



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200601034**

Release Date: 01/06/2006

SE:T:EO:RA:T:1

UIL: 501.00-00

Date: 11/23/05

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

1120

Tax Years:

Dear _____ :

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

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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

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

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

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



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

Date: 10/12/05

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Legend:

B=

C=

D=

Dear :

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 have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You filed your restated Articles of Incorporation on October 10, 2003, to provide that you are now organized and operated for charitable and educational purposes under section 501(c)(3). Information provided in your Form 1023 Application, along with other supporting documentation, indicates that your primary activity involves the sale of credit repair services to individuals who pay a membership fee. You have also represented that you "educate consumers on understanding the loan and credit scoring system."

You have stated that your membership fees are your sole source of revenue, and are as follows: 60-day membership costs \$ with credit report; one year membership costs \$ with credit report. You have stated that the 60-day membership provides the following services: "Analysis for availability of government assistance; Financial planning for first time home buyers; Short-term plan of action on loan process; Analysis and review of credit report with client; Plan of action to re-establish credit (if needed)." Your one year membership provides the following services: "Analysis for availability of government assistance; Financial planning for first home buyers; Long-term plan of action for loan process; Analysis and review of

credit report with client; Plan of action to re-establish credit (if needed); Attorney negotiations of debts as needed or consolidation of debts with a Certified Public Accountant.” Your membership application also allows for applicants to have the following services charged to a credit card: “Credit Reports without score (\$); Credit Reports with score (\$).” The application states that membership fee can be paid in installments. However, the application states the following: “Installments not accepted with cash, money order or check payments.” Installment payments can only be made with a credit card.

You have indicated, in your Form 1023 Application that during the year ended December 31, 2003, you conducted “ten free seminars to make consumers aware, and to further enhance the organization objectives.” These seminars covered the following topics: “How to read and understand your credit report; How to re-establish credit after filing for bankruptcy; How to fix incorrect credit reports; Availability of government assistance for first time home buyers; Understanding credit scoring and how to improve it.” You also stated that you are providing “free educational seminars to attract new members.” These seminars are open to the general public, and “offered at public libraries, financial institutions, business sites and hotels.”

You have provided a copy of a brochure that describes, promotes, and advertises the availability of your services. In the brochure you advertise your organization as “A Non-Profit Organization.” The brochure also makes the following representation as to the benefit of membership: “Become A Member, You Can AFFORD IT! NO HIDDEN FEES!!” The brochure further states: “We can save you more than the cost of our membership. You can potentially save thousands of dollars in high interest rates alone.” Testimonials such as the following were also made: “ showed me how to raise my credit score by 40 points. I was surprised to learn a few simple tips. I never knew!” With regard to payment for your services, in the brochure you state that, “we have flexible payment options including Visa, Mastercard and American Express.

In a letter dated April 20, 2004, we requested that you submit copies of the training material you provide your counselors, including any recommended scripts for use with customers. In your response you stated the following: “There are no training materials at this time.” You did, however, provide a copy of a three-page “personalized plan of action” that an individual would use in trying to repair his/her credit record. This plan discussed the factors that are considered in determining an individual’s credit score, including the following: “Payment History; Amounts Owed; Length of Credit History; New Credit; Types of Credit in Use.” You also provided a copy of a twelve page outline of a presentation made by B on your behalf, to an unidentified audience. The title of the presentation was “ ”, and included the following topics: “ .”

Your officers and members of your Board of Directors conduct the credit repair services and seminars. You have stated that B serves as a consultant on credit law and real estate issues. Information obtained over the Internet indicates that B has an affiliation, as an attorney, with D. Your financial data for the year shows that you paid compensation and other wages, totaling \$, to B and C. Your total revenue in amounted to \$. Both B and C serve on your Board of Directors. You have not indicated that you will pay salary and/or wages to any other officers or directors. The financial data shows that you donated a total of \$ to charitable organizations in .

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings 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 exempt an organization described in section 501(c)(3), the 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 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 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.

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. 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.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S. Tax Case. 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.

Our analysis of the information you submitted shows 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). You have failed to establish that you are or will be operated for either a charitable or educational purpose. There is no evidence that your primary purpose is to provide financial education to individuals or to the general public, in that you do not have a tailored, authentic education program with a structured educational methodology in place. In fact, the administrative record demonstrates that you are operated for the substantial non-exempt purpose of conducting a commercial business. Another non-exempt purpose appears to be your operation to avoid regulation under the CROA. Your operation may also result in inurement of your assets to B and C.

You have represented that you “educate consumers on understanding the loan and credit scoring system.” 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.

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. You have failed to provide any evidence that your credit repair program is an incidental adjunct to a substantial and substantive program of public education and individual counseling. Any discussion with clients does not appear to include any educational material or counseling component. Your primary focus is 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 stated in a letter dated April 20, 2004 that you had no training materials at that time. You did, however provide a copy of a three-page "personalized plan of action" that an individual would use in trying to repair his/her credit record. These materials are designed as a tool to be used in the promotion and sale of credit repair services. Likewise, the outline of a presentation made by B to an unidentified audience is directed to the promotion and sale of credit repair services. You even stated that you are providing "free educational seminars to attract new members." There is no indication that your services are provided in the context of a systematic, structured, individually tailored educational program with a bona fide educational methodology. You, therefore, have failed to substantiate that you follow an educational methodology in operating your credit repair program. Moreover, you have not provided copies of any materials to be used in the training of your credit counselors or in the education of individuals and families who seek to purchase credit repair services.

You have provided no evidence that your interaction with clients will not 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. Your interaction with clients 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 is spent in selling credit/debt repair services, with no time spent on public education or on meaningful personal counseling. The fact that during the year ended December 31, 2004 you conducted ten free seminars, which were open to the general public, is not evidence that you are serving a charitable purpose. On the contrary, the topics covered in the seminars appear to be tailored to convince potential clients that it would be to their benefit to enroll in credit repair services program. 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 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. Your interaction with individuals and the content of the materials you have given to potential clients appears entirely aimed at selling credit/debt repair services.

The information you submitted, in support of your Form 1023 Application, is clear in showing that you are involved in a venture to promote and sell financial services, consisting of credit repair, to the general public. You have submitted no evidence that these services can be distinguished from the kind that would be provided by a for-profit credit repair business.

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 financial services 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 is a charitable activity. Since the sale of debt repair services to the general public is your primary purpose and is substantial in nature, we cannot conclude that you are operating for charitable purposes.

You also 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 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 have provided no evidence that your clients ever received free credit repair services or services on a sliding fee scale based on ability to pay. Your “marketing” seminars, although free, are not providing any free services—they are designed to sell your services for a fee. To be considered “free” these services would have to be the same services received by a client who pays the \$ or \$ fee. Furthermore, it would appear that your fees bear no relation to the costs of providing your service, and are a pure profit-making tool.

Moreover, like other for-profit companies you make payment for your services available through use of the major credit card services. In your brochure, which advertises and promotes the sale of your services in the manner of a for-profit business, you state clearly that the costs of your services can be paid with a credit card. Your membership application states that installment payments can only be made with a credit card. You have provided no economic rationale for the amount you charge for your services. You have provided no financial studies or other information that would justify these particular fees. Furthermore, your "membership fee" is similar to the fees for services charged by any for-profit business where the customer expects an immediate service/benefit in return for the payment.

As opposed to the way that most charitable organizations are funded, you do not receive significant support 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. You even stated, in your Form 1023 Application, that you would use your "free educational seminars" to attract new members as a fundraising method. This would only mean the sale of more credit repair memberships for a fee rather than public support from fundraising efforts. 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 your revenue from operation of your credit repair 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 have or will dedicate significant revenue to activities involving educational and/or charitable programs. Your financial data shows that you donated \$ to charitable organizations in that year. Your total revenue in was \$. In having a paid staff with no volunteer help, and having insignificant 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. Thus, the totality of the facts and circumstances show that you are operated for the substantial non-exempt business purpose of selling credit repair services to the general public rather than providing a public benefit to the general public.

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 repair 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 repair services program requires that prospective clients pay "up-front" fees. Based on the information you have submitted, it appears that you are seeking exemption as a 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.

You also have not shown that there will be no inurement of income accruing to the benefit of B or C. There seems to be great likelihood of inurement to these individuals in that they both serve on the Board of Directors, and have a vote on compensation arrangements, leasing arrangements, and other financial matters that would affect your financial interests as well as their own. This situation obviously gives rise to an inherent conflict of interests that could potentially, adversely impact your financial well being.

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 judgement 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).

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 do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437