

Internal Revenue Service
Appeals Office

Department of the Treasury

Taxpayer Identification Number:

Release Number: **201307015**

Release Date: 2/15/2013

Date: November 19, 2012

Person to Contact:

A

B

Tax Period(s) Ended:

Certified Mail

UIL: 501.03-08

Dear

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code effective January 1, 2008.

The revocation of your exempt status was made for the following reason(s):

You have failed to establish that you operate exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) and Treasury Regulations section 1.501(c)(3)-1(d). You do not engage primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3). You operate for a substantial non-exempt purpose. You operate for the benefit of private rather than public interests and your activities result in substantial private benefit.

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

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

If you were a private foundation as of the effective date of revocation, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

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

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

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters

that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

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

Sincerely Yours,

Acting Appeals Team Manager
John Wong

Enclosure: Publication 892



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

U.I.L.

501.03

501.32

501.33

Legend:

- Incorporator =
- Board Member #2 =
- Board Member #3 =
- Condominium Association =
- For-Profit Entity =
- State =
- Date #1 =
- Date #2 =
- l dollars* =
- m dollars* =
- n dollars* =
- o dollars* =
- p dollars* =
- q dollars* =

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.

Issue

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

Facts

You are an organization that provides a no-usury loan program and foreclosure related services.

You were incorporated on Date #1 as a non-profit corporation under State law. Your Articles of Incorporation (“Articles”) state, in Article 4, that your specific purpose is to:

“(E)ngage in any lawful act or activity for which corporations may be formed under the State Revised Nonstock Corporation Act.”

Article 5 states:

Notwithstanding any other provisions of these articles, the corporation is organized exclusively for one or more purposes as specified in section 501(c)(3) of the Internal Revenue Code of 1986, and shall not carry on any activities not permitted to be carried on by an organization exempt from federal income tax under IRC section 501(c)(3) or corresponding provisions of any subsequent tax laws.

Your Form 1023 (“application”) indicates you will spend % of your time conducting “Foreclosure Prevention Counseling for Homeowners” and % conducting a “Mortgage Assistance Program for Homeowners.”

The foreclosure counseling is conducted by Incorporator. Incorporator was also your sole initial board member and the director of education and program development. The foreclosure counseling is described as “ ... (f)ree educational advising to homeowners to proactively minimize the risk of foreclosure.”

The mortgage assistance program is conducted by Incorporator. The mortgage assistance program is described as “ ... assistance to homeowners to encourage informed financial decisions and increase access to home ownership.”

Initially, you were governed by one board member, Incorporator. During our review of your application you added two board members, Board Member #2 and Board Member #3. Board Member #2 is a real estate investor and contractor. Board Member #3 is a minister and business owner.

You do not have a website.

In response to our correspondence, you submitted additional information regarding your operations.

In your Date #2 letter you listed four objectives:

- 1) Restore a Culture of Ownership and Freedom
- 2) To Lend to those denied credit by the banking system
- 3) To facilitate prosperity

4) To practice and encourage Biblical financial precepts

Your Date #2 letter also provided additional information from Board Member #2 who stated:

Additionally, the bulk of my occupational life has been in the construction industry. As an estimator and project manager of commercial construction firms, I gained valuable insight into the planning and valuation of construction projects, from single family residences to large commercial and industrial developments. When I sat out and started my own company, I began in renovation and historic restoration. I know the pitfalls of working on old homes and how to evaluate for signs of concealed damage. I spent considerable time as a subcontractor for a company that replaces doors and windows. As such, I became acquainted with the peculiarities of subcontract practice and law. Now that I am a general contractor and project manager for my own projects, I can attest to the challenges faced by small businesses specializing in construction trades. In short, I take a keen eye to the valuation of all of the loans that we write to help people acquire or improve real property, because I have been in their situation. I know what to look for and how to determine the feasibility of their desires. If the project justifies the loan, we can lend at zero interest even if the borrower can not qualify through conventional means.

Foreclosure Assistance

The step-by-step process you follow consists of a dual approach that seeks to: 1) proactively prevent delinquent mortgages from entering foreclosure; and 2) provide helpful information to individuals whose homes are in the process of being foreclosed. In this regard, you provide information about initiatives that individuals often are unaware of until many time-sensitive requirements have elapsed. Services are not limited to any particular class of individuals. Financial information requests, especially for situations that have reached the foreclosure stage, seek to access an individual's prospective ability to resume mortgage payments if new terms can be negotiated.

After receiving exemption, the primary foreclosure seminars will provide relevant information to individuals regarding "... preventing foreclosures for cases that are delinquent, but not yet entered into foreclosure ..." and "... cases (that) have reached the foreclosure litigation stage."

Sessions will be open to the public and not in partnership with any other entity. No business relationships exist with any mortgage brokers, loan officers, realtors or attorneys. No client referrals will be received through the purchase of notice of default lists, mortgage lists or lead lists. No funding will be received from fee-for-service agreements with lenders, creditors, or debtors. You will not do business with related For-Profit Entity.

Participants will not be required to engage in any ongoing educational programs. You will meet clients twice, for approximately one hour, before recommending a particular approach. Clients are not required to pay an upfront fee.

You have not applied for funding from the National Foreclosure Mitigation Counseling Program or similar programs. You have no current plans to become a Housing and Urban Development (HUD) approved housing counseling agency.

Although you currently you have no employees you anticipate hiring employees in the future. In fact, you expect to develop training programs for your employees within 18 months after exemption is received.

We asked for further details regarding your foreclosure counseling. You indicated that:

Here we arrive at a “chicken vs. egg” dilemma, in that we could benefit from the input of credit counselors and attorneys in order to formulate a model for this portion of our operations, and to provide the requisite services. Our efforts to attract *pro bono* legal advice from attorneys and our ability to effectively solicit donations to hire credit counselors for these purposes will, we believe, be furthered by your recognition that we are acting in the public good, as evidenced by being awarded 501(c)(3) status.

At this time, we are still sorting through the methods by (which) we intend to meet our objectives. If I am not mistaken, the bulk of your questions address qualifications and feasibility. Because we are not licensed attorneys, nor credentialed credit counselors, we can not answer some of your questions at this time. We need the further benefit of time to learn the system.

While we are working diligently to solidify the practices of our foreclosure counseling process, we are also ready to continue our existing no-usury lending operations.

Regardless of your “chicken vs. egg” dilemma, you did provide the following clarifications:

You will proactively prevent delinquent mortgages from entering foreclosure by providing:

...(i) initiatives that homeowners might not be aware of includ(ing) mediation (in State, the borrower can force the lender into mediation with a state-provided mediator), lender modifications, bankruptcy cram-downs, state mortgage assistance programs, various government and GSE refinancing, Making Homes Affordable Act (Obama Plan), etc.

You will make clients, obtained via advertisements and referrals, aware of time-sensitive requirements that may elapse such as appearances and answers to summonses and complaints, the deadlines of all of the programs listed above, the expiration of the Bush Plan, etc. No current advertising exists.

We again asked for details in an attempt to understand your planned foreclosure activities. In response you indicated the following:

You are a religious organization helping people get out of debt using Christian values. Furthermore, a “ ... more comprehensive description of the foreclosure counseling will be possible once we have the latitude to engage the services of the necessary professionals to advise us in this matter. Our funding currently comes solely from the shallow pockets of our directors.”

Your “ ... proactive steps to prevent delinquent mortgages from entering foreclosure ... ” will include the following:

- 1) Education consumers/mortgagors to become better stewards over their “possessed financing” by understanding biblical principles.
- 2) Pairing mortgagors with attorneys that can review foreclosure documents. You “...envision soliciting *pro bono* work as possible, and using economies of scale to collectively bargain reasonable rates for our applicants.”
- 3) The “...cornerstone of our program would be to transition as many of these loans as possible into our no-usury lending programs to come (to be activated in the future-presently no funding in hand). Helping the borrower receive concessions on the principal and interest from the lender would figure heavily in this process.”

Your “ ... direct involvement in the role of advisor would depend on our further review of pertinent laws and the standards of the industry.” Your goal is to help people pay off debt. You “ ... would help them by negotiating with their lender for a minimum balance, buying out their high interest loans and replac(ing) it with a principle only loan.” You will seek assistance from “negotiation professionals” in designing your program. However, such professionals are “presently not engaged” due to your organization “ ... being hindered by our lack of non-profit status.”

You are a:

... (t)eaching and (i)nstructional organization, however, in times to come when financial resources have increased, it may be necessary that assistance provided will require direct negotiation with a lender to reduce the principle and interest amount, so that a buy out of the obligation can be accomplish(ed). Then replacing it with a non-interest assistance loan that will help the person get out of debt quickly and permanently. We currently are not yet aware whether or not we will be directly involved with such negotiations, or whether they will be outsourced. If we had to make a decision presently, then such task would be outsourced; leaving us to do what we do best which is to TEACH AND INSTRUCT, PROVIDE DIRECTIONS, AND INFORMATION.

Assisting those already in foreclosure would consist of the following:

- 1) Getting a real estate attorney
- 2) If an attorney is unaffordable, provide information regarding pro se procedures and rules

- 3) Provide legal information
- 4) Help with completion of forms
- 5) Guidance through the court system
- 6) Help with court motions

Regarding your two one hour counseling sessions, "The first hour is spent ... to aid them in releasing the emotional pressures by informing us WHAT REALLY BROUGHT YOU HERE TO THIS PLACE OF BEING FORECLOSED ON?" The second hour is the "building block phase" where a plan of action is agreed upon.

You submitted a document from the State Fair Housing Center entitled "Representing Yourself in Foreclosure: A Guide for State Homeowners" and a copy of the "Fair Debt Collection Practices Act." You indicated that "the greatest problem is "IGNORANCE OF THE LAWS!" "We will provide pertinent information to raise awareness of the Laws & available Tools to the person, or be able to direct them to it."

No-Usury Loan Program

Your responses indicated that the "mortgage foreclosure assistance program" was actually a "no-usury charitable lending program." Regarding this lending program you indicated the following:

(T)he primary criteria for assistance is the individual's willingness to exercise and maintain the consistent financial discipline necessary to prevent the loss of their home. Assistance will largely consist of giving individuals necessary information concerning access to measures (such as court based mediation programs or exemptions due to unemployment or sickness) that are often not utilized in a timely manner because individuals are often not aware of them. Financial assistance may be offered on a limited case-by-case basis.

Your organization " ... exists to lend charitably, at zero percent interest, in accordance with Judeo-Christian beliefs, especially to people and organizations who would be turned down by traditional lenders." The four goals of this no-usury program are to restore a culture of ownership and freedom, lend to those denied bank credit, facilitate prosperity and practice biblical precepts.

Your loans " ... empower our borrowers to pay off their debt quickly, and to have full stewardship of their homes and other valuable property." You will loan funds for " ... home ownership, real estate investment, or even smaller commitments like buying the proper tools for their trade, or purchasing a reliable vehicle to get to work."

The résumé of Board Member #2 indicates you are a "nonprofit no-usury charitable lending organization."

Two promissory notes were submitted with your response. Both were no-interest loans to Condominium Association. The first note was in the amount of l dollars. The second note, dated was in the amount of m dollars. Both notes indicated that annual membership enrollment in this association is required for benefit participation. An initial non-refundable enrollment contribution of n dollars was required. The assigned recipient of the funds was For-Profit Entity. Your Incorporator is a director of For-Profit Entity.

Both promissory notes indicate that, in event of a default, the unpaid balance of the note shall, at the option of the holder, become immediately due and payable and the amount then due shall accrue interest until payment at the rate of 18% per annum or the highest rate permitted by law, whichever is less. The borrower further agrees to pay all collection and/or attorney fees pertaining to the collection of the note.

We asked for clarification regarding your loan program and past loans. You indicated that the “... no-interest loan program is intended to be our flagship service. It is the reason for which our organization exists.” Regarding your loan assistance criteria you indicated:

The applicant must demonstrate that they are unable to secure traditional financing through a bank or credit union. This may be previous denials of credit, (or) poor FICO scores. In other instances, such as loans for renovations, inadequate appraised value of the building can also substantiate the need for alternative lending.

The applicant must demonstrate a need for the loan. Wanting to move one's family into a safer neighborhood, needing tools in order to conduct business, requiring a safe and reliable vehicle to get to and from work, etc..., are examples of reasons for which one might be awarded one of our no-interest loans.

The applicant must demonstrate that they have a character consistent with the desire and intention to repay the loan. Traditionally, this has been the purpose of credit reporting agencies, but our purpose is to lend to those whose credit scores do not qualify them for traditional loans. In our case, however, character witness, demonstration of previous forthright dealings, explanations of past failures, and the attestation of the applicant that they are able and willing to repay the loan are examples of lending criteria.

You last criterion was the availability of funds.

No formal application form currently exists. However, past loans were made using the above criteria. No member of your organization lived at Condominium Association or otherwise had any relationship with Condominium Association. Only one application, from Condominium Association, was received in 2009 for renovations to their roof.

As mentioned previously, the assigned recipient of the 2009 loan funds was For-Profit Entity, a construction/project management company, and your director, Incorporator, is also a director of For-Profit Entity. You indicated that "... one of the reasons that we were able to fund the loan...is because we did not have to worry about the contractor defrauding or failing the applicant." Incorporator was also able to control the contract amount and defer some of his payments.

In some cases you may reduce an amount owed to your organization "... (i)f they genuinely have more difficulty than they expected with the repayment, or if the business they were borrowing for fails, o(r) if they have a reduction in income or an increase in expenses."

Some of your loans will be secured and some unsecured. The secured loans "... may well fall below the threshold for foreclosure." If a loan is not repaid timely you may charge interest and conduct collection procedures. However, you state that "... (c)ollection actions are distasteful. We are called to be adversarial only if all other measures fail."

You may loan funds to serve as a home down-payment. However, only "... (i)f the applicant understands the shortcomings of the usury system, and is fully aware of the frailty and precariousness of the system, and is willing to enter into such an agreement with a traditional mortgage lender, then we will consider writing a loan for the down payment."

Initially, you were a membership organization. Only members could receive loans. However, when we asked about your membership requirements and benefits you rescinded your membership concept.

Financial Information

You expect to receive donations from the general public, corporations, churches and other religious organizations. The financial information submitted with your application indicated, for 20 through 20 shows over \$ in gifts, grants and contributions and nearly \$ in expenses. The expenses consisted of over \$ in fundraising expense and nearly \$ in professional fees. Your revenue exceeded your expenses by over \$.

When asked about the lack of any expenses in pursuit of your stated purposes you submitted revised financial statements. The revised financials were the same as the initial submission except for the addition of over \$ in disbursements to or for the benefit of members. Your expenses exceeded your revenue by nearly \$.

When asked about your revised financial statements you again submitted revised financial projections. In these latest projections you estimate, for 20 through 20, gifts, grants and contributions of over \$ and loan repayment revenue of *o dollars*. Expenses were fundraising of almost \$ and salaries and wages of over \$. Your revenue exceeded your expenses by *o dollars*.

When asked about the loan repayment revenue (lender, amount, terms, etc...) and salaries (individuals and their compensation) you refused to directly address our question, indicating that:

Our loans right now are small and of short term, so a repayment schedule of p dollars/yr, that is only q dollars/month on the principal lent is a reasonable goal for repayment of funds.

This is another sum that we listed as a number not to be exceeded. We are certain that there will be come a time that the efforts that are donated by the directors will be insufficient to meet the needs of the organization, and clerical staff will have to be employed on a part-time basis. Additionally, in the starting phases we will need the advice of industry professionals. While we are preparing to solicit them to provide these services as donations, we have to face the reality that we may need to hire certain services in the event that they are not donated.

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:

(1)(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.

(1)(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.

(1)(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.

(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) of the Code 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) (iii) a combination of the activities described above.

Treas. Reg. § 1.501(c)(3)-1(a)(1) 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.

Treas. Reg. § 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.

Treas. Reg. § 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. Treas. Reg. § 1.501(a)-1(c) 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.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) states that an organization must establish that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) 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.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term “educational,” as used in section 501(c)(3) of the Code, relates to:

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

Rev. Proc. 2011-9, 2011-2 IRB 283, states, in part, that exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) 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.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it

qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling.

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. 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 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 under section 501(c)(3) of the Code.

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 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, while to some extent the fees charged reflected ability to pay, 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 Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In Church by Mail, Inc. vs Commissioner, 765 F. 2d 1387 (9th Cir. 1985), affg. T.C. Memo 1984-349, the 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:

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 International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36, the court held that an organization that had the substantial nonexempt purpose of benefiting a related for-profit travel agency, from which it purchased travel services, did not qualify for exemption under IRC 501(c)(3).

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. Inc. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 414 U.S. 910 (1973).

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 ("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 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 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.

Application of the 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). See Treas. Reg. § 1.501(c)(3)-1(a)(1). You fail the operational test.

To satisfy the 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. 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. Under the operational test, the purpose towards which an organization’s activities are directed, and not the nature of the activities themselves, is ultimately dispositive of the organization’s right to be classified as a section 501(c)(3) organization. See B.S.W. Group above. Your activities are not directed exclusively toward one or more exempt purposes.

Foreclosure counseling

Although the initial application indicated your foreclosure counseling had begun over two years ago, you have provided no evidence of a substantial ongoing or planned educational program. You did not provide a detailed business plan. You stated that it was a “chicken vs. egg” dilemma, in that you could “ ... benefit from the input of credit counselors and attorneys in order to formulate a model for this portion of our operations, and to provide the requisite services.” You state “At this time, we are still sorting through the methods by (which) we intend to meet our objectives.” You also state a “ ... more comprehensive description of the foreclosure counseling will be possible once we have the latitude to engage the services of the necessary professionals to advise us in this matter.” Therefore, you do not meet the requirements of Revenue Procedure 2011-9 that indicates proposed activities must be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption.

The limited information you did provide indicates the following:

Your services will not be limited to any charitable class. You will help people of all income levels. Helping people with incomes above the median wage for the area does not provide relief to the poor and distressed within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(2) or serve any other purpose recognized as charitable. Accordingly, you are unlike the organization described in Rev. Rul. 69-441, above, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing “credit counseling services” within the meaning of section 501(q)(4)(A) of the Code. An organization that engages in such activities as a substantial purpose must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q). You do not meet the requirements of section 501(q).

You will negotiate terms with lenders and/or facilitate the negotiation using other entities. This is not in compliance with the requirements of section 501(q)(1)(A)(ii) of the Code which provides that

organizations which provide “credit counseling services” as a substantial purpose shall not be exempt from taxation under section 501(a) unless they do not negotiate the making of loans on behalf of debtors.

You will have three board members; the owner of a construction company, a real estate investor/contractor and minister/business owner. This is not in compliance with section 501(q)(1)(d)(i) that indicates that at all times the organization must have a board of directors “ ... 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.” You have not established that your board represents the broad public interest.

You twice revised your financial statements. The last revision contained salary expense of more than \$ _____ per year. You refused to indicate who was to receive the compensation. Since Incorporator is your director of education and program development and you have no employees, there is no indication that Incorporator or other directors will not receive compensation. Therefore, it appears at least one of your three directors will receive a salary. This is not in compliance with section 501(q)(1)(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). Regardless of whether the director will receive compensation, your refusal to provide projected compensation details was not in compliance with Rev. Proc. 2011-9.

At first you indicated no planned relationships with for-profit entities but then detailed how you would refer clients to for-profit lawyers for services. While you would attempt to obtain pro bono services, you will negotiate reasonable rates for your clients. The referral of clients to for-profit entities at “reasonable rates” is not in compliance with Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) which states an applicant organization must establish that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. The referrals to for-profit entities is a substantial non-exempt purpose similar to the operations of the organizations described in International Postgraduate Medical Foundation v. Commissioner and Old Dominion Box Co. v. United States.

Your initial counseling will involve two one-hour sessions. The first hour is spent releasing emotional pressures and understanding how the client got to this point. The second hour is the “building block phase” where a plan of action is agreed upon. You have not shown that these sessions serve an educational purpose (defined in Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) as the instruction or training of the individual for the purpose of improving or developing his capabilities; or the instruction of the public on subjects useful to the individual and beneficial to the community).

Like the organization in Solution Plus, above, 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.

No-Usury Loan Program

You will loan funds for “... home ownership, real estate investment, or even smaller commitments like buying the proper tools for their trade, or purchasing a reliable vehicle to get to work.” Furthermore, the applicant must demonstrate a need for the loan. “Wanting to move one’s family into a safer neighborhood, needing tools in order to conduct business, requiring a safe and reliable vehicle to get to and from work, etc., are examples of reasons for which one might be awarded one of our no-interest loans.” Your loan program does not have criteria that serves exclusively charitable purposes. Your program is open to anyone “in need” who requires funds for investments, tools, vehicles or simply moving to another neighborhood. This is not in compliance with section Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) that states an applicant organization must establish that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. Your loan program is operating for the benefit of private parties. Operating for the benefit of private parties constitutes a substantial nonexempt purpose (see Old Dominion Box Co. v. United States) and precludes exemption.

You loaned Condominium Association funds in 2011 for repairs on their roof. However, the assigned recipient of the loan funds was For-Profit Entity, a construction/project management company. Your founder and current director, Incorporator, is a director of For-Profit Entity. No charitable purpose has been shown for this activity and it is highly indicative of the type of loans you will grant.

Treas. Reg. § 1.501(c)(3)-1(c)(2) 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. Treas. Reg. § 1.501(a)-1(c) 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. Loaning funds to Condominium Association so that Incorporator’s construction company, For-Profit Entity, could repair their roof indicates the inurement of your organization’s funds to your director.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes. Your loan to Condominium Association is a single non-exempt purpose that precludes exemption.

It is not necessary for us to prove that the payments to For-Profit Entity were unreasonable. As indicated in Church by Mail, “... 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 this case it is clear that Incorporator’s construction company, For-Profit Entity, benefitted substantially from your operations.

Conclusion

Based on the facts stated above and applicable law you are not operated exclusively for section 501(c)(3) purposes. You have failed to substantiate an educational program. You do not limit your counseling services or your loan programs to the poor or distressed. Your operations as described above result in private benefit to for-profit companies and inurement to insiders.

Even if you had met the operational test, you fail to qualify for exemption because you do not meet IRC § 501(q). You negotiate with lenders, your board does not represent the public interest and you have not established the board will not be compensated.

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.

Your protest statement should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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 protest 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 this 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 also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois Lerner
Director, Exempt Organizations

Enclosure: Publication 892