homes and equipment at no cost to you.

You submitted your licensing agreement with O entered into on C. O grants you a non-transferable, non-exclusive, non-assignable license, without right to sublicense, to market, promote, distribute and resell software product(s) developed by O (G

Professional and Premium). All intellectual property rights will remain with O. Your rights are limited to distributing O to your membership and you are not entitled to sell or distribute O on a stand-alone basis. You will pay O z dollars per year for each license fee you distribute. You will provide O the names, addresses and phone numbers of your members to whom you have distributed products and any feedback regarding the products. The agreement, while not signed, lists H and J as the parties who would be accepting the terms of the contract.

Your long-term plans are to generate sufficient contributions that will allow you to provide materials and tools to the intermediaries at no charge. Initially, you will provide the materials and tools at a substantially lower cost as compared to alternative products and services.

You plan to charge a user setup fee of z dollars. It appears a G subscriber will pay more than one setup fee. A month-to-month individual subscription for G will range from \$50 to \$400 per month. You compare this to similar products available for similar prices. You will also offer organizational memberships, with fees ranging anywhere from \$500 to \$250000.

The general public can obtain G through retail channels of O. However, the retail services of O will be phased out as your membership grows.

You have projected income including contributions in addition to receipts for your services and membership fees, and have projected expenses for salaries, facilities, licensing fees, marketing and advertising.

## **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(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)(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. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses supported and operated a nurses' registry to help make the nurses' services more readily available to the general public. The association's bylaws stated that its specific purposes were to provide employment for its members as well as to organize an adequate and available nursing placement service for the community. Its membership was open to both registered and practical nurses who met specified requirements. The organization maintained a registry of its members showing their respective qualifications and the types of services they perform. Reference and placement from the register were made on a rotating basis upon request for nursing services. The association was operated primarily to afford greater employment opportunities for its members, and only incidentally for the benefit of the general public. This was evidenced by the fact that it drew its support primarily from members and was controlled by a board of trustees composed of professional nurses, without public participation of any kind. Thus, the association was not organized or operated exclusively for exempt purposes as described in section 501(c)(3) of the Code.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

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

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."

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 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 Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational. The Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these

organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Case. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Bethel Conservative Mennonite Church v. Commissioner, 746 F. 2d 388, 391 (7<sup>th</sup> 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 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 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 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, you fail the operational test.

### 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 will begin by marketing a financial tool, G, to your membership. Your membership will use G to educate their clients when providing services. Sometime in the future you plan to conduct a nationwide educational campaign, create a magazine and offer financial videos. All of the planned activities include the promotion of G and your for-profit members conduct almost all of the educational activity. You will not operate a substantive, on-going educational program, provided no evidence that you help clients develop an understanding of the cause of their financial problems, or provide a plan to address their financial problems. You have provided no evidence that you intend to establish long-term relationships with the public. Your activities are only connecting your for-profit members to clients whom they will then educate, using O's product. Although your website contains some educational content, it is not sufficient 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.

Your operational focus is on generating fees from your membership. 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.

Rev. Proc. 86-43, *supra*, states a 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." You failed to prove that your method of communication

through your membership to the general public meets the standards of Rev. Proc. 86-43, *supra*. Thus, you failed to establish that your activities are educational within the meaning of section 501(c)(3) of the Code.

*Your Activities Are Not Charitable*

Your time and resources are devoted to marketing the products of a related for-profit entity, O. Your membership will use O's products, including G, to assist their clients. You do not limit your services to poor or distressed individuals.

Further, you do not waive your fees for those who cannot afford to pay for your services. While you plan to offer some free services sometime in the future, no specific details were provided and you will rely primarily on fees to produce revenue. 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. "[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*, and have outlined factors related to the nature of how an organization conducts its business, including pricing policies, funding sources, and the organization's competitiveness with and similarity to other commercial ventures, in discerning substantial nonexempt commercial purposes. See e.g., Arlie Foundation, *supra*, B.S.W. Group, *supra*; Living Faith, *supra*.

Your activities consist primarily of providing membership services for a fee. Although an organization is not disqualified from tax-exempt status solely because its primary activity constitutes a business, when it conducts a business with an apparently commercial character as its primary activity, "that fact weighs heavily against exemption." B.S.W. Group, *supra*.

You will market and distribute a product created by O. You will pay a license fee to O for every copy of G distributed. All intellectual property rights will remain with O. You will provide O the names, addresses and phone numbers of your members to whom you have distributed products and any feedback regarding the products. Like the organization described in Old Dominion Box Co, *supra*, your operation for the benefit of private parties constitutes a substantial nonexempt purpose.

The general public can obtain G through retail channels. Other for-profit organizations offer similar products. It is significant that you are in direct competition with for-profit entities. "Competition with commercial firms is strong evidence of the predominance of non-exempt commercial purposes." B.S.W. Group, *supra*.

An examination of your activities, pricing policies, funding sources and competition with for-profit entities clearly indicate your manner of operations is commercial in nature. 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.

*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.

It is unnecessary for us to determine the payments to the related for-profit entity O are unreasonable. Church by Mail, *supra*. Your entire enterprise is carried on in such a manner as to substantially benefit the related for-profit entity.

You are controlled by a small board of directors, composed primarily of financial professionals. You will be marketing and promoting products created and distributed by O, and O will receive z dollars for each license distributed. Two of your three directors, H and J, own O. Your reseller agreement lists both H and J as signatories. This is all evidence that you operate for the benefit of your directors rather than the public, as in Rev. Rul. 61-170, *supra*.

Your board of directors is composed of persons who stand to gain financially from your organization's activities, unlike the organization in Rev. Rul. 69-441, *supra*, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

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).

Further, as a result of insiders gaining benefits from your operations, inurement is present, as H and J gain increased promotion, marketing, sales and use of both G and F. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 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. Thus 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 have failed to 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 as required by section 501(q)(1)(C).

You are not governed by a board controlled by persons representing the broad interests of the public as required by section 501(q)(1)(D). You are governed by a board primarily composed of financial professionals who will benefit from your activity.

You plan to compensate two of your three directors. This would not comply with section 501(q)(d)(ii) that indicates that at all times the organization must have a board of directors or other governing body 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).

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 do not meet the operational test as your activities are neither educational or charitable. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals. You have also 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.

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,

Holly O. Paz  
Director, Exempt Organizations  
Rulings & Agreements

Enclosure, Publication 892