

**Internal Revenue Service
Appeals**

Department of the Treasury

Number: **201412022**
Release Date: 3/21/2014

Address any reply to:
Pennsylvania Appeals Office
1000 Liberty Avenue
Room 816
Pittsburgh, PA 15222
Employer Identification Number:

December 23, 2013

Person to Contact:

Contact Telephone Number:

Contact Fax Number:

UIL: 501.03-30

Certified Mail

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, 20XX.

Our revocation was made for the following reasons:

***** is not operated exclusively for exempt purposes. Under Treasury Reg. § 1.501(c)(3)-1(c)(1), an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In addition, Under Treasury Reg. § 1.501(c)(3)-1(d)(1)(ii), an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. ***** is operated for private, rather than public interests inasmuch as nearly all the board members of the organization own interests in entities that provide services to the organization under contracts. See Treasury Reg. 1.501(c)(3)-1(d)(1)(iii), Example 3.

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

You are required to file Federal income tax returns on Forms 1120. 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.

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.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

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.

We will notify the appropriate State officials of this action, as required by IRC section 6104(c). 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, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

/s/
Appeals Team Manager

Enclosure: Publication 892

cc: *****

Internal Revenue Service

Department of the Treasury

Date: April 25, 2006

Legend

ORG= Name of organization

NUM= EIN number

XX= Year

Taxpayer Identification Number:

NUM

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear ,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You 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 matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service	Schedule No. or Exhibit
Explanation of Items		
Name of Taxpayer ORG. Num		Year/Period Ended 12/31/20XX, 12/31/20XX, 12/31/20XX

Legend

ORG = Name of organization
 Num = EIN Number
 NM = Name of individuals
 AD = Address, City, State, Country
 AC = ORG Program
 RR = Related organization
 XR = Non-related organization
 XX = Date
 xx = Number

Whether ORG. was operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), including:

- a. Whether ORG. (ORG) was engaged primarily in activities that accomplish an exempt purpose?
- b. Whether more than an insubstantial part of ORG's activities are in furtherance of a non-exempt purpose?
- c. Whether ORG was operated for the purpose of serving a private benefit rather than public interests?

FACTS:

ORG, with Employer Identification Number (Num") Num, was incorporated on as a nonprofit corporation in the AD on October xx, 19XX. The specific purposes of ORG were:

1. Community educational programs on wise use of credit and the sound economics of consumer credit.
2. The reduction in number of personal bankruptcies through the cooperation of welfare and legal aid social service groups, merchants, banks and finance companies.
3. Free counseling and advisory service to help consumers help themselves.
4. Consumer debt settlement or pro-rate services in cooperation with creditors, at no more than a nominal fee for reimbursement or partial reimbursement of costs.

ORG filed Form 1023, *Application for Recognition of Exemption under Section 501(c) (3) of the Internal Revenue Code*, for a publicly supported organization described under Internal Revenue Code section 509(a) (2). The application was signed

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by NM as president of ORG. ORG described its activities and operational information on page 2 of Form 1023 as and hereby quoted:

"1. Detailed Narrative Description

ORG has been organized to provide financial management and guidance to individuals in the low to moderate income bracket in return for a nominal fee. This nominal fee will be based upon the individuals' ability to reimburse or partially reimburse ORG for costs.

(a) ORG will organize and make accessible to the community the following:

Educational programs that will explain the use of credit and how it affects the average consumer.

Free counseling and advisory services to educate people on how to manage their finances and how to structure a financial budget for future use.

Free counseling and advisory services to low to moderate income individuals on how to restructure their existing financial situation.

Seminars that will educate and inform those in the low to moderate income bracket of financial services currently available to them.

Provide self help information and educate consumers on where to find and how to utilize information in the financial arena that would best serve their individual financial needs.

ORG will devote approximately xx% of their time providing consumer debt settlement or pro-rate services in order to help prevent the low to moderate income individual from having to file personal bankruptcy. In addition, xx% will be directed at organizing educational seminars regarding financial management and xx% of time will be utilized on having free counseling sessions. The exempt purposes of the organization are providing financial counseling services to low and moderate income individuals and to reduce the number of personal bankruptcies.

....

The person who will provide the counseling and debt settlement or pro-rate services will be NM, as well as other individuals experienced in the area of credit counseling and financial management."

The officers of ORG listed on page 3 of Form 1023 were NM, President; NM, Chief Financial Officer; and NM, Secretary. The Service recognized ORG as a publicly supported organization described under Internal Revenue Code section 509(a)(1) and 170(b)(1)(A)(vi) on August xx, 20XX.

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The following is the officers, directors, and key employees from 19XX through 20XX:

Year	Members of Board	Officers	Key Employees
20XX	NM NM NM	NM- President NM- VP/Secretary NM-CFO/Treasurer	NM NM NM NM
20XX	NM NM NM	NM- President NM- VP/Secretary NM-CFO/Treasurer	NM NM NM
20XX	NM NM NM	NM- President NM- VP/Secretary NM-CFO/Treasurer	NM NM NM
20XX/ 20XX	NM NM NM	NM- President NM- VP/Secretary NM-CFO/Treasurer	NM NM NM
19XX/ 19XX	NM NM NM	NM- President NM- VP/Secretary NM-CFO/Treasurer	NM NM
19XX	NM NM NM	NM NM NM	NM

NM and NM are sisters.

Minutes:

In the minutes dated March 4, 20XX, the Board discussed the recent letter sent by XR referring to ORG's practice of asking for donations instead of charging clients a fee for the services. XR position was that asking for a donation was the same as charging clients a fee. The Board was not in agreement with this interpretation, since ORG had provided services for clients regardless of the client's ability to give a donation. ORG had helped many consumers and received nothing for its services.

In the minutes dated December 2, 20XX, the Board discussed the company's marketing and advertising campaign for the 20XX year. The Board decided it was in the best interest of ORG to continue to do business with RR Corporation.

In the minutes dated February 7, 20XX, the Board discussed ORG's credit education program. The credit education program consisted of Educational Credit

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Counseling, Interactive Web page, Educational Brochures Monthly Mailers and Educational Books and Materials. The Board mentioned that the educational counseling and materials were available at no cost to the community.

The President discussed the new state law about the limitation to receive \$xx for credit education, credit counseling and enrollment into the AC, and could not receive more than xx or \$xx for monthly maintenance of the consumer's accounts enrolled into the program. The Board reviewed the application requirement and authorized the President to apply and fulfill the requirement as required.

The Board reviewed the current fees charged by ORG to manage clients' debts. The Board discussed that in view of the current legislation, ORG should adjust their monthly fees to conform to the regulations. The Board also authorized the CFO to adjust the monthly fees and also continued to provide services to anyone regardless of the amount of their debt or their ability to pay.

The Board also discussed about the current situation with the Satellite Offices in AD,AD, and AD. The officers reported that due to the bad publicity of XR, many consumers had become apprehensive about credit counseling agencies and since the Satellite Offices had started to produce a loss to the organization, the officer recommended that it would be ORG's best interest to close these offices.

In the December 1, 20XX minutes, the Board discussed the primary purpose of ORG was to provide the community with credit education programs on the wise use of credit and consumer credit. Among the methods mentioned were a monthly newsletter sent to clients who were participating in the XR. Other methods were in person sessions during the credit counseling sessions. This would happen when a consumer called or came into the office to discuss a credit or financial related problem. The credit counselor would discuss this with the consumer and during this session would teach the consumer about consumer credit.

In the March 8, 20XX minutes, the Board discussed and authorized the President to purchase credit education materials from XR. The Program was called "Money and Debt Management" where a consumer was allowed to go on ORG's Interactive Web Page on-line to take a simple test. Upon completion of the test, the consumer was awarded a certificate and XR would place a statement on his credit report of the successful completion of the Program.

ORG Business Plan 20XX Profile:

During the examination, ORG provided a copy of the Business Plan 20XX Profile for the goal setting on A portion of the content is hereby quoted,

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"Goals

Credit Counseling- ORG will conduct free credit counseling services to consumers. Services will be offered via person-to-person at the office, in the field, or by telephone. We will also provide self-help credit counseling materials on the web.

Credit Education- ORG will conduct a credit education campaign, which will include the following:

A AC Coordinator

Mailing a Monthly Newsletter to Clients in both Spanish and English language.

Pamphlets on Credit Education in both Spanish and English language.

Provide on ORG's Web site educational materials.

Debt Management Program- ORG understands that for every xx clients enrolled on the AC program 1 client will remain on the program. ORG also knows that we have approximately xx clients a month cancelling the program for various reasons.

.....

Advertising

To achieve the enrollment goals establish by this business plan ORG will start advertising in different areas of the AD. ORG will budget approximately xx -xx% of the gross revenues to the advertising budget. The advertising expenditures will increase in proportion to meet the production enrollment goals.

ORG plans to accomplish the client enrollment goals by using a marketing and advertising mix. Depending on the area, advertising will account for xx – xx% of the client's enrollment.

Inbound Telemarketing

The inbound Telemarketing Department will be staffed by XR that will make appointments for office and field representatives. At present, there are xx counselors to assist our clients. More counselors will be added as determined by the Senior Counselor.

Production

The inbound telemarketing department is expected to make appointment on at least xx% of the inbound calls they receive. Ie. if Inbound Telemarketing receives xx calls on a certain day, the department as a whole will make xx appointments.

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Telephone Enrollment

If a prospect is calling from an area outside of the main office or field office range, then the prospect will be given information about the program and enrolled directly over the phone.

Outbound Telemarketing

Outbound telemarketing is another form of marketing that will be used to accomplish our goals. Outbound telemarketing will be used from xx – xx% of the areas”

In another copy of Business Plan provided during the initial visit at ORG’s office, the plan called for the following:

“1. **Main Office – Moving to AD August 20XX**

2. **Satellite Offices –**

- AD -....
- AD -
- AD -
- AD -
- AD -
- AD -...
- AD -....
- AD -

3. **Marketing/Advertising –**

Marketing Department – compose of Inbound and Outbound telemarketing.

Direct Response Target Markets – ORG will continue to conduct direct response advertising in the markets listed above. The advertising will be composed of Television and Radio. Half hours infomercials will be produced and will be advertised in these markets.

Inbound Marketing Department – Will be making appointments for the above mentioned advertising, and enrolling clients on the phone..

Outbound Telemarketing Department – Will call prospects using a predictive dialer to enroll clients directly on the phone via fax or office appointments. Field appointments will also be available upon request.

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Direct Response Mass Marketing – ORG will purchase national advertising in order to directly enroll clients on the phone for the AC.

The Marketing Department will hold quarterly meetings with satellite office managers to discuss production, enrollment, development and new markets/products.

Packaging – Marketing will package all new enrollment applications in labeled folders.

4. Credit Counseling Customer Service Department – All new enrollment applications will be forwarded to and assigned to this department.

All new client enrollment application will be assigned to a credit counselor. The counselor will review each application for the following:

1. Review/QC
 1. Changing the client's payment due date with their creditors.
 2. Any protection insurance charged to the account.
 3. Any over limit amounts the clients must remedy
2. Calls Client
 1. Welcome into the Program explain/resale the program to the client.
 2. Inform the client to change payment due dates, remove protection insurance, fix over limit amounts.
 3. xx is the Magic Number. ORG needs the clients to make xx (xx) consecutive payments on the program before they receive any benefits.
 4. Answer any questions.
3. Client's payment
 1. Monitor the client's account to assure that the client has made their monthly scheduled payment to the program.
4. Proposals
 1. Monitor the client's accounts to assure that the creditors have accepted the proposals to enroll the clients on the AC.

5. Processing

1. QC/Data Entry & Processing
 1. Will review the client's application and will enter this into the ORGbase System.

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2. Will transfer the client into the client section of the ORGbase System.
 3. Will print proposal letters to creditors and the client's package.
2. Payment Due Dates/Protection Insurance
 1. Will review client's payment due dates to assure there is a xx day window to allow the ORG payment to arrive at the creditor.
 2. Will E-Mail creditors change of payment due date request
 3. Will contact creditors to verify that the payment due dates has been changed
3. Electronic Proposals
 1. Will issue electronic proposals to creditors
 2. Will receive confirmation of same and input into the system
4. Proposals
 1. Proposal Management – Verifies that proposals have been accepted and that the client is set-up on the Program
 2. Accept Proposals – data entry into the ORGbase System
 3. Denied Proposal –
 1. Re-issues new proposal
 2. Contacts client to increase the amount or fix problem
 3. Works with the client's credit counselor.
5. Receipt of Client's Payments
 1. Cashier – accept client's payments issues receipts
 2. Mailed payments – Letter Opener opens mail. Client's payments enter by cashier.
6. Auto Pay/Telephone Checks
 1. Auto Pay – Debits client's account for monthly payment
 2. Telephone Checks – Processes telephone checks request.
7. Funds Disbursement
 1. Disburses Funds Electronically/Mail Daily
8. Client's Monthly Statements
 1. Sends clients monthly statements for payments
9. Mail Room
 1. Assures mail is printed or sorted for a discount
 2. Mails out correspondence daily

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.....”

ORG also provided a Marketing Campaign during the course of the examination. The Marketing Campaign listed the following:

“Marketing Campaign

1. National Advertising is placed
2. All agents present answer the phones
3. All agents fill-out a lead sheet and take down the name and two phone numbers for each caller.
4. Lead sheets are turned over to the marketing manager for review and redistribution.
5. The Marketing Manager separates the leads into **appointment** and **direct sales**. The appointment leads will call the clients in the areas where ORG has an office to make an appointment. The direct sales leads will be given to the agent to directly enroll the client on the telephone.
6. The Marketing Manager distributes the leads to the agents. Appointment Leads will be distributed to the agents that are best for making appointments and the Direct Sales leads will be distributed to the agents that are best for selling the client on the telephone. Not to exceed xx leads per day. It is the discretion of the Marketing Manager as to how many leads to distribute to every individual agent.
7. The Marketing Manager will maintain a sales board indicating the sales activity of the department. The format enclosed is a sample of a sales board.
8.”

Programs maintained by ORG:

AC:

From ORG's Welcome to ORG Handout under the AC Questions & Answers Information section, it explains that ORG will send the client a welcome package within

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the two weeks of enrollment which contained: a detailed report of the client's debts enrolled on the program, a time period that a client pays off the debts, a monthly client statement, a creditor's letters to change the payment due date and a CD on Money, Debt & Credit. In order to qualify for the AC, the client must have enough disposable income to be able to pay his or her debts enrolled on the program. During the first xx months on AC, the client is on a probationary period. The client should make xx timely consecutive payments directly to ORG and ORG will disburse the payment to creditors as scheduled. After the xx months probationary period, ORG will offer the client the opportunity to sign up for the free service of AUTO PAY PROGRAM. ORG will mail the client a monthly client statement indicating the client's creditors and the amount of money ORG has received from the client and mailed to the client's creditors. During the first xx months, some creditors may charge clients for late fees and other fees during this period. ORG can negotiate with the creditors to have these fees credited back to the clients' account if the client has made the scheduled monthly payments. Whether the fees will be waived depended upon the creditors.

Bookkeeping program:

For clients who have recent purchases on their credit cards and those credit cards' proposals entered into AC are not accepted by the creditors or the creditors did not want to reduce the interest rate, ORG has a Bookkeeping program which enrolls these clients' rejected credit card accounts.

Credit Education/Credit Counseling:

ORG offers credit education materials to its clients in both Spanish and English. ORG provides clients free credit counseling through personal and/or telephone interviews. ORG's credit counselors will determine what the client's needs, goals and expectations. ORG's credit counselors also work with the clients to form a monthly budget and provide financial education about monthly budgeting and budgeting techniques.

AC Applications:

ORG's clients applications were written in Spanish. They were translated in English. There were two columns on the application, on the left column, it asked for the clients' monthly income and monthly expenses. On the bottom of that column, there was a "client declaration" which the client could select from. They were defined as follows:

"I have economical problems to pay my debts.

I (we) am not working or earning the same as before I haven't enough to make payments to my creditors.

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I can only make the minimum payment to my creditors.
I (we) are sending our payments late to our creditors.
I am xx or more days behind on payments to my creditors.
I (we) have some accounts in collections.
I am not paying some of my accounts.
I (we) are thinking of applying for bankruptcy."

On the right column, it listed the clients' creditor names, account numbers, card balances, clients' monthly payment amounts and ORG's monthly payment amounts. At the bottom of each credit card information, it had three questions. They were:

"Have you destroyed your credit cards?
Purchases in the last xx months
Date/Creditor Payment ___ will it change"

At the bottom of that column, it stated the monthly contributions to ORG. It also stated, "The previous payment is an approximation depending on the negotiations with the Creditors. Once your accounts have been totally negotiated ORG will notify you about the payment. Usually after xx payments into the creditors will reduce the interest/monthly charges. This will depend on the creditors and not ORG."

On the bottom page of page 1, it stated,

"ORG ORG is a corporation in AD. A non-profit Federal Organization 501(c)(3) Tax Exempt in the AD of AD. ORG offers the consumers free counseling and free education towards the better use with credit. The program of Debt Withdrawal (AC) from ORG consolidates all the uninsured debts from the client into one monthly payment. ORG will represent the interest of the client in negotiating the clients debts for a lower payment, reduction or eliminating the interest, reduction or eliminating the late charges, client service, and to establish the credit with the creditor. ORG will handle the clients' funds to pay the debts and monthly charges of managing the accounts. ORG is a member of the XR (XR). The client's accounts are insured for \$xx in a Fiduciary account in a Federal Bank. In addition, ORG has a Commercial Service Deposit of \$xx.

I (we) understand we are agreement with the established conditions to enter the Program of Debt Withdrawal. The rules appear on the following page. I (we) attest that the proportionate information for me (us) is true and correct. I (we) have read, understand and I (we) are in agreement with the previous mentioned and with conditions and agreement with the Program of Debt Withdrawal. I (we) recognize that the Program has been explained to me (us) in Spanish before signing."

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Attached to the application were xx pages of conditions and agreements of the Program of Debt Withdrawal (AC)

.....

Information

- a) You have applied for the Management and Debt Withdrawal Services which consolidate your uninsured debts into only one payment. ORG will send your creditors a proposal in writing, asking them to lower your monthly payments, reduce or eliminate your interest, reduces or eliminates the late payment charges and rotates its limits. &&XR will only, with your approval and authorization, automatically deduct your monthly payment from your bank account. ORG will process and distribute your payment to your creditors on time within xx days and will maintain records of all the transactions. ORG will mail you a monthly account statement detailing the creditors enrolled in the program together with the details of the transactions of your account."

Pamphlets, booklets:

One of the ORG's booklets provided during the examination, it states that credit education program involves a free Money Management Certification Program, which consists of ten self-directed study chapters and educational guide testing. Consumers are able to take a test online. If they successfully pass the test, ORG will send the consumer a certificate of completion and letters to the credit bureaus along with the completion certificate. This information will be reflected on their credit report. If a consumer is interested on purchasing a home, some banks may give them a 1/2 a point discount off the interest rate. This motivates consumers on the importance of being credit-wise.

ORG has another pamphlet called, "Welcome! Debt Management Program" which explains the services provided by ORG. ORG provides free Credit Counseling, free Credit Education and Debt Management Program. For the credit counseling and educational programs, it creates a personal monthly budget, analysis and recommendations. The AC is to consolidate a debtor's debt into a single monthly payment.

Employee Hiring:

ORG placed advertisement on XR and other advertising companies to hire its personnel. The advertisement on XR spelled out as,

"Sales/Telemarketing: Bilingual (Spanish/English). Training available. Good Pay Plus Bonus & Benefits. All Shifts. Full-time/Part-time. xx."

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Another advertisement on XR was as follows:

"XRs!! is now hiring bilingual (Spanish/English) telemarketers, training available. For information call xx."

Telemarketing script:

ORG's scripts were written in Spanish. They were translated in English and some were listed as follows:

1. Script used by ORG's credit counselors during client contact (page 1):

"Introduction

Speak slowly with a firm voice

Can I speak with: Name of client

Mr./Miss: Name of client: My name is: your name: I am a credit advisor from ORG.

We are calling you to speak to you about your debts and your credit situation. We have some good news that might help you. Permit me to ask you some questions to see if you qualify for our program.

Break the ice

Comment something about their voice, weather, accent, etc. The client has to be relaxed.

Pre-Qualify the client

Mr./ Miss: _____ Do you have credit cards?
About how much do you owe on your credit cards? (Make a note)

Do you have any personal loans or other types of debts?

If the client doesn't have any type of credit cards, personal loans, collections, etc. STOP! Don't continue. Explain to the client that the program is designed for credit cards.

Credibility:

(Permit me to explain to you who we are)

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ORG is one of the largest organizations in the AD that has to do with credit education and the consolidation of your debts. We work nationally and are recognized among all the creditors and the Federal Government. With more than xx years experience we have been able to help many persons like yourself obtain credit education and to pay their debts with the use of our management program and debt withdrawal in a short period.

I am sure (A) that you have heard about our company or you know someone who is using our services.

Script used by ORG's credit counselors during client contact (page 2):

Explain the program

Permit us to explain our program

The withdrawal and debt management program

1. Consolidates all your uninsured debts with only one monthly payment.

First Shutt Down

You are interested in having only one monthly payment from all your debts, right? Yes!Yes!Yes!Yes!

2. Usually our monthly payment is less than the monthly payment that you are making at this moment.

Second Shutt Down

Would you like to pay less each month?

3. We negotiate with your creditors to reduce the interest from your accounts and in this way you pay your debts much faster.

Third Shutt Down

Eliminating or reducing your interest from your accounts you can pay your debts in half the normal time.

I am sure that you are interested (A) to get out as fast as you can from your debts, right?

Enrollment:

Fine, the way we work is very simple.

We make you a free analysis on the telephone about your debts.

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I will ask you some questions and in this way I will be able to tell you how much you can save if you enroll in our program.

Data Entry/Analysis

First of all, permit me to write your name and address to give you a free analysis.

Script used by ORG's credit counselors during client contact (page 3):

Tell me, who is it, you owe....Take the number of his credit cards if possible.

Put the information in the system (get all the information possible)

Close

Very good Sir/Miss. _____ our results analysis.....

Tell the client, Good News about how much he can save enrolling in the program and how rapidly he'll pay his debts.

\$\$\$\$\$Charge\$\$\$\$\$\$

Mr./Miss. _____ the cost for enrolling is only \$xx

Telephone Check

I need you to get your checkbook and make a check to the name of ORG for the amount of \$xx. Please tell me what the number on the check is and read the numbers that appear at the bottom from left to right.

(Make the client go for his checkbook, and wait for the client to write the check to ORG.)

(After the client writes the check, ask the client the number of the check and the numbers that appear on the bottom part of the check.

(If the client asks why, tell him that it is for identification purposes.

(Once the client has written the check, tell him)

Mr./Miss _____ hold on to the check that you have used to enroll for your records. This is your receipt from our transaction.

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We will make your check here in our office.

Script used by ORG's credit counselors during client contact (page 4):

Speech Assessment From Telemarketing

1. Are you paying a high interest?
2. Are you actually working? Yes ___ No ___
What is your average income? \$ _____

(Familiarize- Asking if has other incomes)
How much? \$ _____ savings _____ other _____
3. Do you have your cards on a promotional interest?
4. Mr./Miss. Are you married/ A Yes ___ No ___ (Whom do you make decision with) alone ___ wife ___ others _____
5. Do you have the last statements from your debt accounts? From how long a time?
6. Are you up to date with your payments or are you behind? How far behind _____
7. Do you have plans to refinance your home or car? Yes ___ No ___

8. How do you pay your debts? Cash, check or money order _____
9. Do you have other debts other than the ones mentioned?

Note: It is very important that the consultant has this information.

Can you indicate how you get to your home? The cross streets (ask them to write the name of the street)

You understand that this is not a loan, right?

If you decided this with your husband/a **it is very important that he be present**

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Confirm the day and hour of the final dialogue.

Important, reconfirm the appointment the same day in the evening.

Script used by ORG's credit counselors during client contact (page 5):

In the following step I will need you to put together all the statements from your creditors and when you have assembled them give me a call by telephone so that we can continue with your enrollment.

Credit Education

Mr./Miss _____ with ORG you will receive all months pamphlets or educative material about credit to help you control and obtain the best use for your credit.

The credit education program is included and works together with the withdrawal and management program.

You need to participate in the educative program, reading the educative material and verifying the information about the condition of your accounts.

Every month you will call the organization and participate with your education consultants.

I am sure that you are interested (A) in obtaining the education in converting into a better caring consumer.

(The client will answer, of course!)

Ending

Mr./Miss _____ it has been a pleasure to serve you (A) please enroll me, my name is _____ and your enrollment number is: _____ you can call us directly at xx.

I want to congratulate you in enrolling in the ORG program. You have made a very good decision.

You have a nice day!"

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Script used by ORG's credit counselors during client contact (page 6):

“ **AC**

1. INTRODUCTION

Hello, can I speak with Mr./Miss. _____ I am calling _____ from the RR about your debt and credit situation with good news that could be valuable for you. Allow me to ask you some quick questions to see if you qualify.

Are you like the majority of AD with Credit Card debt, Uninsured Loans, etc.? Fine, we have developed a program very powerful in reducing debts that can take you completely out of debt 3 to 5 times more rapidly than if you pay.

Right now _____ how much would you say you owe on insured accounts like Credit Cards, Insured Loans from banks, medical and hospital bills, etc. (Obtain the amount from the client) (Pay attention to the rule) According to the amount of debts you told me, we could help you out of debt in approximately _____ months with one monthly payment of \$ _____.

Can you pay this amount?

Have you noticed that when you make your monthly payment, your balance doesn't go down very much? That's for two reasons. 1. The interest you are paying is very high, and 2. Why? Because we debtors have never taken classes on how we should pay our debts.

Right now _____ do you have late payment charges or charges for being over the limit with your Credit Cards? (Yes, Yes, Fine, we can stop the charges on late payments and turn over the limit and correct your credit report to help you. (If not, Fine, we can help you reduce or eliminate the interests, and lower your monthly payment so that you can liquidate your debts in 3 to 5 years.)

Fine, _____ this is the way the program works. We will enroll you in the program and a Service Representative will call the client. What they will do is work with your creditors to reduce or eliminate your interests, for charges on late payments, restructure your debts.”

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Training scripts for employees:

The following scripts were also in Spanish. Translation was completed as follows:

Script (page 1) used by the employees as:

What is persuasion?

Discover the necessities of the prospective (client)

Establish a friendship

Give a little information. (only what is sufficient to get an idea of the program)

Close the appointment

Using the name on the person on the list immediately. (Being very pleasant and not speaking very rapidly, nor very slow, just normal).

Good morning (afternoon, night) is this where I find ____ please, (if the person on the list is not there, be cordial, and pleasantly got out of the situation and attempt to find him. When the correct person is on the line, present yourself with your complete name and the name of the company (XRs without Debt).

Good morning, my name is ____ from ORG. You still live at (address on the list). Very good, Mr./Miss ____ the reason for my call is that in our computer your name came out indicating that you have credit cards where you are paying a very high interest. Our company can help you get out of your debts....(wait for the response).

Mr./Miss ____ if you would be as kind as to lend me a few minutes of your time to ask you some questions and see how we can help you. (Wait for the response if the response is positive, then you continue. If it is not, simply thank them very much for their time and call another person).

When we are asking questions we must apply the law xx to xx%. xx% we will listen, xx% we'll speak, (only to ask questions).

-Actually what Credit Cards do you have? It's important to know what bank (don't speak, listen).

- More or less, how much do you owe?

- Are you aware of the money you are giving away in interest?

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- What would you like to change from your actual situation with your debts? (Depending on the persons response we will decide if we will continue or not...the response we are looking for are the benefits we offer: only one payment, reducing the interest and to pay the account in a short period.

- If the client qualifies, start to apply closure: Establish a friendship. Give them some information, and close the appointment.

Close#1: Then Mr. /Miss. _____ are you interested in _____ (emphasis on what the prospect mentioned in response to what he would like to change. Getting out of debt as soon as possible and lowering the rate of interests, etc. etc.....
(We'll respond to the prospect that he buy the benefits that he wants, not what we want).

You told me that your rate of interest was xx% to xx%, or maybe even more or less then xx%. This is a very high interest.

Close #2: Mr. /Miss _____ would you like to reduce the high rate of interest that you are paying to be able to reduce your monthly payments?"

Script (page 2) used by the employees as:

I. We must know our objective: If we do not know what we specifically want which will be the final result, we are at a risk of being influence by the prospectus, if his objective is clearer. (The majority of the time it's to say, no thank you). **Our specific objective is:** Pre-qualify the prospective and open the doors to our consultants.

II. Leave our emotions out: There will be some people that will not want us to call them for anything. We cannot get angry, or depress, or be very enthusiastic. Let's not forget that we can always say, "Excuse me for bothering you". Never forget that we simply called them, we didn't ruin their life and if they won't accept the appointment, the ones who lose out will be them, not us, because they are the ones who need a solution now. We have many, many more persons to call.

III. To persuade is to inspire and not manipulate: The best persuasion is when you make the prospect believe that it was his idea to entertain a consultant. A common salesman can make a shark attempt and

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experiment in being a vegetarian. A super professional in persuasion can make the shark believe that becoming a vegetarian was his idea and that the shark could also convince his friends in becoming vegetarians.

IV. Failure does not exist; it's only an opportunity to learn: When someone is rude with us or we think we now have him, and no appointment can be made, you only have to analysis and learn from this.

V. We have to make ourselves responsible for the results: We must believe that if we do not obtain the desired results, that it is our responsibility to learn from it and make the changes or necessary adjustments."

ORG provided copies of memorandum for interoffice communication during the course of examination. One of the memo was addressed to the Marketing Personnel. Since the memo was stored on the computer, it was printed with the current date (1/11/20XX the print date). The memo is regarding Marketing Objectives. The memo is hereby quoted,

"To: All Marketing Personnel,

On Wednesday October 9th ORG began the National Marketing Campaign by advertising on the XR. This means that our commercial will be viewed throughout the AD.

As such, calls will be coming from all areas of the AD. The idea is to make appointments for our representatives when the call comes from an area where we have an office and/or representative.

In areas where we do not have offices and/or representatives, then the idea is to have our agents directly enroll these clients on the telephone.

To justify the investment in advertising the company's goal are the following:

All Agents are to Enroll xx (xx) clients daily and make xx (xx) appointments daily.

I will personally be reviewing the marketing weekly production report to determine who and why the agents is not in compliance, then I will recommend corrective actions if necessary.

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ORG paid the above referral centers the following as marketing fees:

Category	20XX	20XX	20XX
Marketing fees	xx	xx	xx

ORG signed a broker agreement with each of the above referral centers. The contract calls for the following responsibilities from the broker and ORG:

- “2.1 Broker is to complete an accurate program application form for each prospective client who has been approved by ORG....
- 2.2 Broker is to complete an accurate enrollment package including filling out the creditor's notification letter and changing creditor's payment due dates. If the client's account is over the limit the Broker is to explain to the client that his or her account will continue to be charged an over limit fee while the account is over the limit....
- 2.3 Broker is to make a prudent, independent judgment to determine if each client will satisfy the criteria for the ORG Program as communicated to Broker by ORG from time to time. ORG may change said criteria during the term of this agreement.
- 2.4 Broker is to make an independent, prudent judgement whether bankruptcy is the only viable option for a client's financial circumstances.
- 2.5 Broker is to make an independent, prudent judgement that the client is so financially sound as not to be a good candidate for the ORG Program.
- 2.6 Broker is to explain the ORG Program and process clearly to each client...
- 2.15 For each period consisting of one calendar month, Broker is to complete and forward to ORG accurate and complete Program applications forms for twelve (12) new clients who meet ORG's Program participation criteria. If Broker fails to make the requisite number of client enrollments for a period of three (3) consecutive calendar months, and Broker has no communication with ORG, this agreement is deemed terminated immediately, without the need for further action or notice by ORG to terminate this agreement.
- 2.16 Broker is not to accept or receive any client's monthly program payment. Each client should make all debtors monthly program payments directly to ORG.

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2.17 Broker agrees that it will provide its services with respect to a debt management program, including, but not limited to, marketing or promotion of the debt management program, and identification, solicitation, referral and enrollment of clients in a debt management program, solely and exclusively for the benefit of ORG during the term of this agreement.....

3.2.....ORG shall be responsible for negotiating payment arrangements with the creditors of each client, receiving each client's payments, depositing each client's payments into a segregated client trust account, and, distributing each client's funds to his or her creditors pursuant to the payment plan. ORG shall also communicate with each client and his or her creditors, and provide a monthly statement to each client of the client's monthly payment due to creditors. ORG shall provide Broker on a monthly basis with a statement setting forth the name of each client enrolled by Broker and the last payment date of client for such client....

4.2 ...ORG will pay the Broker the amount of \$xx from the \$xx ORG monthly contribution paid by each such client. The \$xx marketing fee per client shall hereinafter be referred to as "Fee".

In the event that some clients monthly contributions may vary, the following scale of marketing fees should be observed:

Scales of Marketing Fees Paid to Brokers:

If the client's monthly contribution is \$xx than the broker fee is \$xx
If the client's monthly contribution is \$xx than the broker fee is \$xx
If the client's monthly contribution is \$xx than the broker fee is \$xx
If the client's monthly contribution is \$xx than the broker fee is \$xx
If the client's monthly contribution is \$xx than the broker fee is xx..."

Fees charged:

Prior to February 7, 20XX:

ORG stated that prior to February 7, 20XX, ORG did not charge clients any fees. ORG's Credit Counselor would ask the client if he/she would like to make a voluntary donation for the initial enrollment into the AC Program. In addition, client's enrolling on the AC was also asked to make a monthly contribution to help the organization offset the cost of administrating the program. The monthly contribution ranged from \$xx to

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\$xx). The monthly contribution was determined by the amount of the client's debt at the time the client enrolled in the AC.

After February 7, 20XX:

For clients who enrolled in the AC from this period and on, he/she was asked to pay an initial \$xx enrollment fee and a monthly contribution equal to xx% of their monthly payments not to exceed \$xx per month.

In 20XX, the guidelines changed to charging clients monthly contribution to xx% not to exceed \$xx per month.

ORG's system showed the number of clients who paid the initial enrollment fees and the monthly contributions:

Category	20XX	20XX
Monthly contribution	x	x
Initial enrollment fee	x	x

ORG claimed that its old software system had problem and couldn't retrieve 20XX year data. ORG System also did not have any information showing the number of clients who did not make the monthly contributions and the initial \$xx enrollment fee. It also did not have any data showing the number of clients who did not make the monthly contributions but paid the initial \$xx enrollment fee.

Financial Data:

Revenue:

For the years under examination, ORG received its funding from the following:

Category	20XX	20XX	20XX
Monthly fees	x	x	x
Fair share	x	x	x
Fair share billed	x	x	x
Fair share voluntary	x	x	x
Clients fee	x	x	x
Others	x	x	x
Total	x	x	x

Expenses:

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For the years under examination, ORG incurred the following expenses:

Categories	20XX		20XX		20XX	
Advertising	x	x	x	x	x	x
Marketing fees	x	x	x	x	x	x
Salaries/wages	x	x	x	x	x	x
Service fee	x	x	x	x	x	x
Printing exp	x	x	x	x	x	x
Educational exp	x	x	x	x	x	x
Postage/Delivery	x	x	x	x	x	x
Office Expense	x	x	x	x	x	x
Office Supplies	x	x	x	x	x	x
Professional fee	x	x	x	x	x	x
Rent	x	x	x	x	x	x
Telephone	x	x	x	x	x	x
other expenses	x	x	x	x	x	x
subtotal expenses	x	x	x	x	x	x
Extraordinary expenses/expense from prior year	x	x	x	x	x	x
Total expenses	x	x	x	x	x	x

Bank Statements:

ORG maintained the following accounts as of the end of each tax year under examination. The account balance shown on the general ledger for these accounts were as follows:

Account	20XX	20XX	20XX
XR- xx	x	x	x
XR-xx	x	x	x
XR-xx	x	x	x
XR-xx	x	x	x
XR-xx	x	x	x
XR-xx	x	x	x
XR-xx	x	x	x
xx		x	x
Total	x	x	x

Offices:

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In 20XX year, ORG had xx offices and they were located in AD, AD, AD, AD, AD and AD. In 20XX year, ORG had xx offices. The AD office was no longer in existence. In 20XX, ORG had xx offices, one in AD and the other in AD.

ORG paid xx individuals as independent contractors (IC) who worked in these offices in 20XX. However, the number of so-called independent contractors dropped to 10 in 20XX year and down to xx in 20XX year. ORG would mail the AC application forms for them to sign up the clients. These individuals would receive commissions and bonuses to contact potential clients by phone and also conducted face to face appointment. The bonus was calculated based on the number of clients they performed services to. If they serviced xx clients in xx week, the bonus was \$xx. Bonus would be \$xx if they serviced xx clients in one week and the bonus would be \$xx if they serviced fifteen clients in one week. Once the AC paperwork was completed, they were forwarded to the ORG's main office in AD for further processing and ORG's employees could contact the clients for further guidance.

ORG had xx employees in 20XX and they were broken down into the following different areas:

- Administrative – xx employees
- AC Payment Processing- xx employees
- Credit Counseling – xx employees of which xx employees received less than \$xx for wages.
- Credit Education – xx employees
- Customer Service – xx employees

ORG provided a spreadsheet showing the total bonus payments made to the credit counselors was \$xx in 20XX year. However, when asked for details as to how the bonus was determined, ORG did not provide any explanation. ORG ceased to give out bonus in 20XX and 20XX years.

During the interview with the NM, on January 18, 20XX, NM mentioned that in order to be a counselor, the individual has to be with ORG for at least xx months and take an "in house" test. To be a qualified certified counselor, the individual must attend xx to xx classes with a minimum of xx hours and then take a test at the local colleges on "financial education".

Outreach educational program:

In an interview conducted with NM during the examination process, NM mentioned that ORG provided one seminar in the AD in 20XX year. During the periods between 20XX and 20XX years, ORG conducted about xx to xx in-house seminars. There were materials given to the participants. The seminars started with an

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introduction to ORG [redacted] and NM. NM then talked about the situation through questions and answers and depended upon what questions or problems that the participants had. However, there was no documentation showing how many participants attended these seminars.

In another written response from ORG regarding to the Service's Document Request (IDR#4), ORG stated that ORG did not keep records of Seminars it provided during 20XX, 20XX and 20XX. However, the In-House Seminars and Field Seminars were conducted by NM and NM. There were at least four In-House Seminars conducted at ORG's office in the AD. In 20XX and 20XX years, there was at least xx In-House Seminars conducted by ORG each year.

Clients educational program:

During the examination process, ORG was asked to explain in details as to how ORG provided financial management and guidance to individuals. ORG responded by stating the following manner and hereby quoted:

"a) First, an interview is scheduled in person or by telephone with a certified credit counselor to determine the following:

b) The counselor's job entails what is the best way to communicate with the client. The counselor must determine whether the client is a Social, Persuasive, Nonverbal, Expressive or Cognitive Communicator.

c) The counselor will listen to the client to determine the client's financial problem(s) and lack of financial education. The counselor will share as much information with the client.

d) The counselor must first create a relationship of confidence in which the client is comfortable sharing information about his or her personal finances.

e) The counselor must gather all the facts about the client's financial situation.

f) Personal Monthly Budget: Write down and create the client's current budget and go through the items that client spends money on to identify consistent patterns of spending.

g) Educate and Define: determine what are the clients essential vs. non-essential purchases.

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h) Alternative Spending Patterns Education: Present the client with alternative spending patterns, such as taking his lunch to work instead of spending money on eating out lunch everyday.

i) Creditor/Debt Profile Education: Create a debt profile to show the client how much debt he or she owes and what it will take to service this debt and how long the client will be paying off this debt.

j) Debt Repayment Alternatives Education: Present the client with ways to pay off their debts ranging from re-organizing debt load, shift debt load, loans, refinance, debt management program, debt negotiation program and bankruptcy.

k) Goal-Setting Education: It is important to know what creditors are disturbing the client and to Set Temporary short term goals (paying of a creditor) Educate the client on setting short, mid and long term goals. This gives the client a sense of accomplishment.

l) Planning Education: Establish a vision for long-term goals (purchase of vehicle, school, home) Clients want to be able to come out of debt or get a handle on their debts in order to continue with their lives and live their dreams of living a better life.

m) Monitoring & Record Keeping Education: Monitor and record financial progress. This will allow the client to visualize their progress and to make any and all necessary corrections necessary.

n) Revised Monthly Budget Education: The counselor and the client will create a revised monthly budget for the client's financial management.

o) The counselor will present to the client oral, written materials and booklets on tips on financial management and guidance.

p) If the client' problem deals with paying creditors, the counselor may instruct the client on how the client may resolve his or her debts on his own or the counselor may place the client on a Debt Management Program or the Bookkeeping Program (when the client needs less help).

q) Educational Information: On a monthly basis ORG will send the client educational information of debt, credit and money management.

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r) Referral Information: ORG will also send the client a list of debt, credit and money management resource materials and/or references for the client to request any educational or referral information necessary.

s) Customer Service: ORG will provide for clients intervention or customer service with the client's creditors to assure that the creditors are helping the clients get out of debt.

t) Debt/Credit Negotiation & Education: The counselor contacts the creditors and negotiates a reduction or elimination of interest and fees. The counselors also ask the creditors to re-age the client's credit bureaus reports to current.

u) Clients Helps Himself: The clients negotiate with the creditors to have any late fees or overlimit fees waived.

v) Financial Statements Audit/Goal Monitoring: The counselors every quarter (xx (xx) months) ask the client to send in their creditor's statements to audit the progress in paying off the debt and to audit the statements to assure that the creditors are properly crediting the client's accounts. This auditing is conducted with the assistance and participation of the client.

ORG provided clients with financial education, seminars, booklets, website education, etc.; credit counseling and education on how the client may help himself manage his or her finances; credit counseling and education in enrolling the client participation on the Debt Management Program and/or Bookkeeping Program; providing clients management and guidance by referring clients to resource information and referrals."

However, when asked for the above detail reports from a list of sample clients, the clients files only contained the following documents:

Financial Personalized Plan Checksheet
Determining Client's need's questionnaire checksheet,
Budget Worksheet,
Client's list of credit cards balances
Client Responsibilities statement
Privacy Policy Statement
Notes from ORG's computer system stating when the client was contacted and correspondence between ORG and the client regarding paperwork needed for the AC.

Related Entities/Transactions:

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Lawsuit:

In 20XX, ORG lost a lawsuit for breach of contract against some of its referral centers. The amount entered against ORG was \$xx.

In the minutes dated April 30, 20XX, The Board met to discuss a settlement offer in the NM v. ORG judgment. NM suggested to the Board to offer the judgment creditors xx (\$xx) cash in one lump sum for complete satisfaction of the outstanding judgment. NM suggested that xx (\$xx) could come from ORG's fund from the \$xx frozen trust accounts and ORG would borrow the remaining \$xx. The Board authorized and instructed NM to offer and execute a settlement agreement and pay the judgment creditors for \$xx.

ORG entered into a loan agreement with NM on May 3, 20XX for \$xx with an interest rate of xx%. The repayment period was xx months from April 20XX. The first installment payment of \$xx was paid in June 20XX. The second installment payment of \$xx was paid in July 20XX. The remaining \$xx would be amortized over xx months at \$xx per month. However, upon reviewing ORG's general ledger, ORG already paid off the outstanding loan amount in July 20XX.

Office location:

For the AD office, starting in November 20XX, ORG rented the office space from its president's for-profit entity, RR. aka RR. The monthly rent was \$xx for the xx square foot office. In addition to the rental office space, ORG also rented office furniture from RR for a payment of \$xx per month for the years 20XX and 20XX. Both contracts were signed by NM, as Chief Financial Officer of ORG and NM as Secretary and Vice President for RR. The total payments on the office rents and furniture rents were as follows:

Categories	20XX	20XX	20XX
Office rental	x	x	x
Furniture rental	x	x	x
Total	x	x	x

In December 20XX, ORG issued a duplicate advance check payment for the rent for January 20XX. It was Check Number xx dated December 23, 20XX for a total amount of \$xx. There was no indication that the money was returned to ORG in the year 20XX.

Advertising:

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On May 1, 20XX, ORG entered into an advertising contract with RR. This for-profit corporation was owned by NM, who was the Vice President and Secretary of ORG. The contract called for ORG to purchase TV SPOTS and Radio SPOTS exclusively through RR. The Spots would air from Monday through Saturday from 6:00 am to 6:00pm. The contract was signed by NM for RR and NM, as Chief Financial Officer of ORG.

ORG incurred the following advertising expenses through advertising its services on TV or radio. During the first three months of 20XX year, ORG paid advertising expenses directly to various TV or radio stations. Starting in April 20XX, ORG made all advertising payments directly to RR. RR received xx% commissions from these payments. ORG incurred the following advertising expenses for the three years:

Category	20XX	20XX	20XX
Advertising	x	x	x

Processing service:

On January 10, 20XX, ORG entered into a contract with RR, (RR) a for-profit entity related to one of the members of the Board of Director, NM. According to the public records, NM is the owner of RR. NM is the president and NM is the registered agent. The contract agreement was signed by NM for RR and NM for ORG in February 20XX. RR provided data processing service for ORG and charged the following fees per client:

Enrollment new client's application	x
Processing client's portfolio/Statements	x
Distributing Client's Payments AC	x
Consultation/Processing Services	x

The January 20XX contract called for the service commencement date in April 20XX. On May 1, 20XX, RR sent a correspondence to ORG regarding the February Contract. The letter stated and hereby quoted,

"...As you know, RR quoted you our best prices in the processing services outlined in our contract. As per our discussions, you mentioned that ORG would be willing to offset some of our expenses by helping us with our monthly rental payments starting in the month of June 20XX through December 20XX. Please mail us the June rental payment as soon as possible.

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As per our agreement, RR is willing to hire any displaced ORG employees as long as ORG continues to pay the employee's benefit only for the remainder of 20XX. With regards to counseling fees, these fees will be determined on an individual basis....."

ORG paid a total amount of around \$xx to RR in 20XX year which included payments for RR office space rentals, medical benefits for RR employees and office expenses. In November 20XX, the service between ORG and RR Inc. was terminated. RR received the following payments in total:

Year	Amount
20XX	\$xx

When asked about why ORG paid RR for some of the above payments in advance in early 20XX year before the service was actually performed, ORG responded by stating RR spent a considerable amount of time and money to adjust their operations to comply with ORG's needs. RR asked ORG to release some of the funds to them early to help them with their cash flow.

LAW:

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) is exempt from income tax. Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c)(3)-1(d)(2), Income Tax Regulations.

The term educational includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3). In other words, the two components of education are public education and individual training.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that, in order to be exempt as an organization described in section 501(c)(3), 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.

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Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (1945).

Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. AD, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Institute for Economic Research v. AD, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose and was not entitled to be regarded as exempt.

An organization must establish that it serves a public rather than a private interest and "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)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

An organization formed to educate people in Hawaii in the theory and practice of "est" was determined by the Tax Court to a part of a "franchise system which is operated for private benefit," and, therefore, should not be recognized as exempt under section 501(c)(3) of the Code. est of Hawaii v. Commissioner, 71 T.C. 1067, 1080

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(1979). Although the organization was not formally controlled by the same individuals who controlled the for-profit entity that owned the license to the "est" body of knowledge, publications, and methods, the for-profit entity exerted considerable control over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court stated that the fact that the organization's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit entities were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether the for-profit entity benefited substantially from the operation of the organization. The court determined that there was a substantial private benefit because the organization "was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations."

The Service has issued two rulings holding credit counseling organizations to be tax exempt. Rev. Rul. 65-299, 1965-2 C.B. 165, granted exemption to a 501(c)(4) organization whose purpose was to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy. Its primary activity appears to have been meeting with people in financial difficulties to "analyze the specific problems involved and counsel on the payment of their debts." The organization also advised applicants on proration and payment of debts, negotiated with creditors and set up debt repayment plans. It did not restrict its services to the needy. It made no charge for the counseling services, indicating they were separate from the debt repayment arrangements. It made "a nominal charge" for monthly prorating services to cover postage and supplies. For financial support, it relied upon voluntary contributions from local businesses, lending agencies, and labor unions.

Rev. Rul. 69-441, 1969-2 C.B. 115, granted 501(c)(3) status to an organization with two functions: it educated the public on personal money management, using films, speakers, and publications, and provided individual counseling to "low-income individuals and families." As part of its counseling, it established budget plans, *i.e.*, debt management plans, for some of its clients. The debt management services were provided without charge. The organization was supported by contributions primarily from creditors. By virtue of aiding low income people, without charge, as well as providing education to the public, the organization qualified for section 501(c)(3) status.

In the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R.2d 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs

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were also educational and charitable; the debt management and creditor intercession activities were "an integral part" of the agencies' counseling function and thus were charitable and educational. Even if this were not the case, the court viewed the debt management and creditor intercession activities as incidental to the agencies' principal functions, as only approximately 12 percent of the counselors' time was applied to debt management programs and the charge for the service was "nominal." The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. AD, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. AD, discussed immediately above.

The organizations included in the above decision waived the monthly fees when the payments would work a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B.249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

Internal Revenue Code section 501(c)(3) specifies that an exempt organization described therein is one in which "no part of the net of earnings inures to the benefit of any private shareholder or individual." The words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization. Treas. Reg. Section 1.501(a)-1(c). The inurement prohibition provision "is designed to prevent the siphoning of charitable receipts to insiders of the charity..." United Cancer Council v. Commissioner, 165 F.3d 1173 (7th Cir. 19XX). Reasonable compensation does not constitute inurement. Birmingham Business College v. Commissioner, 276 F.2d 476, 480 (5th Cir. 1960).

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Where an organization provided a source of credit to companies of which a private shareholder was either an employee or an owner, the court found that a portion of the organization's net earnings inured to the benefit of that private shareholder. Easter House v. AD, 12 Cl. Ct. 476 (1987). That such loans were made showed that the companies controlled by the private shareholder had a "source of loan credit" in the organization.

The Credit Repair Organizations Act (CROA), 15 U.S.C. § 1679 et seq., effective April 1, 19XX, imposes restrictions on credit repair organizations, including forbidding the making of untrue or misleading statements and forbidding advance payment, before services are fully performed. 15 U.S.C. § 1679b. Significantly, section 501(c)(3) organizations are excluded from regulation under the CROA.

The CROA defines a credit repair organization as:

- (A) any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—
- (i) improving any consumer's credit record, credit history, or credit rating, or
 - (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

15 U.S.C. § 1679a(3). The courts have interpreted this definition broadly to apply to credit counseling agencies. The Federal Trade Commission's policy is that if an entity communicates with consumers in any way about the consumers' credit situation, it is providing a service covered by the CROA. In Re National Credit Management Group, LLC, 21 F. Supp. 2d 424, 458 (N.D.N.J. 19XX).

Businesses are prohibited from cold-calling consumers who have put their phone numbers on the National Do-Not-Call Registry, which is maintained by the Federal Trade Commission. 16 C.F.R. § 310.4(b)(1)(iii)(B); 47 C.F.R. § 64.1200(c)(2). Telemarketers calling to solicit charitable contributions are not covered by the registry. However, if a request is made to not call again, the telemarketers are required to honor such request. If they subsequently call again, they may be subject to a fine of up to \$11,000.

In Revenue Ruling 98-15, the Service ruled that an important factor in evaluating joint ventures between exempt organizations and for-profit entities is the degree of control retained by the exempt entity in operating the joint venture.

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Section 501(c)(3) of the Internal Revenue Code prohibits an organization from participating in, or intervening in any political campaign on behalf of (or in opposition to) any candidate for public office.

Taxpayer's Position:

ORG's position has not been determined.

Government's Position:

The Service contends that ORG has a more than insubstantial nonexempt purpose. In addition, the related transactions between ORG and the related for-profit entities had substantially enriched the officers. Both of these reasons are ground for revoking the section 501(c)(3) exempt status of ORG.

ORG's total source of funding was from fair share contributions and monthly account maintenance fees. ORG did not receive any private or governmental grants for the years under examination. ORG had completely relied on creditors' fair share and clients' fees for its operation.

ORG conducted one seminar in 20XX year and during 20XX and 20XX years, ORG conducted at least six in-house seminars. However, ORG was unable to provide documentation to demonstrate the seminars did actually incur. By reviewing the financial statements, ORG spent about \$xx to \$xx in these three years on educational expenses. On the contrary, ORG spent around \$xx to \$xx in advertising and referral services in these years for recruiting potential clients. The significant amount of advertising expenditures was incurred in order to meet the production enrollment goals for ORG's business plan.

ORG had three board members and three officers for the years under examination and they are not a community based board. One board member who was also an officer was [redacted] NM. He also runs ORG's daily operation. Another board member, [redacted] NM and another officer, [redacted] NM are sisters. [redacted] NM is also the officer for the for-profit entities, RR aka RR and RR.

From ORG's Business Plans, Marketing Campaign, memorandum to its Marketing Personnels and scripts used by ORG's employees, ORG devotes itself entirely xx% of its time and effort in promoting its AC to its potential clients. Even though Form 1023 called for xx% of its activity in AC on its Activities statement on F1023, in reality, ORG's daily operation contradicts to what was stated on the Form 1023. ORG's clients are from the lead providers or through the advertising TV Media.

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They were not individuals referred by other sources such as from employers, unions or community group. ORG also charges fee for its AC services and operates as a fee for service business. Even though in the minutes dated March 4, 20XX, it stated that ORG had provided services for clients regardless of the client's ability to give a donation and ORG had helped many consumers and received nothing for its services. When asked for the number of clients who made monthly contributions from \$xx through \$xx for 20XX year, ORG did not have any records at all. For 20XX and 20XX years, when asked for the number of clients who did not make the monthly contribution and the initial enrollment fee, ORG claimed that its computer system did not provide this data. When asked for the number of clients who did not make the monthly contribution but paid the initial enrollment fees, ORG again claimed that its computer system did not provide this data. However, ORG was able to provide the number of clients who made the monthly contribution but did not pay the initial enrollment fees. In summary, ORG did not have any client who did not have to pay for the services he/she received from ORG.

For the related party transactions, ORG rented the office space and furniture from its president's for-profit entity, RR for 20XX and 20XX years. For ORG's advertising expense, ORG entered into an agreement with its officer, NM's for-profit entity, RR. For these three years period, ORG paid around \$xx to RR for its commissions. In 20XX, ORG entered into a contract with RR (RR), which NM is the owner. ORG not only made advance payments to RR to help RR with their cash flow and for RR to adjust its operations to comply with ORG's needs, ORG also paid for RR for its office rental payments, medical benefits for RR's employees and RR's office expenses. All these transactions created substantial private benefits to the for-profit entities similar to the case of *est of Hawaii v. Commissioner*, 71 T.C. 1067, 1080 (1979) which the court addressed in that case that the payments were a substantial private benefit because the organization "was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations."

Conclusion:

In summary, ORG was not operated exclusively for exempt purposes, because it did not engage primarily in activities that accomplish an exempt purpose, more than an insubstantial part of ORG's activities are in furtherance of a non-exempt purpose. ORG was operated for the purpose of serving a private benefit rather than public interest. Accordingly, it is determined that ORG is not an organization described in section 501(c)(3), and is not exempt from income tax under section 501, effective January xx, 20XX.