



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

Release Number: 201445014
Release Date: 11/7/2014
Date: June 10, 2009
UIL Code: 501.03-08

Employer Identification Number:

Person to Contact:

Identification Number:

Contact Telephone Number:

In Reply Refer To:

CERTIFIED MAIL – Return receipt requested

**LAST DAY FOR FILING A
PETITION WITH TAX COURT:**

September 8, 20XX

Dear :

This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code (I.R.C.) as an organization described in I.R.C. section 501(c)(3). Internal Revenue Service recognition of your status as an organization described in I.R.C. section 501(c)(3) is revoked, effective April 24, 20XX. Our adverse determination is made for the following reason(s):

You have failed to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) as you have failed to provide evidence of your charitable activities. Per your application you were created to provide debt management assistance and to educate the public with regard to financial responsibility; however, you have not engaged in these endeavors or other activity that would satisfy 501(c)(3) statutes.

Contributions made to you are no longer deductible as charitable contributions by donors for purposes of computing taxable income for Federal income tax purposes. See Rev. Proc. 82-39 1982-2 C.B. 759, for the rules concerning the deduction of contributions made to you between April 24, 2002 and the date a public announcement, such as publication in the Internal Revenue Bulletin, is made stating that contributions to you are no longer deductible.

You are required to file income tax returns on Form 1120 for all years beginning after April 24, 20XX. Returns for the years ending November 30, 20XX, November 30, 20XX, and November 30, 20XX must be filed with this office within 60 days from the date of this letter, unless a request for an extension of time is granted. Send such returns to the following address:

Internal Revenue Service

Tax returns for subsequent years are to be filed with the appropriate Campus identified in the instructions for those returns.

If you decide to contest this determination under the declaratory provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgment. You may write to the United States Tax Court at the following address:

United States Tax Court,
400 Second Street NW
Washington, D.C. 20217

The processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under I.R.C. section 7428.

If you have questions about this letter, please write to the person whose name and address are shown on this letter. If you write, please attach a copy of this letter to help identify your account. Keep a copy for your records. Also, please include your telephone number and the most convenient time for us to call, so we can contact you if we need additional information.


You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above, since this person can access your tax information and can help you get answers. You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate office located nearest you by calling faxing or writing to: Internal Revenue Service, Taxpayer Advocates Office,

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax 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.

We will notify the appropriate State officials of this action, as required by I.R.C. section 6104(c).

This is a final revocation letter.

Sincerely,



Sunita Lough
Director, EO Examinations

Internal Revenue Service

Department of the Treasury

Date: August 8, 2008

Taxpayer Identification Number:

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,

Vicki L. Hansen
Acting, Director EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

TAX YEARS ENDING NOVEMBER 31, 20XX AND 20XX

ISSUES PRESENTED:

1. Whether _____ is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):
 - a. Whether _____ is engaged primarily in activities that accomplish an exempt purpose?
 - b. Whether more than an insubstantial part of activities are in furtherance of a non-exempt purpose?

FACTS

Background

_____ was incorporated under the laws of the State of _____ pursuant to the _____ Nonprofit Corporation Act on April 24, 20XX. In a determination letter dated July 23, 20XX, _____ was determined to be exempt from federal income tax as an organization described in IRC Section 501(c)(3). _____ is located at _____.

In its Articles of Incorporation, _____ stated its purpose is "to Provide information and/or counseling to the general public and /or debt distressed individuals and families on the subject of budgeting and the wise use of consumer credit. To promote debt management receiving money from debtors for the purpose of distributing the same to creditors. To receive and maintain a fund or funds of real or personal property, or both , and subject to the limitations and restrictions herinafter set forth, to use and apply the whole or any part of the income thereof and principal thereof exclusively for charitable and educational purposes, either directly or by contributions to organizations that qualify as exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and its Regulations as they now exist or as they may hereafter be amended. To engage in the transaction of any and all lawful activities for which nonprofit corporations may be organized under the _____. No part of the net earnings of the Corporation shall inure to the benefit of any Director, officer of the Corporation, or any private individual, except that reasonable compensation may be paid for services rendered to the Corporation to employees other than it Directors and officers. No Director, Officer of the Corporation or private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation. The Corporation shall carry on no propaganda or attempt to influence legislation or

participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office. Under no circumstances will the Corporation make loans to employees, officers and/or Directors.

According to the form 1023 application for recognition of exemption, was formed to provide 75% of the organization's time doing debt management assistance, free of charge, to those who need financial assistance but could not otherwise afford it. Debt management assistance will include, but not be limited to, establishing revised repayment schedules with creditors and securing reduced and/or eliminate interest, late fee, over the limit fees with creditors. Delinquent accounts may be brought current through the use of extension fees, recycling/re-aging agreements, etc. The amount of assistance and the amount of intervention required will be determined by debtor/client budget analysis, in conjunction with creditor needs. Debt management assistance to be provided will be done so in an effort to prevent bankruptcy on the part of the debtor client, as an alternative to resolving financial difficulties.

In as much as the service will be provided free of charge, our tax exemption will enable us to solicit contributions to cover inherent costs from both the creditor community, as well as from the debtor clients, once they have achieved the desired benefits and results of the program. The activity will commence upon receipt of their approval.

The activity will be conducted at
by unpaid volunteers, with considerable skill, experience in the area of debt management.

25% of the time will be devoted to educating and providing knowledge to the general public, with regard to financial responsibility. In many cases, debtors who have become over-extended can be taught how to resolve their problems, on their own, by themselves. People can be taught how to communicate with their creditors. People can be taught the options available to them for resolving different types of financial problems. People can be taught how much interest is too much. People can be taught how to live within their means and how to prepare of unexpected expenses. Education and knowledge can oftentimes enable people to resolve existing financial problems, imparted through seminars, one-on-one counseling, distributed literature, news releases, financial columns in various newspapers, etc. and, hopefully, through curriculum additions in schools.

Tax exemption will enable us to solicit contributions to cover the cases of printed matter, travel to and from the locale and possibly enable donation of or access to a forum (a place for the seminar).

One-On-One counseling would take place at our offices and/or over the phone. Seminars will take place wherever a forum and audience can be achieved. We anticipate going to churches, civic group, large employers, school boards, etc. All of

these activities will be conducted by unpaid volunteers, with much skill, experience and expertise in debt management.

Activity Description

The primary activity of the _____ (hereinafter _____) during the year ending November 30, 20XX is enrolling clients in debt management plans (hereinafter DMP's). Potential clients are individuals with unsecured debt. A DMP is a plan where a client makes monthly payments to _____ to satisfy their unsecured debt over a certain period of time. The debts handled in the DMP's were credit card debts, but other unsecured debts were also included. The monthly payment made by the client included the payment to the creditors and a service fee. The client agreement stated that the client shall make payments to the Company as follows: The first initial payment made will be the amount agreed upon by the creditors and it also states that _____ may charge a one time retainer fee. This fee will be assessed based upon the customer's ability to pay up to a maximum of _____. _____ also stated they may charge a monthly service fee. The fee will also be assessed based on the client's ability to pay up to a maximum of _____.

_____ had one counselor doing the budget analysis with the clients and trying to help set them up on a DMP plan. The counselor did not have on going credit counseling education. Even though the materials provided by _____ states that they also helped clients in other ways besides the DMP's they have no proof of the other programs that was provided. The only income received by the organization was from DMP's. There were no phone calls recorded to review. During the audit, there were no activities so the agent could not monitor any calls.

During the examination it was discovered that the _____ is working along side another for-profit organization with the same name, _____. Both organizations have the same founder, _____. During the examination it was discovered that a portion of the funds were commingled with the for profit organization. The funds were deposited in the account of the for-profit and transferred to the non-profit account. Even though there were separate accounts it was not clear as to which client was non profit and which was for-profit.

_____ stated that a good portion of both businesses was derived from current and former satisfied customers as well as from referrals from such nationally prominent creditors as _____ etc. He stated if a resident of a state requiring non-profit status for administering debt management plans would call the for-profit for information, they would be turned over to the non-profit for their assistance.

Education

In addition to its activities, they claim to have engaged in educational outreach presentations to local churches. However, provided no documents to verify that any educational activities were conducted. There is no evidence that or its employees were engaged in any activity other than the telephone solicitation of potential clients for DMP's. does not presently solicit new clients at this time. They claim the only form of education at this time is in the form of mail outs. There is no evidence that any employees of were engaged in any activity other than the telephone solicitation of DMPs to individuals in debt, which was done during the year of examination.

claims they solicited clients from outreach activities but there is no evidence that any outreach activities were conducted. However, any amount of time devoted to these "outreach" activities would have been minimal or non-existent compared to primary activity of selling DMPs. cannot provide any information such as where the outreach activities were held, who conducted the outreach activities, number of people that were helped because of the outreach activities. claims that they went to different churches and inserted pamphlets in the church bulletins, however the pamphlets were not provided.

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.

Exhibit I

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. United States, 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. United States, 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 (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

Exhibit I

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 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. United States, 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. United States, 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. § 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. 1999). Reasonable compensation does not constitute inurement. Birmingham Business College v. Commissioner, 276 F.2d 476, 480 (5th Cir. 1960).

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. United States, 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, 1997, 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. 1998).

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). Section 501(c)(3) organizations are not subject to this rule against cold-calling. Because 501(c)(3) organizations are exempt from regulation under the CROA and the cold-calling restrictions, organizations that are involved in credit repair have added incentives to be recognized as section 501(c)(3) organizations even if they do not intend to operate primarily for exempt purposes.

Exempt Organization's Position

The exempt organization will have a chance to respond when the report is sent to them.

GOVERNMENT POSITION

During the examination it was discovered that the is working along side another for profit organization with the same name, . It is not clear as to how the client distinguish between the non profit and the for- profit when they call. Both organizations have the same founder, . During the examination it was discovered that a portion of the funds were commingled with the for profit organization. The funds were deposited in the account of the for- profit and

transferred to the non-profit account. Even though there were separate accounts it was not clear as to which client was non profit and which was for profit.

According to the Articles of Incorporation, The Corporation is organized exclusively for charitable, educational, religious or scientific purposes, within the meaning of section 501(c) (3) of the Internal Revenue Code.

It is the service's position that failed to provide proof of adequate amount of education such as workshops, seminars, one on one counseling sessions to the public, going out to churches, civic groups, large employers, school boards, etc. as was stated in the initial 1023 application.

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.

CONCLUSION

In conclusion, was not operated exclusively for exempt purposes. In fact, did not verify that substantially all of its activities was for the exempt purpose of the organization. Accordingly, it is determined that is not an organization described in section 501(c)(3), and is not exempt from income tax under section 501, effective April 24, 20XX.

Form 1120 returns should be filed for the tax periods ending on or after December 31, 20XX and any subsequent years.