



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201305013**
Release Date: 2/1/2013
Date: November 8, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.00-00; 501.03-08; 501.03-30; 501.32-00
501.33-00; 501.36-01

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: September 17, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #:s

501.00-00

501.03-08

501.03-30

501.32-00

501.33-00

501.36-01

Legend:

D = Date
F = Name
L = Name
P = Name
R = Name
S = Name
T = Name

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

Issues

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

described below.

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

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

Do you substantiate that you are operating exclusively for exempt purposes within the meaning of Section 501(c)(3)? No, for the reasons stated below.

Alternate Issue

Do you meet the provisions described in 501(q)? No, for the reasons described below.

Facts

Your founder, F is the owner of R, a for profit business of providing services to the mortgage industry including title searches, mortgage recordings and loan closings. R also had a loan modification department that provided loan mitigation counseling services for about \$ _____, which was managed by P, a bankruptcy attorney. T who is F's son is also a bankruptcy attorney, has his own law firm, L, and also works for R part time. There was a law change in your state providing only non-profits or attorneys could provide loan mitigation counseling services. Therefore, F incorporated you as a non-profit corporation under the state law of S on date D to conduct the same loan mitigation services as provided by R's mortgage mitigation department.

Your Articles of Incorporation state:

- Your specific purpose is providing loan modifications, home retention, debt consolidation, short sale and relocation guidance.
- Your public objective is to offer solutions to homeowners and tenants in fear of losing their homes due to financial hardship.
- You are organized exclusively for charitable and educational purposes under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

In addition, there are no dissolution provisions in your filed Articles, which dedicate your net assets to 501(c)(3) purposes.

You provide the following services for clients facing foreclosure:

- The development of a spending plan.

- A detailed analysis of the mortgage default, including the amount of and causes of the default.
- A detailed presentation of reasonable options available to the homeowner.
- Assistance [in] communicating with the mortgage servicer and other creditors.
- Timely completion of promised actions.
- An explanation of the collection and foreclosure process
- Referrals to needed resources.

You will have a paid staff including F, as your executive director and P, the former head of R's Mortgage Mitigation Department as the supervising attorney. The staff positions include:

One supervising attorney, who will oversee all non litigation foreclosure prevention services, counsel homeowners, conduct follow up calls, engage in negotiations with lenders when work outs are imminent and trouble shoot problems that arise with the lenders.

Three Homeowner advocate paralegals, who will prepare loan mitigation applications (LMA). They will collect and submit the necessary documents to the lenders, conduct follow up phone calls, provide status reports to your clients, collect and provide other documents requested by the lenders and act as liaison for the homeowner with their lenders.

One full and one part time litigation attorney who will attend mandatory settlement conferences for homeowners, provide bankruptcy services, short sales and deed in lieu assistance.

One part time accounting person who will be responsible for all requirements of the non-profit operation.

Moreover, employees of R will be given the opportunity to quit their positions at R and work for you exclusively. You will conduct an initial assessment to determine which of your loan mitigation services are appropriate for clients. During this initial session, you require potential clients to complete numerous documents including your mortgage data sheet, the Borrower's Authorization form, your Acknowledgement of Services form, your Patriot Act compliance sheet, Borrower Credit Authorization form, Client/Counselor Agreement, and Release of Information Authorization form. Your Client/Counselor Agreement specifically states you will provide confidentiality, honesty, respect and professionalism in all services you provide.

In addition, you require clients to give you pay stubs, tax returns, bank statements, current mortgage statements, and personal financial statements so you can analyze the

client's financial situation with him/her. After the financial assessment, you discuss their options and recommend appropriate courses of action.

For example, for those currently employed and facing foreclosure, you will recommend and prepare an LMA to submit to the client's lender, which involves the following:

- Completing all the necessary paperwork and then negotiating a new mortgage term with the lender.
- Placing biweekly telephone calls to the lender to assure that they have everything they need to make their decision for the best possible loan modification.

For those clients whose foreclosure proceedings have begun, one of your attorneys will represent the homeowner during the settlement conference and submit an LMA.

For those who are not eligible for a loan modification because of their finances, you may recommend bankruptcy, a short sale or a Deed in Lieu. You generally will not provide these services and will give these individuals referrals to others who do.

You do not plan to provide any workshops, classes, and seminars. In addition, you advertise your services by using a non-paid referral system from local bankruptcy lawyers firms including L. Moreover, you plan to be a HUD defined local counseling agency and will apply for state and federal grants to fund your services. You may charge a sliding fee up to \$500.00 if you are unable to get grants. Your primary expense is salaries.

Finally, you made the following changes during the application process.

1. You changed your board three times:

- Your initial application indicated only F and a paralegal from R as board members.
- The second change indicated F and three employees from R as your board.
- The third change indicated F and two others from the community unrelated to R and F. No information was submitted to show when or how they were appointed or who appointed them.

2. You changed your lease agreement terms three times as described below:

- In the initial submission, you included a lease with R for about \$5000.00 a month.
- In the second submission, you modified the lease paying R about \$2000 per month.
- In the last submission, you decided not to pay R anything and will look for another facility.

You also changed your source of revenue from fees to grants. Furthermore, you initially said that you will share employees with R but these employees will now have the choice to work exclusively either for you or R. Finally, F stated these changes were made because of previous errors.

Law

Section 501(c)(3) of the Code provides that corporations may be exempt 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:

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

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

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Reg. 1.501(c)(3)-1(d)(1) states, in part, that an organization is not organized or operated exclusively for one or more exempt purposes "unless it serves a public rather than a private interest. Thus, 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.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit with 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 neither charged fees for counseling services nor prorated their services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support. Creditors were not required, though, to make such contributions as a condition of participation.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling as 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.

Revenue Procedure 2011-9, Section 4.01, provides that the Internal Revenue Service will recognize the tax-exempt status of an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4.03 provides that exempt status may be recognized in advance of the organization's operations if its proposed operations are described in sufficient detail to permit a conclusion that it will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed. Section 4.03(2) states that the organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

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 . . . [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes.”

The applicant for tax-exempt status under section 501(c)(3) has the burden of showing it “comes squarely within the terms of the law conferring the benefit sought.” Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958).

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the Tax 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 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.” Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama was an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. As such, the community and education counseling assistance programs were the agency's primary activities. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See *also*, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Easter House v. 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 Claims 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 non-exempt 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 non-exempt 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 District 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, among other things, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations."

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not described in section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans ("DMPs"). The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials to provide to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

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

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

Finally, the Tax Court held that the facts in Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) "stand in stark contrast" because "the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal."

Application of 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) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations. You fail both tests.

Organizational Test

You do not meet the requirements in Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your Articles of Incorporation state you are organized to:

- Provide loan modifications, home retention, debt consolidation, short sale and relocation guidance.
- Offer solutions to homeowners and tenants in fear of losing their homes due to financial hardship.

Because your purpose clause is too broad, you are not organized exclusively for purposes described in the regulations.

Moreover, your Articles of Incorporation do not have a dissolution provision as required by Section 1.501(c)(3)-1(b)(4), which also causes you to fail the organizational test.

Operational Test

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

Your Activities Are Not Educational

Your activities of providing mortgage mitigation counseling services to homeowners facing possible foreclosure are not described in section 1.501(c)(3)-1(d)(3)(i) of the regulations. You generally only conduct one counseling session. The focus of the session is to gather financial information and financial documents in order to analyze and assess your client's financial situation and discuss the options available to him/her. Furthermore, you do not :

- Operate a substantive on-going educational program for clients
- Allocate any revenue to activities involving educational programs.

Your counseling sessions are not designed to provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. Thus, you are not operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

You are not like the organizations in Consumer Credit Counseling Service of Alabama, supra, and Rev. Rul. 69-441 because you do not provide any information to the general public on such subjects as budgeting and the sound use of consumer credit. In addition,

the methods used in your counseling sessions are not structured to improve your clients' understanding of their financial problems or their skills in solving them. Finally, the purpose of your counseling sessions is to determine if they are eligible for an LMA. Those who are not good candidates for an LMA are generally referred to other organizations.

You are similar to the organization in Solution Plus. 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. In fact, you generally only have one session to determine if they are a good candidate for an LMA so you can sign an agreement with them, rather than conduct any meaningful educational programs.

You Have a Substantial Nonexempt Commercial Purpose

You are not as described in Section 1.501(c)(3)-1(c)(1) of the Regulations because you are primarily providing mortgage mitigation services in a commercial manner. In fact, you took over the operation of R's mortgage mitigation department after there was a state law change. In addition, your staff consists of the same individuals doing the same jobs with a similar salary as they did for R. Finally, you even stated the only difference between you and R's mortgage mitigation department is the income source. However, you intend to charge fees if you do not get government grants.

You are similar to the organizations in Easter House, supra, Airlie, supra, and Living Faith, supra because you are operating like a for profit business. This is indicated by the fact that you will provide referrals to those who are not eligible for an LMA.

In fact, you have failed to show you are indistinguishable from R since you are a continuation of R's business operation and use the same operational methods, the same office, and the same personnel.

Inurement/Private Benefits

You are not described in Section 1.501(c)(3)-1(c)(2) of the Regulations because, you are not operated exclusively for exempt purposes. Your net earnings inure to the benefit of F and her son. This is indicated by the following:

- You took over the mortgage mitigation department of F's private business, R because of a law change.
- The fact that F was your incorporator, has been on each board modification, is your executive director and still owns R.
- You currently share space with R, F's for profit business, which provides mortgage related services and is in a favorable position to receive any referrals from your operations.

- The current make up of your board because you did not present any evidence the new board members have been actively involved in your operations and or have participated in any major decisions.

You are similar to the organizations in Nelson v. Commissioner and Christian Echoes National Ministry, Inc. v. United States , because you have failed to show that you are operating exclusively for exempt purposes and not for the private interests of R, T and L. Moreover, L, the law firm of T that specializes in bankruptcy is in a favorable position to benefit from your activities. Moreover, even though you are not currently paying rent to R, the fact that your founder, F owns R and R provides mortgage related services puts R in an advantageous position to benefit from your activities.

Revenue Procedure 2011-9

You have not met the requirements of Revenue Procedure 2011-9 , Section 4.01, which provides that an organization seeking exemption must fully describe all activities including standards, criteria, and procedures. You have submitted numerous changes. For example, you changed your board from having two compensated board members, F and P to having all board members who were employees of R to having two unrelated board members and R; you at first were renting and sharing equipment with R for about \$5000.00 per month. You then modified this arrangement twice and now you are not paying R anything and are looking for a separate venue. You initially were going to share employees with R but then decided that they have the option to quit and work for you. You may have a sliding scale fee but could not provide specifics except this will be in place if you do not receive grants.

As described in section 1.501(c)(3)-1(d)(1)(ii) of the Regulations and Nelson v. Commissioner, *supra*, the burden is on the applicant organization to demonstrate that it has met the operational test as specified under section 501(c)(3) of the Code. You have not met this burden.

Similar to the organization in Harding Hospital, Inc. v. United States, you have the burden of proving that you satisfy the requirements for tax exemption. You have failed to prove that you are not operating for the benefit of R and your founder, F.

You are similar to Easter House v. United States, 12 Cl. Ct. 476, 487 (1987) where the court asserts that it is the responsibility of an organization to establish that it serves public rather than private interests. You have failed to prove to us that you are not operating for the benefit of R and F and not in a commercial manner.

Section 501(q) of the Code

You do not meet the requirements of section 501(q) and section 501(q)(1)(D)(ii) because F is compensated and is one of three board members. This does not comply with the requirements that at all times the organization must have a board of directors or other

governing body of which 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, because one out of three board members directly benefits from your activities.

Therefore, had you established that your mortgage lending business satisfies the requirements of section 501(c)(3), and 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

In summary, you are not organized exclusively for exempt purposes because your Articles do not limit your purposes to one or more exempt purposes and upon dissolution, your assets are not properly dedicated to 501(c)(3) purposes. You also fail the operational test because you are not operated exclusively for educational or charitable purposes. Specifically, you fail the operational test for exemption under section 501(c)(3) of the Code because your mortgage mitigation counseling services are commercial in nature and you have the substantial private purpose of benefiting F and R. In addition, you fail to qualify under section 501(q) of the Code because you compensate one out of three of your governing members and your mortgage mitigation counseling is not tailored to the individual client. 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, under the heading "Regional Office Appeal". 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,

Holly O. Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892