



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities

Date:
09/09/2024
Employer ID number:

Form you must file:

Tax years:
All
Person to contact:

Release Number: 202449017
Release Date: 12/6/2024
UIL Code: 501.32-00,
501.32-01, 501.33-00

Dear :

This letter is our final determination that you don't qualify for exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a) as an organization described in IRC Section 501(c)(3). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under IRC Section 501(c)(3), donors generally can't deduct contributions to you under IRC Section 170.

We may notify the appropriate state officials of our determination, as required by IRC Section 6104(c), by sending them a copy of this final letter along with the proposed determination letter.

You must file the federal income tax forms for the tax years shown above within **30 days** from the date of this letter unless you request an extension of time to file. For further instructions, forms, and information, visit www.irs.gov.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection after deleting certain identifying information, as required by IRC Section 6110. Read the enclosed Letter 437, Notice of Intention to Disclose - Rulings, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Letter 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

If you have questions about this letter, you can call the contact person shown above. If you have questions about your federal income tax status and responsibilities, call our customer service number at 800-829-1040 (TTY 800-829-4933 for deaf or hard of hearing) or customer service for businesses at 800-829-4933.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Letter 437

Redacted Letter 4034

cc:



Department of the Treasury
Internal Revenue Service

Date: 6/18/2024

Employer ID number:

Person to contact:

Name:

ID number:

Telephone:

Fax:

Legend:

B = State

C = Date

D = Name

E = Name

F = Name

u dollars = Amount

v dollars = Amount

w dollars = Amount

x dollars = Amount

y dollars = Amount

z percent = Numbers

UIL:

501.32-00

501.32-01

501.33-00

Dear _____ :

We considered your application for recognition of exemption from federal income tax under Internal Revenue Code (IRC) Section 501(a). We determined that you don't qualify for exemption under IRC Section 501(c)(3). This letter explains the reasons for our conclusion. Please keep it for your records.

Issues

1. Do you qualify for exemption under IRC Section 501(c)(3)? No, for the reasons stated below?
2. Do you meet the requirements under IRC Section 501(q)? No, for the reasons stated below?

Facts

You were incorporated in B on C. Your purposes as stated in both your Articles of Incorporation and bylaws are (1) to empower and educate others about understanding the importance of finances and credit and (2) to teach financial literacy and help change lives.

You will provide financial education services primarily consisting of Credit and Budget Counseling, and Home Buyer Services. You plan on providing a wide variety of free and low-cost educational materials for low-income individuals and families. You advertise your services on your website and through social media. Your website states "Your road to financial freedom starts here." You have numerous testimonials on your website

from clients recommending your services stating you were helpful with clients and their families in setting and achieving their financial goals. There is also a link to a secure credit card on your website.

You explained that D, your founder, and president, provides specific credit counseling and budgeting services to clients to include but not limited to credit analysis, credit restoration, and credit dispute resolution. D conducts individual counseling sessions to clients.

You explained that your client interactions typically begin with an initial free consultation with D, to determine what type of services the client needs. D discusses the client's finances and goals so services can be tailored to the client's needs. If the client decides to enroll in any of your services which are sold as packages, the client will be required to sign a contract which explains the fees and specific services. The fees generally consist of an enrollment fee and a monthly fee. Packages start as low as u dollars per month. After the contract is signed and the enrollment fee is paid, D will conduct a follow-up consultation where D and the client talk more specifically about finances. The credit analysis is reviewed with the client. D will provide a variety of resources to the client and spend time teaching the client about better budgeting, debt management, and snowballing debt depending on the client's needs. D generally meets with clients on a weekly basis. Clients are free to cancel the contract no later than three days after it was signed.

You offer various packages including:

- E which has an enrollment fee of v dollars and a monthly fee of w dollars. For this you provide services to clients such as credit restoration, credit dispute resolution, credit monitoring, email and text support, support from D and a 24/7 portal. Clients who purchase this package are also required to pay a monthly fee of x dollars for credit monitoring.
- F which has an initial fee of y dollars and a monthly charge of u dollars and offers similar services to the other package. Clients who purchase this package are also required to pay a monthly fee of x dollars for credit monitoring.

Specific services you provide to paying clients which are included in your packages are:

- Preparing their monthly dispute rounds for credit bureaus and creditors;
- Reviewing updated credit reports through their paid credit monitoring account;
- Reviewing all their updated documents sent to you;
- Filing complaints on their behalf;
- Educating the client on how to improve their credit score and the credit restoration process by email;
- Updating their client tracking portal with their credit improvement process;
- Keeping the client updated with their progress.

You further explained that these services are informative and focus on the needs of each individual so they can learn better money management skills and find solutions to their current problems.

You indicated that your Home Buyer Services consist of pre-purchase counseling, foreclosure prevention counseling, and homebuyer education. You teach consumers about budgeting and improving one's credit score to qualify for a mortgage, finding a mortgage, paying taxes, home inspections, and other necessary areas of the home-buying experience. D conducts this activity via phone weekly or monthly depending on the client's needs. You offer several packages starting as low as u dollars a month for services with free materials. You stated that this activity offers free education to individuals. You explained that specific mortgage brokers provide you referrals, but there are no written agreements. You have also conducted homebuyer seminars with these specific mortgage brokers. You wish to assist individuals in the home buying process. You stated that this activity offers free education to individuals.

You also explained that % of your time and resources is spent on Debt Management Assistance. This consists of providing debt management assistance to make it easier and more affordable to pay off credit card debt in years without having to take out a loan. D conducts this activity via phone with clients (weekly/monthly). You offer several packages that include Debt Management Assistance if needed, starting as low as F dollars a month for services. These clients have come to you originally seeking financial counseling for homebuying or budgeting.

You have board members of which are paid and appear to be to .

You stated that you are mainly supported by fees and explained that fees make up in the range of z percent of your revenue. To date you have not applied for any grants.

You also explained that if a client declines your services for affordability reasons, D qualifies them to receive services for free or heavily discounted. This is determined on a case-by-case basis (income, household size, situation are looked at). Clients are never turned away because they cannot afford services. If client declines services for other reasons, they are still offered:

- a. Resources to assist them in better budgeting
- b. Your do-it-yourself credit repair kit to assist them in self-services
- c. Invitations to join any of your live or in-person informational sessions or events, all of which are free

You also offer payment assistance for clients who do enroll in your services but can't make their payment down the line because of financial hardship, by offering that month for free. You reduce payments for any client who is enrolled in any service after six months.

However, you did not provide evidence that you provide assistance to clients, who are unable to pay.

Law

IRC Section 501(c)(3) provides that corporations may be exempted from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

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

- (A) The organization:
- (i) Provides credit counseling services tailored to the specific needs and circumstances of consumers,
 - (ii) Makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
 - (iii) Provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
 - (iv) Does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.
- (B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.
- (C) The organization establishes and implements a fee policy which:
- (i) Requires that any fees charged to a consumer for services are reasonable,
 - (ii) Allows for the waiver of fees if the consumer is unable to pay, and
 - (iii) Except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan.
- (D) At all times the organization has a board of directors or other governing body:
- (i) Which is controlled by persons who represent the broad interests of the public such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders.
 - (ii) Not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
 - (iii) Not more than 49% of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).
- (E) The organization receives no amount for providing referrals to others for debt management plan services and pays no amount to others for obtaining referrals of consumers.

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

Treasury Regulation Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in IRC 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.

Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i) provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. Section 1.501(c)(3)-1(b)(4) provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subsection, 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.

Treas. Reg. Section 1.501(c)(3)-1(d)(2) provides that the term "charitable," is used in section 501(c)(3) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i) provides that the term "educational," as used in IRC Section 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.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under IRC Section 501(c)(3). Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the

organization, holding the funds in a trust account, and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling, and a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under IRC Section 501(c)(3).

Rev. Proc. 86-43, 1986-2 C.B. 729, describes the methodology test the Internal Revenue Service uses to determine when the advocacy of a particular viewpoint or position is educational under IRC Section 501(c)(3), and Treas. Reg. Section 1.501(c)(3)-1(d)(3). The revenue procedure states that the focus of Treas. Reg. Section 1.501(c)(3)-1(d)(3) is on the method the organization uses to communicate to others, not the content of its communication. The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." One factor indicating the method is not educational is as follows: "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter." The remaining factors relate specifically to advocacy organizations and the "full and fair exposition" part of the regulation.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under IRC Section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held 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.

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. An incidental amount of their revenue was counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Case. 9468 (D.D.C. 1979), in which the facts were virtually identical, and the law was

identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir. 1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health-related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under IRC Section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In City of Galveston, Texas v. United States, 33 Fed. Cl. 685, 707-08 (1995), the court stated the mere fact that one taxpayer has been treated differently from another taxpayer does not establish the other's entitlement.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a nonexempt commercial purpose, rather than for a tax-exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g., advertising) and the extent to which the organization receives charitable donations.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only members of organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." (Debt Management Plans) Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner * * * because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center. The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, further the benefit of private interests.

Application of law

IRC Section 501(c)(3) sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in Section 501(c)(3) as specified in Treas. Reg. Section 1.501(c)(3)-1(a)(1). You fail both tests.

You do not meet the organizational test.

Your Articles of Incorporation state your purposes are (1) to empower and educate others about understanding the importance of finances and credit, and (2) to teach financial literacy and help change lives. Because your Articles of Incorporation do not limit your purposes to those described in Treas. Reg. Section 1.501(c)(3)-1(b)(1)(i), you fail the organizational test under IRC Section 501(c)(3). Furthermore, your Articles of Incorporation do not contain a dissolution clause as required by Treas. Reg. Section 1.501(c)(3)-1(b)(4). This also causes you to fail the organizational test under Section 501(c)(3).

You do not meet the operational test.

To satisfy the IRC Section 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes, as stated in Treas. Reg. Section 1.501(c)(3)-1(c)(1). The information you submitted does not show that you are operated exclusively for one or more exempt purposes.

Your services are not educational.

You provide services to paying clients such as credit restoration, credit dispute resolution, credit monitoring, email and text support, support from D and a 24/7 portal for their use as long as they sign your contract and pay both your monthly fee and credit monitoring fee. Further your client interactions typically begin with an initial free consultation to determine what type of services the client needs. If the client decides to enroll in any of your services, the client will be required to sign a contract which explains the fees and specific services you will provide. There is also an enrollment fee required before any services are rendered. The primary goal of the consultations with clients appears to be the "sale" of services and products. Further, once the client stops paying your fees, the services terminate.

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities. Unlike those organizations, you do not offer counseling sessions that are structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. You provided no evidence that you do anything more than review a client's financial reports and situations as long as they pay your fees. Assisting in improving a client's financial status is not an educational activity because it does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process, as described in Rev. Proc. 86-43. Additionally, you submitted a copy of your web pages. The primary focus of these is to advertise your financial services and products that will enable paying clients to obtain financial freedom.

You do not conduct substantive educational programs that are structured to improve the client's understanding of their financial problems or their skills in solving them. You do not operate a substantive on-going educational program. You did not provide evidence that you dedicate any revenue to activities involving educational programs. Like the organization in Solution Plus, you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems. Your educational purposes are, at best, minimal.

Therefore, you have not shown that your activities are designed to provide instruction or training "useful to the individual and beneficial to the community" within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(3)(i).

Your activities are not exclusively charitable.

Your activities do not further a charitable purpose as provided in Treas. Reg. Section 1.501(c)(3)-1(d)(2), because you do not limit your services to a specific charitable class. The financial counseling services you provide to individuals do not provide relief to the poor and distressed within the meaning of Treas. Reg. Section 1.501(c)(3)-1(d)(2) or serve any other purpose recognized as charitable.

You provide credit counseling services to anyone who pays for your assistance in order to help them improve their financial position or qualify for a mortgage. You assert that you provide some services to clients who are unable to pay. No one is turned away. However, there is no evidence of this.

Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama and Rev. Rul. 69-441, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Like the organization in Solution Plus, you are primarily engaged in selling services. Therefore, your charitable purposes are, at best, minimal.

You are operated for substantial nonexempt purposes.

An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose as provided in Treas. Reg. Section 1.501(c)(3)-1(c)(1). You are primarily providing financial counseling services for a fee. For example, you are offering several packages to assist clients in repairing and restoring their credit. Providing financial counseling services for a fee does not serve an exempt purpose. Thus, you are not engaged primarily in activities which accomplish one or more of the exempt purposes specified in IRC Section 501(c)(3), and more than an insubstantial part of your activities is not in furtherance of an exempt purpose. Therefore, you are not operated exclusively for an exempt purpose as provided in Section 501(c)(3) you fail the operational test as provided in Treas. Reg. Section 1.501(c)(3)-1(c)(1).

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose as provided in the court cases B.S.W. Group, Easter House, Airlie, and Living Faith. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business.

Even though your clients do receive a free consultation, your activities consist primarily of providing financial counseling services to individuals for a fee which is a substantial nonexempt commercial purpose. You run your business similar to a for-profit entity charges a fee. Providing the same services as those provided by a for-profit also demonstrates that you are operating like a commercial organization seeking to maximize profits, rather than a charitable or educational organization seeking to serve the public. Your income is used to pay salaries and office expenses, marketing materials, and educational materials primarily for paying clients. Thus, similar to the organization in Easter House, the profit-making fee structure of your financial counseling services overshadows any of your other purposes.

Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose. Your proposed budget indicated that you charge fees for your services, and you explained that 85-90% of your income is from fees. Accordingly, you are unlike the organization described in Consumer Credit Counseling Service of Alabama, that received the bulk of its support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way (only an incidental amount of their revenue was from fees). Your operations are financed almost entirely by fees earned from providing services to clients. As noted in Easter House, receiving support primarily from donations solicited while providing services is indicative of a nonexempt purpose.

Like the organizations in Easter House, Airlie, and Living Faith, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. You conduct many of your activities in the same manner as commercial enterprises in that you charge monthly fees. The provisions in your contract also are similar to that of a for profit. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose.

The activities you identify as “educational” are merely incidental to your business of providing financial counseling services. Thus, more than an insubstantial part of your activities is in furtherance of a nonexempt purpose, in contravention of Treas Reg. Section 1.501(c)(3)-1(c)(1). Therefore, you are not operated for an exempt purpose.

You are serving private interests.

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest as stated in Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You are serving a private interest by providing credit counseling services to individuals for a fee in order for them to achieve financial freedom and qualify to for a mortgage. Your clients are not limited to a charitable class. Therefore, the benefit of the service provided does not serve an exempt purpose, nor is the benefit incidental to your clients. Therefore, you do not serve a public interest as required by Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii).

You do not meet IRC Section 501(q).

You do not meet the requirements of IRC Section 501(q) because of the following:

- You do not meet IRC Section 501(q)(1)(A)(iii). You primarily provide credit counseling services and homebuyer services for a fee for the purpose of improving a client's credit record, credit history, or credit rating for the client to obtain financial freedom or to assist the client in qualifying for a mortgage. These services are not incidental to the provision of credit counseling services.
- You do not meet IRC Section 501(q)(1)(D)(ii). Your governing body does not comply with this Section because it requires that at all times the organization must have a board of directors or other governing body not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly, or indirectly, from the organization's activities, because of your board members will benefit financially from your operations.

Therefore, had you established that you otherwise met the requirements of IRC Section 501(c)(3), your failure to satisfy the requirements of Section 501(q) would prevent you from being exempt from taxation under Section 501(a).

Your position

You believe you are different from other for-profit institutions which provide credit counseling and home buyer services because:

- You do not charge for your initial consultations whereas most for profit's charge for consultations in addition to their monthly fees;
- Some of your introductory programs are free of charge;
- You provide free education in a variety of ways including hosting webinars and providing social media content to educate people on the first-time home buying process, savings, and budgeting;
- You teach people how to communicate with their lender on past due bills and how to pay their bills on time;
- You help people improve their credit for free without charging a fee.
- Many for-profit companies are only repairing individual's credit and not providing one-on-one monthly phone/zoom calls or giving a full detailed instructions on how to improve their credit and the next steps they should take.

Finally, you provided the name of an organization which is exempt under IRC Section 501(c)(3) whose activities and fee structure you believe are similar to yours.

Our response to your position

You have failed to provide any information that shows you are operating exclusively for exempt purposes within the meaning of IRC Section 501(c)(3)

Regarding the organization who is exempt under IRC Section 501(c)(3) that you claim is similar to you, the facts and issues concerning the alleged tax-exempt status of those organizations are not relevant to our determination here. Disparate treatment claims are not supported by the law. In City of Galveston, Texas v. United States, 33 Fed. Cl. 685, 707–08 (1995), the court stated the mere fact that one taxpayer has been treated differently from another taxpayer does not establish the other's entitlement. The fact that all taxpayers or all areas of the tax law cannot be dealt with by the Service with equal vigor and that there thus may be some taxpayers who avoid paying the tax cannot serve to release all other taxpayers from the obligation. As such, a

taxpayer cannot premise its right to an exemption by showing that other have been treated more generously, leniently, or even erroneously by the IRS.

Conclusion

Based on the information submitted, you do not qualify for exemption under IRC Section 501(c)(3). You do not meet the organizational test because your organizing document does not limit your purposes to those enumerated in Section 501(c)(3) or dedicate remaining assets upon dissolution to one or more exempt purposes described in Section 501(c)(3). You also do not meet the operational test for IRC Section 501(c)(3) because you are operated for substantial nonexempt purposes, serving private interests, and not exclusively furthering charitable or educational purposes. Furthermore, you do not meet the requirements of Section 501(q) because the services you provide are not incidental to the provision of credit counseling services, and the majority of your board is compensated.

Accordingly, you do not qualify for exemption under IRC Section 501(c)(3).

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

If you don't agree

You have a right to protest if you don't agree with our proposed adverse determination. To do so, send us a protest within 30 days of the date of this letter. You must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A statement of the facts, law, and arguments supporting your position
- A statement indicating whether you are requesting an Appeals Office conference
- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization or your authorized representative
- The following declaration:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

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

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, Power of Attorney and Declaration of Representative, with us if they haven't already done so. You can find more information about representation in Publication 947, Practice Before the IRS and Power of Attorney.

We'll review your protest statement and decide if you gave us a basis to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't given us a basis for reconsideration, we'll send your case to the Appeals Office and notify you. You can find more information in Publication 892, How to Appeal an IRS Determination on Tax-Exempt Status.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court later because the law requires that you use the IRC administrative process first (IRC Section 7428(b)(2)).

Where to send your protest

Send your protest, Form 2848, if applicable, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Mail Stop 6403
PO Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Mail Stop 6403
Cincinnati, OH 45202

You can also fax your protest and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that they received it.

You can get the forms and publications mentioned in this letter by visiting our website at www.irs.gov/forms-pubs or by calling 800-TAX-FORM (800-829-3676). If you have questions, you can contact the person listed at the top of this letter.

Contacting the Taxpayer Advocate Service

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that can help protect your taxpayer rights. TAS can offer you help if your tax problem is causing a hardship, or if you've tried but haven't been able to resolve your problem with the IRS. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. Visit www.taxpayeradvocate.irs.gov or call 877-777-4778.

We sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements