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

200447046

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: JUN - 7 2004

Contact Person:

Identification Number:

Telephone Number:

UIL: 501.00-00

SE:T:EP:RA:T4

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we conclude that you do not qualify for exemption under that section. The reasons for our conclusion are set forth below:

You were incorporated in the state of Virginia on February 1, _____ Your amended Articles of Incorporation state the following purposes:

In your Bylaws, Article 2, Section 2.1, you further describe your purposes as follows:

Information you submitted indicates that your primary activity will be credit repair that you provide as part of your credit consultation program. With regard to credit consulting, in your Bylaws, in Article 2, Section 2.1, you state that it includes:

With respect to your financial counseling activitv. in Article 2, Section 2.1 of your Bylaws, you state the following:

' You represented that you do not currently have a debt management program in operation.

You have also represented that advocacy and debt negotiation activities are done as part of counseling and credit repair activities. Advocacy involves calling organizations to "find food,

clothing, shelter and money for needy individuals and families." Debt negotiation is an attempt to convince creditors to enter into a settlement of debts with debtors. You also mention in your promotional material and in a letter to potential clients that you will with housing issues involving foreclosures and evictions. You provided no specific, detailed information as to how these particular activities are conducted, and how many individuals or families you have assisted.

Your current board of directors consists of (President/CEO/Founder); (Secretary); (Treasurer); (Director); (Director); and (Director). You indicated in a letter dated March 4, 2004, that will receive a salary of $ per year; and that and will each receive a salary of $ per year. You projected that your credit counselors will all have a beginning salary of $ per year. You also indicated in your letter of March 4, 2004, that is the mother of and

With regard to the qualifications for your credit counselors, you have stated that they must be high school graduates. However, you will not require that they have prior experience, and you will provide on-the-job training. You will require that they receive certification within one year of being hired from a private certifying company, Association of Financial Counselors and Planner Education (AFCPE). You state that after they receive certification, they will be entitled to a 4.5 percent raise.

In response to our letter dated February 17, 2004, you made the following statement: "Our education services offer support, encouragement, financial education, such as budgeting, money management and recordkeeping. I have enclosed some of the information that is used for education." As regards your in-house training program for credit counselors, you have provided copies of training materials and a script. Your training materials include a one-page document titled a two-page document containing a quiz to be given to clients on managing money, and an eight-page document; a four-page document on and a fourteen-page document from the Federal Trade Commission Bureau of Consumer Protection titled "Equal Credit Opportunity," which discusses the rights of consumers in the credit application process. The aforementioned materials are apparently intended to train your credit counselors and provide credit education to your clients. However, you have not explained when, where, or how these materials will be used in training credit counselors or providing credit education to your clients.

You indicated that, for the present, the majority of your credit repair solicitation and counseling will be conducted over the telephone. You provided a script to be used in attempting to "sale" your credit repair program. In your script, you stated the following as to the customer you would seek: "People that are having credit problems, in need of financial & credit counseling, need of debt repair, needing help with mortgage, utilities, food, shelter and clothing." You further stated the following: "We know...that most churches and different organizations do their best to give good help to their congregation or staff. We are here to help you, so if you

know of anyone that you want to recommend for these services please get them to contact us today." You also stated in response to our letter dated February 17, 2004: "Once a client calls in we used the enclosed script, which tell them who we are, what we do, then we pause to allow them to ask questions. We also thank them for using our services. We also fill out an (sic) consultation form if the client decides to use our services. The counselor will ask questions as to what services are needed, also the form allows us to know what to charge the client up front. We then sends (sic) out the necessary paper work to be signed before we get started. Paper work is only sent out to Financial & Credit Counseling and credit repair clients. Other services do not have to have signed forms, because we give them information on different organizations and they start off doing the research to find help for Food, Shelter, Mortgages, Rent and utilities if they are unsuccessful, we try to help." You further stated in the first sentence of the script that your objective in terms of potential clients would be "churches and organizations dealing (sic) with many people." Thus, it is apparent that you do not limit your debt repair services to a particular class of people or segment of the community.

Moreover, you stated in your letter dated March 4, 2004, that, is the only person presently attempting to recruit clients by making telephone calls. In that letter, you also stated the following: "We are currently advertising for clients, by using flyers, telephone and faxes, majority of our clients are from "Word of Mouth", Dept of Social Service, churches and the public that know we are here. We do not pay for referrals or leads."

Your revised proposed financial data submitted as part of your Form 1023 Application listed gifts, grants, and contributions as your expected primary sources of revenue over a three-year period, including your first year of operation. In our letter to you dated February 17, 2004, we requested that you describe your fundraising program and tell us how you plan to raise these amounts. You responded, in your letter dated March 4, 2004, that you "have not started a fundraising program." You further stated that you would not commence your fundraising efforts until you are "approved" for 501(c)(3) exempt status.

Your revised proposed financial data for and shows total revenue in the amount of $ Of this amount, you propose to spend considerably more on credit reports and supplies and postage than on educational materials. During this three-year period, you anticipate spending $ for credit reports and supplies and postage, and only $ for educational supplies. You plan to spend $ on charity. As of this date, you have made no specific expenditures to any programs or organizations engaged in educational activities or programs. You have not designated any expenses to advertising. However, you have stated that you would like to use an "outside advertising agency in the future." You also stated that you do not have a lease agreement because uses her home as your business office. It is not clear whether is claiming a deduction for the use of her home as an office on her personal income tax return.

Even though you claimed in your revised financial data that your revenue would be derived primarily from public contributions, the written materials and other documents submitted with your Form 1023 Application clearly indicate that your current and sole source of revenue is from the "sale" of services in your "debt repair" program. In your credit/debt repair program, you have clearly defined "up-front" fees to be charged for your various services. For individuals, you offer

investigation and research (supply your own credit reports) for a $ fee; to "pull" three credit reports, a $ fee. For husband and wife, you offer investigation and research (supply own credit reports) for a $ fee; to "pull" three credit reports for each person, a $ fee. Your consultation fee (an addition to your initial fee) applies to both individuals and married couples and is on a sliding scale as follows:

| Income | Fee |
|---|---|
| $30,000 | $ |
| $25,000-$29,000 | $ |
| $15,000-$24,999 | $ |
| Under $15,000 | |

You provided no support for your contention that you waived fees for anyone who has used your credit repair services. You do claim, however, that you waived a fee for one client "because of her income." You indicated in your letter dated March 4, 2004, that in the year three clients paid fees for consultation services; that all three chose to have credit reports retrieved by you and interpreted by you.

As regards the amount you charge for credit repair, you made the following statement: "My fees are very low compared to other debt repair and credit counseling companies. Some companies charge up (sic) $600.00 and they do less than per my clients. They review the credit report and give the clients the form to fill out and send in themselves. The client is doing their own debt repair and most of the time it is incomplete, because the clients doesn't have the time to follow-up." You have provided a copy of a form in which clients are requested to sign a "Blanket Authorization," which allows you to "pull" a credit report and release a client's credit information to his or her creditors in order to "verify and rectify my credit obligation to your company." You also have a contract in which clients pay a late fee penalty of 25 percent if they are 30 days late in paying for services. It also states that unpaid accounts will be turned over to an attorney who will charge an additional one-third of the balance due. It is not clear whether you have any agreement with an attorney for sharing fees or receiving a referral fee.

You view your relationship with potential clients as a "business" relationship. Each prospective client receives a letter which states:

Moreover, you have provided a copy of your business license issued by the city of

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 its net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax 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.

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.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) defines 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.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations 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.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense and includes relief of the poor and distressed or of the underprivileged as well as the advancement of education.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" refers 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.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

In Rev. Rul. 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

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 section 501(c)(3) of the Code. 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, which held the funds in a trust account and disbursed 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 voluntary 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 section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable for purposes of section 501(c)(3) of the Code. "Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable."

Rev. Rul. 76-244, 1976-1 C.B. 155 , held that home delivery of meals to the elderly free or with charges on a sliding scale, depending on recipients' ability to pay, is a charitable purpose.

Rev. Rul. 78-99, 1978-1 C.B. 152, held that the provision of individual and group counseling for widows based on their ability to pay is an educational activity.

Rev. Proc. 90-27, 1990-1 C.B. 514, provides in part that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section

under which exemption is claimed. A mere statement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. American Science Foundation v. Commissioner, T.C. Memo. 1986-556; La Verdad v. Commissioner, 82 T.C. 215, 219 (1984); Pius XII Academy v. Commissioner, T.C. Memo. 1982-97. Exempt status can be recognized in advance of operations if proposed operations can be described in enough detail to permit a conclusion that the organization will clearly meet the requirements of section 501(c)(3). American Science Foundation v. Commissioner, T.C. Memo. 1986-556.

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.

In Birmingham Business College, Inc. v. Commissioner, 276 F.2d 476 (5th Cir. 1960), the court denied tax exemption to an organization, in part because its net earnings were distributed to its shareholders for their personal benefit. The founder of the organization and his two sisters were the only shareholders; these three and two of their spouses were the organization's trustees. The court found that the organization was operated as a business ultimately producing substantial revenues for its operators.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S. Tax Cas. 9660 (D.D.C. 1978), the court held 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 Consumer Credit Counseling Service, which had been recognized as exempt under section 501(c)(3) in a group ruling, is an umbrella organization made up of numerous credit counseling service agencies. In this case, these agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. The professional counselors used only 12 percent of their time for debt management programs. They did not limit these services to low-income individuals and families, but they provided their services free of charge. The court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3). Nonetheless, these agencies did not charge a fee for the programs that

constituted their principal activities. A nominal fee was charged for the debt management services but was waived when payment would work a financial hardship.

The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from fees. Thus, the court concluded that "each of the plaintiff consumer credit 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 Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under 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, nor scientific, but rather commercial.

In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162, April 2, 1985, the Court reviewed the annual convention of a science fiction organization. It held that while the conventions may have provided some educational benefit to some of the individuals involved, that social and recreational activities and private benefit predominated. The Court distinguished Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337 (1980) in which the organization provided public art education by using juries to insure artistic quality and integrity.

> Petitioner relies heavily upon Goldsboro Art League v. Commissioner, T.C. Memo 1985-162, (April 1985) in support of the contention that it is tax-exempt. In Goldsboro Art League, the taxpayer was an organization that operated two art galleries that exhibited and sold artworks. We held that the taxpayer was tax-exempt under section 501(c)(3) because it was organized and operated exclusively for an exempt purpose--art education. We noted that in order to insure artistic quality and integrity, the artworks displayed were selected by jury procedures. We also noted that the taxpayer was the only such museum or gallery within its county, or any contiguous county. We held that it served public, rather than private interests and that its sales activities were incidental to advancing its exempt purpose. By contrast, petitioner in this case did not apply any controls to insure the quality of the books and artworks sold at its convention. Also, the tone of petitioner's convention is substantially, if not predominantly, social and recreational, rather than educational. In addition, petitioner's huckster's room and art auction provided substantial benefit to private

interests that is not incidental to its exempt purpose. Consequently, we think the case Goldsboro Art League is clearly distinguishable on its facts from the instant case.

In Easter House v. United States, 846 F. 2d 78 (Fed. Cir. 1988), aff'g 12 Cl. Ct. 476 (1987), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because it operated for a substantial commercial purpose rather than for the exempt purposes of providing educational and charitable services to unwed mothers and children. The services for unwed mothers and children were merely provided "incident" to the organization's adoption service business. The agency's operation was funded completely by the fixed fees charged adoptive parents. It relied entirely on those fees and sought no funds from federal, state or local sources, nor engaged in fund raising programs, nor did it solicit contributions. Moreover, the court found that "adoption services do not in and of themselves constitute an exempt purpose."

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 non-exempt commercial purpose, rather than for a tax-exempt purpose. "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."

The Credit Repair Organizations Act ("CROA"), 15 U.S.C. section 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. section 1679b. Section 501(c)(3) organizations are by definition 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. section 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).

In FTC v. Gill, 265 F.3d 944 (9th Cir. 2001), aff'g 183 F. Supp. 2d 1171 (2001), the

appellate court inferred that a credit repair organization that first promised a "free consultation," but charged fees in advance of the full performance of services was being operated as a charity primarily for purposes of evading regulation under the CROA.

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. Nonprofit organizations are not subject to this rule. This registry was created by rules promulgated by the FTC and the Federal Communications Commission. See 16 C.F.R. section 310.4(b)(1)(iii)(B); 47 C.F.R. section 64.1200(c)(2).

An organization seeking exemption must establish that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. See, Rev. Proc. 90-27; American Science Foundation v. Commissioner, T.C. Memo. 1986-556.

Rev. Proc. 90-27 requires an applicant to submit sufficient information during the application process for the Service to conclude that the organization is in compliance with the organizational and operational requirements of section 501(c)(3) before a ruling is issued. You have not fully described your activities as they relate to the number of clients you expected to enroll in your debt repair program during You have provided no proof that your credit counselors receive any form of training or are in fact certified by the private certification agency that you identified. You have not established that you have and will meet with clients on a regular, systematic basis to provide substantive counseling in credit and financial matters.

Most importantly, you have not provided a detailed description of the educational program to be provided to clients who purchase credit repair and other services from you. Nor have you provided a detailed description of your housing, food, clothing and other programs that you indicate you have initiated, including the number of individuals and families served by you. You failed to indicate the amount of salary your directors or others would receive as employees above and beyond compensation for their service on the board. You failed to provide a copy of a lease agreement or provide details of efforts to find a location (outside of a private home) for your operations. You provided no proof, such as demographic studies, that your services are directed primarily to individuals and families from low-income groups. Further, you provide no information regarding how your contemplated debt management program would operate, including identification of a back-end provider. Lastly, you failed to provide a detailed description of how your fundraising program would operate, including an explanation of efforts made to date to raise money for the conduct of your "educational" and "charitable" programs.

Based on our analysis of the information you submitted, we have concluded that while you are organized for charitable purposes you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. You failed to establish that you are or will be operated for either a charitable or educational purpose. In fact, the administrative record demonstrates that you operate for the substantial non-exempt purpose of operating a business. Because the business is operated solely by the members of one family, you have not established that you are operated primarily for charitable purposes rather than to provide them

employment opportunities. In addition, you have not shown that your income does not inure to any private individual. Another non-exempt purpose appears to be your operation to avoid regulation under the CROA.

While you have not submitted sufficient information to support a favorable ruling, you have submitted sufficient information for us to conclude that the activities you plan to engage in will not meet the requirements of the operational test for the reasons explained below.

You state in your Bylaws that your purpose is to "minister, educate and motivate clients about credit, financial and economic matters." You also state that you will "offer credit consulting, financial counseling and debt management." Providing individual counseling to clients on credit matters may be educational or, if provided in a charitable manner, may be charitable within the meaning of section 501(c)(3). See, e.g., Rev. Rul. 78-99, 1978-1 C.B. 152 (individual and group counseling for widows based upon their ability to pay is an educational activity). However, you have not submitted sufficient documentation for us to determine that the counseling you do is either charitable or educational in the sense recognized by law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operating exclusively for exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. Providing services exclusively for the benefit of the poor, a recognized charitable class, furthers charitable purposes. For instance, counseling the poor about economics and personal finance can achieve an exempt purpose. See Rev. Rul. 69-441, supra.

You do not restrict your activities to the benefit of the poor. The credit/debt repair services and financial consulting you offer are sold to anyone who has unsecured debt and is willing to purchase your services. No court or IRS ruling has indicated that the sale of credit/debt repair services and financial consulting is a charitable activity. Since the sale of debt repair services and financial consulting to the general public appears to be one of your substantial purposes, we cannot conclude that you are operating for charitable purposes.

Further, based on the information you submitted, you have not established that you operate for educational purposes within the meaning of section 501(c)(3). Training an individual to develop his capabilities or instructing the public on subjects useful to the individual and beneficial to the community are both educational purposes, recognized as exempt. See section 1.501(c)(3)-1(d)(3) of the regulations. Financial counseling could be carried out as an educational activity. Consumer Credit Counseling Service of Alabama, Inc. v. United States, and Rev. Rul. 69-441, supra. While education is a broad concept, the Service and the Courts require that some rigor must be evident. In St. Louis Science Fiction Limited, supra, the court clearly stated that an organization must have a substantial educational program not a non-educational program with some random educational features.

The information you submitted provides no basis for us to conclude that you offer either education to the public on subjects useful to the individual and beneficial to the community or training to the individual. In your response to our letter dated February 17, 2004, you described the information that is given to a client when he or she contacts you regarding your credit repair

or financial consulting services. You stated that your credit counselor will ask the potential clients what services they want, and let them know what the charges are "up-front" for these services. The discussion with clients does not include any educational material or counseling component. Your primary focus appears to be the "sale" of your credit/debt repair services, rather than the provision of substantial education to your clients.

You have not submitted any evidence of plans for future educational activity, and have neither hired competent employees to teach, nor budgeted to provide it. Your board of directors has no experience in educational methods, and there is no evidence that it plans to acquire any expertise. You submitted a copy of what you consider to be training materials, which is limited in scope and amount of information provided. You even included information from the Federal Trade Commission that is readily available to the general public for free. The information you plan to provide to your credit counselor candidates is not detailed and comprehensive. Moreover, you have not indicated how you would specifically use these materials in the training of your credit counselors and the education of individuals and families who would seek to purchase credit repair and consultation services.

Your use of the language "credit consulting" implies that your interactions with clients will be of short duration. There is no evidence that you plan to provide a series of sessions with in-depth education directed to the particular needs of the client or to dedicate the time necessary to address the financial problems faced by the client. This consultation format appears to be designed, purely, to expedite the "sale" of credit/debt repair services to potential clients.

It appears that the vast majority of the time of all your counselors would be spent in selling credit/debt repair services, with no time spent on public education or on meaningful personal counseling. The budget that you included with your application shows no separately budgeted item for educational activities. You have not provided information as to the amount of time a credit counselor would spend in credit education versus the amount of time to be spent in persuading clients to purchase your credit repair or consultation services.

Your activities are completely different from those found to be providing community education and individual training by the court in Consumer Credit Counseling Service of Alabama, Inc. v. United States, supra. Unlike those organizations, you submitted no evidence that you provide general education for the community.

Second, the counselors in Consumer Credit Counseling Service of Alabama spent their time providing information to the general public through speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. You have submitted no evidence that you provide any similar information to the general public.

Also, in contrast to the organization in Consumer Credit Counseling Service of Alabama, you have not demonstrated the individual training content of your "counseling" sessions with your clients. In that case, counselors spent additional time in individual counseling concerning budgeting and the appropriate use of consumer credit to "debt-distressed" individuals and families. The professional counselors used only 12 percent of their time for debt management

programs. The script you provide your counselors is entirely aimed at selling credit/debt repair and consulting services.

In addition, one of the hallmarks of a charitable organization is that it serves the public interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. However, the terms of the agreement(s) with your clients make it clear that you are not operating for their benefit. One of your forms requires a client to sign a "Blanket Authorization," which allows you to "pull" a credit report and release a client's credit information to his/her creditors in order to "verify and rectify my obligation to your company." This agreement would give you authority and discretion over the private business matters of individuals who perhaps do not fully understand the potential "negative" consequences of signing this form. Furthermore, there is no indication that you have met all of the required license and bond requirements that may be needed in the location where you do business. That you have a business license from the city of would not satisfy these particular requirements. Moreover, you have a contract in which the client is subject to a late fee penalty of 25percent if he or she is 30 days late in paying for your services. It also provides that you can turn this account over to an attorney who will charge an additional one-third of the balance due. This would clearly serve to impose an additional financial hardship on an individual or family who is already "strapped" with debt problems.

The information you provided indicates that you charge significant fees for credit repair and financial consultation. You have not provided any information to show that these fees are, in fact, "reasonable" for the services you perform or that they bear any relationship to the amount or difficulty of those services. That you were told they are "reasonable" is not sufficient to establish that they are, in fact, reasonable. The information you have provided indicates that you perform the following activities: You contact individuals and families and then persuade them to purchase your credit repair and consultation services. You also "pull" credit reports for clients, check for inaccuracies in credit reports, and "you contact creditors to make corrections with each credit reporting agency." If the individual "pulled" his or her own credit report and made the necessary phone calls, and wrote a letter to his creditors, it would likely be a lot less expensive. You failed to explain why your costs are so much greater than the costs an individual would incur on his own.

You operate in a manner that it is strikingly different from the charitable credit counseling organization described in Rev. Rul. 69-441. That ruling states:

> 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 in the revenue ruling assisted the debtor by using all of the debtor's funds to pay off creditors. In contrast, you put your clients in worse financial shape than they started by signing them to contracts that would result in greater financial hardship if they miss payments to you and charging very high fees for credit repair and consultation services.

Moreover, there is no evidence that your counselors are otherwise trained or qualified to provide any meaningful counseling for debt-distressed individuals. You have indicated that you will only require that your counselors be high school graduates. You will also require that they

be certified by a private certification agency. You even state that you will provide on the job training for these individuals. However, no specialized training or qualifications on counseling debt-distressed individuals is necessary to conduct your credit repair services activity.

An analysis of the information provided shows that you are operated primarily for the nonexempt purpose of operating a for-profit business. All of your revenue is currently derived from fees charged to clients for the purchase of credit repair and consultation services.

You have not provided any evidence that the fees to be charged to clients are any less than would be paid by individuals serviced by a for-profit credit repair and counseling company. In Airlie Foundation v. Commissioner, supra, one of the factors considered in assessing commerciality was the extent and degree of below cost services provided. You provided no evidence that your clients ever receive free services, or services according to their ability to pay. Although you claim you waived your fee for one client "because of her income," you have provided no written evidence that this ever occurred. Moreover, your assertion that your fees are "low" compared to "other debt repair and credit counseling companies" is self-serving and not proof of fact. Even if your assertion is true, your fees still appear to be very high for individuals and families experiencing financial hardship.

Your sliding scale used to determine the cost of your consultation fee is further evidence that you are operating a business. It would appear that these payments bear no relation to the costs of providing your service, and are a purely profit-making tool. You provided no economic rationale for the amount you charge for the service, other than if you have greater income then, you should pay more for the service. You have provided no financial studies or other information that would justify these particular fees.

Unlike the agencies in Consumer Credit Counseling Services of Alabama, you receive token or no support from contributions from the general public, government or private foundation grants, or assistance from the United Way. In fact, you have no fundraising program to solicit such contributions. By comparison, for-profit business enterprises are supported by fees paid by those who receive services. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. In B.S.W. Group, Inc. v. Commissioner, supra, the court cited lack of solicitation and sole support from fees as negative factors for exemption. See also, Easter House v. United States, supra.

You have not shown that revenue from operation of your credit/debt repair and credit consultation services are used for any purpose other than to cover operating expenses. Like any ordinary commercial business, your expenditures are almost exclusively to pay salaries and other expenses. You have not provided any information to indicate that you plan to dedicate significant revenue to activities involving educational and/or charitable programs. In having a paid staff with no volunteer help, and having no direct expenditures for charitable and educational purposes, you are similar to the organization described in Easter House v. United States, supra, where the court determined that the organization was not exempt because its conduct of adoption services activity was in furtherance of a non-exempt commercial purpose.

All of your revenue is being used predominately to operate and expand your business. You are similar to the organization described in Easter House v. United States, supra. That organization failed to make significant direct expenditures for charitable and educational purposes. Like Easter House v. United States, you function by means of a paid staff with no volunteer help. An exclusively paid staff is characteristic of a commercial corporation, rather than a charitable nonprofit organization. Moreover, you are unlike the agency held to be exempt in Consumer Credit Counseling Services of Alabama, which obtained its clients through referrals from employers, union leaders, and clergymen.

Your apparent attempt to avoid regulation under the CROA also indicates that you are operated for a substantial non-exempt purpose. See 15 U.S.C. section 1679 et seq. This statute imposes restrictions on credit repair organizations, including forbidding advance payment before services are fully performed. 15 U.S.C. section 1679b. As stated above, the courts have interpreted the CROA so as to apply to the activities of credit counseling organizations.

The information you provided can only be interpreted as evidence that you charge an advance fee, a practice forbidden to for-profit organizations under the CROA. Your credit/debt repair services program requires that prospective clients pay "up-front" fees. You only provide a waiver in the case of consultation fees for an individual or family who has income below $ . You have not provided credible evidence that any clients have received a waiver. Based on the information you have submitted, it appears that you are seeking exemption as an exempt charitable organization because your activities would not otherwise be permitted a commercial for-profit corporation. In this regard, you are similar to the organization described in FTC v. Gill, supra, in that one of your purposes appears to be evading regulation under the CROA.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations 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. To meet the requirements of this subsection, an organization must 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.

Your board of directors rather than being representative of a broad cross-section of the community consists of and her family members. You are similar to the nurses' registry described in Rev. Rul. 61-170 in that your primary purpose is to provide employment for these family members. Even if we concluded that the public received some benefit from your activities, the primary benefit of your activities will be to the members of your board.

Because and her family members control your board of directors, we also cannot conclude that your assets will not inure to their benefit. You represented that your operation is conducted out of the home of and that she and each of her family members will receive a salary and possibly other compensation. Your board, as presently constituted, has inherent conflicts of interests in determining their own compensation, the amounts to be paid for rent, and other financial matters. See Easter House, supra, in which the

taxpayer similarly failed to show that no part of its earnings inured to the benefit of any private individual. Also see Birmingham Business College, supra, where the organization was controlled by the founder and his family members.

Based on our analysis of your actual and proposed activities and, in light of the applicable law, we have determined that you are not operated for exempt purposes. Rather, you are operated primarily for the non-exempt purpose of furthering your business interests through the marketing and sale of credit repair and credit consultation services to the general public. Any activities involving "authentic" credit counseling provided to a genuine charitable class are purely incidental to your non-exempt purpose of operating an ordinary for-profit business. In addition, we conclude that your operations serve private rather than a public interests in that one of your substantial purposes is to provide employment for your board members. Moreover, you have not demonstrated that your assets will not improperly inure to the benefit of private individuals.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

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When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Debra J. Kawecki
Manager, Exempt Organizations
Technical Group 4