



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201414025**
Release Date: 4/4/2014

Date: January 7, 2014

UIL: 501.03-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear _____ :

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

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Karen Schiller
Acting Director, Exempt Organizations
Rulings and Agreements

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: November 18, 2013

UIL: 501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

State:

Date 1:

Date 2:

City:

Area:

Council:

Corporation:

Dear

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

FACTS

You incorporated as a nonprofit corporation under State law on Date 1. You filed Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, on Date 2.

Your Articles of Incorporation state that you are organized exclusively for charitable purposes within the meaning of § 501(c)(3). Specifically, your purposes are (1) to engage in the business of community education, development, and affordable housing related projects; and (2) to provide decent housing that is affordable to low- and moderate-income persons. You do not currently provide any low-income housing but intend to in the future.

Contrary to your Articles, you do not currently provide any low-income housing or related services. However, you state that you intend to provide low-income housing in the future as well as credit counseling services. At present, you spend your time (1) conducting community engagement and advocacy activities and (2) providing administrative services for Corporation's

Hardest Hit Fund (HHF) program.

First, your community engagement and advocacy activity involves “empowering and engaging community stakeholders in dialogues about issues that have an impact on health, economics, and welfare of low-income communities.” You state that “[t]he dialogue is intended to be a catalyst for social action and the development of a plan of action for positive change.” Specifically, you advocate development of the Area of City. You state that the Area is culturally significant. However, you state that suburban flight and lack of capital investment and economic direction has led to the Area’s decline and persistent blight. You provide no information from the U.S. Department of Housing and Urban Development (HUD) or State supporting your designation of the Area as “blighted.” Nonetheless, you posit that development of the Area could cause the following results:

- Elimination of blighted vacant housing stock and the creation of affordable housing within the urban service area;
- Development of commercial spaces within an existing comprehensive design which will suit the growing arts/entrepreneurial needs of the area;
- Re-creation of [the Area’s] aesthetic landscape in a way that celebrates the history and future possibilities of the area;
- Comprehensive and strategic engagement planning for the community to “own” and facilitate as the area transforms into a strong urban center;
- Strengthening of existing neighborhoods and increasing longer term homeownership and residency within the area.

As part of this activity, you work to mobilize Council, a redevelopment advisory council established by the City in an effort to revitalize certain areas of the City. You state that the Council’s purpose is “to inform [Area] residents . . . of opportunities for economic growth and development.” You state that mobilization of the Council is necessary to provide local citizens with the opportunity to engage and shape the future of their community in a meaningful way. You hope that such mobilization will serve as a catalyst to economic development ideas/interests through demonstration of a viable support base within the community and cultivate growth of emerging cultural/artistic expression throughout the area.

Your only mobilization activities are scheduling and conducting monthly Council meetings. You hold these meetings at local businesses in the Area. Topics discussed at these meetings include defining the Area’s boundaries, community planning and improvements, and economic incentives for businesses. You spend approximately 25% of your time conducting this activity.

Second, your administrative services involve providing initial and ongoing program eligibility determination and case management services for the HHF program administered by the Corporation. The HHF is a federal program administered by the U.S. Department of Treasury intended to develop locally-tailored foreclosure prevention solutions in areas hit hard by the decline in home prices during the housing crisis beginning in 2007. The State HHF program provides up to 18 months of mortgage payment assistance for unemployed or underemployed homeowners and/or payments to bring delinquent mortgages current for homeowners who have returned to work or recovered from underemployment.

State defines the eligibility criteria for the HHF. Eligibility requirements are organized into three areas: (1) household eligibility requirements; (2) property eligibility requirements; and (3) mortgage eligibility requirements. One household requirement is that homeowners must have a total income below 140% of the area media income (AMI) as provided by HUD and monthly housing debt of more than 31% of the homeowner's gross monthly income. A homeowner must meet all criteria within each category to qualify. However, even if a homeowner meets all criteria, the homeowner's mortgage company may still deny eligibility.

You are an HHF advisor for more than 30 of State's northern counties. As an HHF advisor, you perform "contractor and professional services" as an independent contractor and not as an agent, representative, or employee of the Corporation. These services include applicant intake, eligibility determination, case management, and reporting activities. You state that your first client contact occurs when the client is referred to you because they are in risk of default. After you receive the referral and make the initial client contact, you print the online application form completed by the client, verify the information contained in the application, collect additional supporting documentation, and obtain client signatures. The information solicited from clients on the online application includes certain biographical, demographic, employment, and financial information. Clients must also submit additional documentation such as paystubs, property information, etc. The Corporation provides the client intake form and HHF document list.

Once the client's file is complete, you determine the client's eligibility for assistance. You state that an average of two appointments is required to collect the client's information and determine a client's eligibility. You do not state what topics, if any, are discussed during these sessions. If the client qualifies, you forward the client's file to the Corporation and schedule a closing on the loan either at your offices or at a local bank in the client's area. After closing, you submit the closing documents to the Corporation. If the client does not qualify, you inform the client and refer them to a HUD approved counseling agency. You state that this referral service is a function of the HHF program, not an independent activity, and that the information solicited for referral is the same as the information solicited to determine HHF eligibility. Since entering into the contract with the Corporation, you have assisted more than 50 clients obtain relief from the HHF and have referred more than 100 clients who did not qualify to HUD approved counseling agencies for assistance.

Your contract with the Corporation is for an initial two year term with the option for three one-year renewals. Under the terms of the contract, HHF advisors are unable to charge applicants for services rendered. Instead, the Corporation pays HHF advisors set amounts for initial start-up costs, determining eligibility, closing on loans, and monthly case management. Your funding primarily consists of amounts received under your contract with Corporation.

You do not currently provide any educational workshops, classes, or seminars related to your foreclosure prevention counseling services. Accordingly, you did not provide copies of any educational material. However, you state that you intend to provide educational workshops, classes, or seminars on mortgage foreclosure intervention, financial counseling, mortgage loss mitigation, and consumer budgeting assistance in the future "if a source of funding for such services is identified." You also do not provide individual or family counseling on these topics "at this time."

You spend approximately 75% of your time and money conducting this activity. Of the time spent providing administrative services, you spend the following percentage of your time performing the following services:

- 30% – performing intake;
- 30% – evaluating applications;
- 10% – closing HHF loans;
- 15% – providing referral services to non-qualifying applicants; and
- 15% – performing monthly case management.

LAW

I.R.C. § 501(a) provides that an organization described in § 501(c) shall be exempt from taxation under this subtitle unless such exemption is denied under § 502 or § 503.

I.R.C. § 501(c)(3) describes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

I.R.C. § 501(q) provides that an organization with respect to which the provision of credit counseling services is a substantial purpose shall not be exempt from tax under subsection (a) unless certain, additional requirements are met. This section defines "credit counseling services" as —

- (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 in clauses (i) and (ii).

Treas. Reg. § 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in § 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that 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 of such exempt purposes specified in § 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.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(iv) provides that, since each of the purposes specified in § 501(c)(3) is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational," exemption will not be denied if, in fact, it is "charitable."

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in I.R.C. § 501(c)(3) in its generally accepted legal sense and includes, among other things, lessening the burdens of government, relief of the poor and distressed or of the underprivileged, advancement of education or science, erection or maintenance of public buildings, monuments, or works, and promotion of social welfare by organizations designed to accomplish any of the above purposes, or to defend human and civil rights secured by law.

Treas. Reg. § 1.501(c)(3)-1(d)(3)(i) provides that the term "educational" as used in § 501(c)(3) relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

Rev. Rul. 65-299, 1965-2 C.B. 165, determined that an organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly payment for the payment of their obligations qualified for recognition under § 501(c)(3).

Rev. Rul. 69-441, 1969-2 C.B. 115, determined that an organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems qualified for exemption under § 501(c)(3). The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who had financial problems by providing them with individual counseling and, if necessary, by establishing budget plans. Under a budget plan, a debtor voluntarily made fixed payments to the organization. The funds were kept in a trust account and disbursed on a partial payment basis to the creditors, whose approval of the establishment of the plan was obtained by the organization. The services were provided without charge to the debtor. The debtor received full credit against his debts for amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. The organization's receipts were from contributions, primarily from the creditors participating in the organization's budget plans. However, the creditors were not required to make contributions as a condition of participation. The ruling determined that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and a means for the orderly discharge of indebtedness, the organization relieved the poor and distressed. Furthermore, by providing the public with information on budgeting, buying practices, and the

sound use of consumer credit, the organization instructed the public on subjects useful to the individual and beneficial to the community. See Consumer Credit Counseling Services of Alabama, Inc. v. United States, 44 A.F.T.R.2d (RIA) 5122 (D.D.C. 1978) (holding that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational).

Rev. Proc. 86-43, 1986-2 C.B. 729, publishes the criteria used to determine the circumstances under which advocacy of a particular viewpoint or position by an organization is considered educational within the meaning of § 501(c)(3) and within the meaning of Treas. Reg. § 1.501(c)(3)-1(d)(3). The procedure states, although the Service renders no judgment as to the viewpoint or position of the organization, the Service will look to the method used by the organization to develop and present its views. The method used by the organization will not be considered educational if it fails to provide a factual foundation for the viewpoint or position being advocated, or if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process.

Rev. Proc. 96-32, 1996-1 C.B. 717, sets forth a safe harbor under which organizations that provide low-income housing will be considered charitable as described in § 501(c)(3) because they relieve the poor and distressed as described in Treas. Reg. § 1.501(c)(3)-1(d)(2). The procedure adopts the U.S. Department of Housing and Urban Development's (HUD) definition of "low-income" and "very low-income." HUD defines "very low-income" as 50% of an area's median income and "low-income" as 80% of the area's median income.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of private benefit, if substantial in nature, will destroy an organization's tax-exempt status regardless of the organization's other charitable purposes or activities.

RATIONALE

An organization seeking tax-exempt status under § 501(c)(3) must be organized and operated exclusively for charitable or other exempt purposes with no part of its net earnings inuring to the benefit of any private shareholder or individual. Treas. Reg. § 1.501(c)(3)-1(a)(1). The presence of a single non-exempt purpose, if substantial in nature, will destroy exemption under § 501(c)(3) regardless of the number or importance of any other exempt purposes. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945); see Treas. Reg. § 1.501(c)(3)-1(c)(1). Your Articles state that you operate exclusively for charitable purposes. However, if an organization is organized and operated exclusively for an exempt purpose or purposes other than the ones stated, the organization will be recognized regardless of the purpose or purposes specified. Treas. Reg. § 1.501(c)(3)-1(d)(1)(iv). Regardless, you do not qualify for recognition under § 501(c)(3) because you operate for one or more substantial nonexempt purpose.

Your primary activity is providing administrative services for Corporation's HHF program. You characterize this activity as "counseling." Generally, individual mortgage foreclosure counseling may be an exempt activity under certain circumstances. See 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). Additionally, credit counseling may be an exempt activity under certain circumstances. I.R.C. § 501(q); Rev. Rul. 69-441; Rev. Rul. 65-299. Such organizations qualify for recognition under § 501(c)(3), in part, as educational organizations. In § 501(c)(3), the term "educational" relates to (a) the instruction or training of the individual for the purpose of improving or developing his capabilities; or (b) the instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i). Thus, these organizations qualify because they instruct the public on subjects useful to the individual and beneficial to the community.

You perform no educational activities within the meaning of § 501(c)(3). Rather, your "counseling" is merely an administrative service performed on the Corporation's behalf. The services you provide include performing client intake services, making eligibility determinations, providing case management, and reporting to the Corporation. These services are not structured primarily to improve your clients' understanding of their financial problems or skills in solving them. Additionally, determining whether a client qualifies for relief under HHF does not provide a development from relevant facts that would materially aid a listener or reader in the learning process. Rev. Proc. 86-43. Furthermore, you explicitly state that you do not conduct educational workshops, classes, or seminars and do not intend to do so unless you can locate an independent funding source. Accordingly, you do not instruct the public on subjects useful to the public and beneficial to the community in the same manner as the organization described in Rev. Rul. 69-441.

Moreover, your mortgage foreclosure counseling activity is not charitable within the meaning of § 501(c)(3). This section uses the term "charitable" in its generally accepted legal sense. Treas. Reg. § 1.501(c)(3)-1(d)(2). The term includes relief of the poor and distressed or of the underprivileged; and the promotion of social welfare to lessen neighborhood tensions and combat community deterioration and juvenile delinquency. Id. Rev. Proc. 96-32 provides that the provision of housing to "low-income" and "very low-income" individuals, as defined by HUD, generally relieves the poor and distressed. HUD defines "very low-income" as 50% of an area's median income (AMI) and "low-income" as 80% of AMI. However, under the State HHF, individuals with a total household income below 140% of AMI are eligible for relief. Accordingly, your mortgage foreclosure counseling activities are not limited to very low-income or low-income individuals. Therefore, your clients are not necessarily poor and distressed in the same manner as the organization in Rev. Rul. 69-441. Additionally, the HHF does not target particular geographical areas in which neighborhood tensions and juvenile delinquency are common. Rather, relief under the HHF is available to all qualifying residents in the more than 30 northern State counties you service.

You spend 75% of your time and money providing administrative services for Corporation's HHF program. The remaining 25% of your time you spend scheduling and facilitating Council meetings, but you failed to provide sufficient information to determine whether this activity furthers one or more of your exempt purposes. However, even if this activity did further one or

more exempt purposes, it is merely incidental to your primary activity of providing administrative services for Corporation's HHF program. Consequently, you are not operated exclusively (primarily) for one or more exempt purposes.

CONCLUSION

Based on the above, we have determined that you fail to meet the requirements necessary to be recognized as a tax-exempt organization under § 501(c)(3). You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration:

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

This declaration must be signed by an elected officer, a member of the board of directors, or a trustee rather than an attorney or accountant.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:3)

1111 Constitution Ave, N.W.
Washington, DC 20224

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,

Karen Schiller
Acting, Director,
Exempt Organizations
Rulings and Agreements