



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201325016**
Release Date: 6/21/2013
Date: March 26, 2013
UIL Code: 501.04-00
501.04-07

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:
All Years

Dear

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(4). 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.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

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

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

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

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 Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 5, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = Date
C = State
D = LLC (predecessor)
E = Governing Body Member
F = For-profit entity

k = dollar amount

UIL:

501.04-00
501-04-07

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(4). The basis for our conclusion is set forth below.

Issues

- Do you qualify for exemption under section 501(c)(4) of the Code? No, for the reasons below.
- Do you meet the requirements under section 501(q) of the Code? No, for the reasons below.

Letter 4034 (CG) (11-2011)
Catalog Number 47628K

Facts

You were incorporated on B as a non-profit corporation under C law. Your Articles of Incorporation ("Articles") state that your specific purpose is to provide "advice and guidance to individuals burdened with financial debts and assist those individuals in developing and pursuing strategies."

Your bylaws state that your purpose is to provide "advice and guidance to individuals burdened with financial debts (whether secured or unsecured) and assisting those individuals in developing and pursuing strategies for overcoming those debts, including, without limitation, the referral of individual debtors to debt settlement specialists, debt resolution experts, bankruptcy attorneys and other specialists that may be of assistance in eliminating debt."

You offer credit counseling services to consumers and refer clients to other entities to assist them with debt management and related services. Your services include the provision of financial planning and credit repair information to consumers. Each debtor will be provided a debtor analysis which lays out all of his/her debt and shows the total payoff amount under the various payment arrangements. You will also refer clients to other qualified organizations providing various services such as debt management plans, tax settlements, loan modifications and bankruptcy. The purpose is to make consumers aware of the many avenues available to them in dealing with debt and financial troubles. You offer credit counseling and debt management services marketing to consumers who might not otherwise be able to afford such services by eliminating the need for consumers to search for multiple businesses providing similar services. You asserted that the materials you provide to clients are at approximately % of the price charged by businesses providing similar materials. You provide members of the community with convenient access to resources to assist them in reducing their debt, building their credit and better managing their finances. In addition, you provide knowledge of competent service providers in the industry because your employees are familiar with the services offered, and which providers are "legitimate" and which are not.

You conduct an individual evaluation of each client's debt and assets to determine which method of handling the debt would be the best approach for that particular client to get out of debt. After the analysis is complete, you refer the client to a variety of providers based upon the analysis of his/her debt. Providers to which you make referrals offer the following services: debt resolution, debt settlement, loan modification, credit repair, debt proration, debt consolidation, financial education programs and bankruptcy.

Your counselors collect information during the initial interaction with a client including: name, address, phone number, email address, marital status, total amount of debt, current monthly debt payments, overdue information, and the maximum monthly payment that can be made and the type of debt. At the beginning of the initial session the counselor will explain that you do not provide any debt management programs but rather will analyze the client's debt and recommend an approach for the client to resolve his/her debt. The client will also be informed that after an approach is recommended he/she will have an opportunity to enroll in a debt program provided by a third-party. Then the counselor will explain the various approaches available to the client and make a recommendation as to which approach the client should take. After answering any questions presented by the client the counselor will offer to enroll the client in the recommended third-party program. If the client decides to enroll, the counselor will enroll the client in the program and provide the client with instructions for contacting the provider to begin the program. If a client decides not to enroll in a program during the initial session a follow-up session is offered during which the counselor will again recommend an approach for the client and answer any questions. The client will receive a printed debt analysis which illustrates that client's total debt, the monthly payment and the amount of time to pay off the debt under each approach. You generally meet with the client one time before recommending an approach.

You charge an up-front fee of k dollars for the written budget analysis, the initial session, and a book concerning financial planning. You do not plan to waive the fee if a client is unable to pay. Once you make the referral to the third party service provider, you have no further contact with the client. You do not provide an ongoing educational program during the course of the program provided by the service provider nor do you perform periodic assessments during the duration of the program. You do not currently offer workshops, classes or seminars on financial education topics, although you do plan to develop a webinar in the future. You have not yet developed the webinar. You submitted a flyer indicating that you provide a free consultation. You explained that the initial session is the free session and the fee of k dollars is collected after the initial session. Your submitted budgets indicate that approximately % of your revenue will come from fees for services.

You initially had four governing body members. Two of these members are no longer involved with you. Another is no longer a governing body member, but continues to be an employee. This leaves you with E being your sole governing body member. E is also a paid employee.

Your initial governing body members previously provided similar services as a for-profit LLC named D. D is no longer operational because it was determined that the business model would not survive under the new regulations. You plan to eventually use the

name of D as a DBA. You also have four employees that were formerly involved with D.

You sublease office space from F, an LLC of which E is a member. The sublease amount you pay to F will be the same amount as that paid by F to the landlord. You will share the facility with F. One office within the space is reserved for F while you utilize the remainder of the space. Both you and F utilize the reception area. The facility has been leased for approximately 19 months and the entire space was previously used by F. F markets services for persons who are seeking to manage their wealth as opposed to managing their debt. Therefore, you have stated that you and F do not market your services to the same persons.

You provided copies of marketing and service agreements you have with two service providers. One of the providers provide bankruptcy services and the other provides debt resolution and/or debt settlement. No referral fees are paid or received by you under the marketing and service agreements. Clients referred to the service providers by you do not receive reduced rates. They pay the same rates as any other client of that provider. You are in the process of drafting agreements with several other providers.

Law

Section 501(c)(4) of the Code provides that civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes and no part of the net earnings of such entity inures to the benefit of any private shareholder or individual may be exempt from federal income tax.

Section 501(q)(1) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

- (A) The organization--
 - (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,

- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which--
- (i) requires that any fees charged to a consumer for services are reasonable,
 - (ii) allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.
- (D) At all times the organization has a board of directors or other governing body--
- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
 - (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
 - (iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially,

directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

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

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

Treas. Reg. § 1.501(c)(4)-1(a) states:

- (1) A civic league or organization may be exempt as an organization described in Section 501(c)(4) if –
- (i) It is not organized or operated for profit; and
 - (ii) It is operated exclusively for the promotion of social welfare.
- (2) Promotion of social welfare.
- (i) In general. An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements....
 - (ii) Nor is an organization operated primarily for the promotion of social welfare if its primary activity is ... carrying on a business with the general public in a manner similar to organizations which are operated for profit.

Rev. Rul. 65-299, 1965-2 C.B. 165, a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties, by budgeting their income and expenses and effecting an orderly program for the payment of their obligations, is entitled to exemption from federal income tax as a social welfare organization described in section 501(c)(4) of the Internal Revenue Code of 1954. It employs specialists to interview applicants who are in financial difficulty, analyze the specific problems involved, and counsel on the payment of their debts. In addition, the organization may advise the applicants as to proration and payment of debts. In this connection the organization may work out a monthly distribution to creditors based on the debtor's ability to pay. It communicates with creditors and, with the creditors' consent, sets up

plans which applicants agree to follow. The organization makes facilities available through which the applicants can each month make pro rata distributions to their creditors. No charge is made for the counseling service. However, a nominal charge is made for monthly prorating services, to cover postage and supplies. The instant organization was formed to assist individuals and families with financial problems to work out those problems and to check the rising incidence of personal bankruptcy in the community. The objectives and activities of the organization contribute to the betterment of the community as a whole.

Rev. Rul. 70-535, 1970-2 C.B. 117, describes an organization formed to provide management, development and consulting services for low and moderate income housing projects for a fee. The revenue ruling held that the organization did not qualify under section 501(c)(4) of the Code. The revenue ruling stated, "Since the organization's primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for profit, the organization is not operated primarily for the promotion of social welfare. The fact that these services are being performed for tax exempt corporations does not change the business nature of the activity."

Rev. Rul. 78-86, 1978-1 C.B. 152. A parking arrangement whereby merchants join together to provide parking for their customers at a reduced rate serves the merchants' private interests by encouraging the public to patronize their stores. Rather than providing their own parking, merchants are able to join together to provide a common parking facility in which all share the benefits. Thus, although there may well be some public benefit derived from the construction and operation of the parking lot, it cannot be said to be operated exclusively for charitable purposes under section 501(c)(3) of the Code or primarily for social welfare purposes under section 501(c)(4). Further, providing parking in a manner similar to that in Monterey is carrying on a business with the general public in a manner similar to organizations that are operated for profit. Such trade or business does not further exempt purposes under either section 501(c)(3) or (4).

Rev. Rul. 81-116, 1981-1 C.B. 333. describes an organization contributing to civic betterments and improvements to the city by relieving congested parking conditions in the downtown area. Providing the availability of free public parking to everyone visiting the downtown area of this city without using public funds is a direct benefit to the city and its residents. The organization's membership encompasses a broad spectrum of the community, thus insuring that the organization will not be operated to benefit any particular merchant or business. Also, by providing free parking, the organization is not carrying on a business with the general public in a manner similar to organizations which are operated for profit. Therefore, the organization is promoting the common

good and general welfare of the people of the community within the meaning of section 1.501(c)(4)-1(a)(2) of the regulations.

Commissioner v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962), stated that while a social welfare organization necessarily benefits private individuals in the process of benefiting the community as a whole, even when the benefits are confined to a particular group of individuals, the organization may be exempt if the general community derives a substantial benefit. Conversely, an organization that benefits a large number of people will not necessarily be organized for social welfare purposes within the meaning of section 501(c)(4) because numbers are not necessarily determinative of social welfare objectives. Social welfare is the well being of persons as a community and classification depends upon the character as public or private -- of the benefits bestowed, of the beneficiary, and of the benefactor. The court also concluded that Lake Forest did not meet the dictionary definition of "social" or "welfare," stating:

It does not propose to offer a service or program for the direct betterment or improvement of the community as a whole. It is not a charitable corporation in law or equity, for its contribution is neither to the public at large nor of a public character. Lake Forest does, of course, furnish housing to a certain group of citizens but it does not do so on a community basis. It is a public-spirited but privately-devoted endeavor. Its work in part incidentally redounds to society but this is not the "social welfare" of the tax statute.

Application of Law

Establishing whether an organization qualifies for exemption requires analysis of the organization's actual operations based on an examination of all of the relevant facts and circumstances. Section 1.501(c)(4)-1(a) of the regulations states that an organization may be exempt as an organization described in Section 501(c)(4) if it is not organized or operated for profit and is operated exclusively for the promotion of social welfare. The promotion of social welfare includes being primarily engaged in promoting in some way the common good and general welfare of the people of the community. It further states that an organization is not operated primarily for the promotion of social welfare if its primary activity is carrying on a business with the general public in a manner similar to organizations which are operated for profit. Your primary activity is the carrying on of a business in a manner similar to organizations which are operated for profit. You provide debt analysis services for a fee and referrals to for-profit organizations in a commercial manner. Your fees are set to recover all operating costs including salaries and facilities expense. This type of business activity is commonly conducted to produce a profit. In fact, your sole director and all of your employees previously operated a for-profit entity,

D, in a similar manner. Accordingly, you do not meet the definition of a social welfare organization as described in the regulations.

The Tax Court in Commissioner v. Lake Forest, Inc., concluded the organization did not qualify for exemption because they did not propose to offer a service or program for the direct betterment or improvement of the community as a whole. You too are not offering a service or program for the betterment of the community as a whole. Instead your services are restricted to individuals who can and are willing to pay your fees. Charging a fee to recommend services provided by for-profit service providers does not benefit the common good and social welfare of the community as a whole. Further, benefits flow directly to your for-profit affiliates in the form of new customers as opposed to the community as a whole.

Social welfare organizations are not precluded from engaging in business activities as a means of financing their social welfare programs. However, the regulations provide that an organization is not operated exclusively for the promotion of social welfare if its primary activity is carrying on a business with the general public. In Rev. Rul. 70-535 an organization that provided various services for low and moderate income housing projects for a fee was not exempt under section 501(c)(4) of the Code because its primary activity was carrying on a business in a manner similar to organizations operated for profit. In the same manner, your primary activity is carrying on a business in a manner similar to organizations operated for profit. Your counseling and referral service is not promoting social welfare.

In addition, you are unlike the organization described in Rev. Rul. 65-299, supra., because your counseling activities are limited to gathering data sufficient to make referrals and you charge fees for your counseling service. Even though your bylaws state that you are operated in accordance with Reg. 1.501(c)(4)-1(a)(2)(i) and Revenue Ruling 65-299 for the express purpose of advising, counseling and assisting individuals in resolving their financial difficulties your actual activities demonstrate otherwise.

You are similar to the organization in Rev. Rul. 78-86, supra because you too are carrying on a business with the general public in a manner similar to organizations that are operated for profit. Also, your services to certain customers for a fee do not benefit the community as a whole.

Finally, you are unlike the organization in Rev. Rul. 81-116, supra, where free public parking was provided to everyone visiting the downtown area of the city without using public funds. The organization's membership encompassed a broad spectrum of the community, thus insuring that the organization would not be operated to benefit any particular merchant or business. Also, the organization was not carrying on a business

with the general public in a manner similar to organizations which are operated for profit, whereas you are. You have provided no information showing that you conduct your activity differently from a commercial entity. Almost all of your revenue comes from fees charged to clients to review their financial situation and make a referral to a for-profit service provider to address the issue. You do not waive your fees if a client cannot afford it. The clients are then also charged additional fees for the services provided by your for-profit "affiliates." The for-profit affiliates benefit from your referrals. See Rev. Rul. 70-535.

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. IRC section 501(c)(4). You share a facility with F, a related for-profit entity. Currently, you are not paying rent on the facility. However, you stated once you are up and running you will execute a sublease agreement in which you will pay F the exact same rate as F pays to the landlord. You have failed to establish that the rent paid to F will be at or below fair market value. Thus, F stands to benefit substantially from the sublease agreement. Since your sole governing body member E, is a member of F, this benefit constitutes inurement to E.

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Providing credit counseling in the form of debt analysis and information regarding credit falls within the parameters of the above definition. Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(4), comply with the provisions of section 501(q).

You do not comply with certain provisions of section 501(q) of the Code. An exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to a consumer for services are reasonable and allows for the waiver of fees if the consumer is unable to pay. Section 501(q)(1)(C). You charge a fee and have not established that the fee is reasonable. Further, you do not waive your fees for those clients who cannot afford to pay for your services.

Credit counseling organizations must be governed by a board controlled by persons representing the broad interests of the public rather than by persons who benefit from the organization's activities. Section 501(q)(1)(D). You only have one director, E, who is also a compensated employee. In addition, you sublease your office space from F, an

LLC of which E is a member. All of the voting power of your board of directors is vested in persons who are employed by the organization and 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). Accordingly, you do not have a board of directors that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i). You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons.

Therefore, had you established that you otherwise met the requirements of section 501(c)(4), your failure to satisfy the requirements of section 501(q) prevents you from being exempt from taxation under section 501(a).

Conclusion

Based on the above facts and law, we conclude that you do not qualify for exemption under section 501(c)(4) of the Code. You are not primarily engaged in promoting the common good and general welfare of the community because you are primarily engaged in a commercial operation. Also, your operations inure to the benefit of E, and provide more than insubstantial private benefit to the related for-profit entities to which you make referrals. In addition you do not meet the requirements of section 501(q) of the Code for credit counseling organizations.

Accordingly, you are not exempt under section 501(c)(4) of the Code.

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 that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be 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. To be represented 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. 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 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 to you. 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 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,

Holly O. Paz
Director, Rulings and Agreements

Enclosure, Publication 892