



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200634045**
Release Date: 8/25/2006
Date: April 26, 2006

UIL: 501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

1120

Tax Years:

All

Dear _____ :

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

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

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

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

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,

Debra Cowen

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 23, 2006

Contact Person:

Identification Number:

UIL: 501.00-00

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

L=

Dear _____ :

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

You were incorporated on _____. Your purposes, as represented in your Articles of Incorporation, are as follows: "assist the homeless, battered and abused victims, providing counseling, guidance, resources, information to low income individual, families, and communities and the general public on maintaining finding, purchasing and keeping houses/homes, paying bills, taxes, credit cards, utilities bills, bank information and insurance, and assisting with locating housing, finances, insurance, tax preparation and credit responsibilities-Consumer Advocate Counselor."

You also represented, in your Form 1023 Application and other documentation, that you will have other activities, including operating a church, a school, a home for the aged and handicapped, and operating as a supporting organization to other organizations that are exempt under 501(c)(3). With regard to operating a church, you stated the following in your letter dated March 18, 2005: "As mentioned in previous correspondence, the church do (sic) not have a present place of worship as of yet." You also stated that "At present the church, do (sic) not have a regular congregation."

Based on the materials and information you submitted, it is clear that your primary activity will be the sale of debt management plans (DMPs). That your primary activity will be the promotion and sale of DMPs is evidenced in your sample statement of an initial encounter with

a client. In your letter dated March 18, 2005, you provided the following sample statement: "Good morning or afternoon Mr. or Mrs. Client, thank you for calling L allow us to take a moment and explain our services. L is a non-for-profit organization that (sic) main purpose is to help individual's management (sic) their budget and easy (sic) the hassassing (sic) phone calls from creditors. L is an alternative to bankruptcy; we recommend that as ones last choice. L contacts your creditors and negotiates a working payment plan; (the reason why we said WORKING) is the plan want (sic) work if you do not do your part. Mr. or Mrs. Client do you have any questions? Would you like to schedule an Assessment Interview? What is best for you morning or afternoon?" In your letter dated October 28, 2004, you stated that you would not limit your services "to any particular class of people-we welcome all classes."

Your Board of Directors will be comprised solely of three individuals. Two of these individuals are husband and wife. The other person is a cousin to the husband and wife. You have not established that these individuals will not be paid employees and/or administrators. You have provided no evidence that any of these individuals has any education or experience in matters concerning credit counseling.

In your letter dated March 18, 2005, you stated that you will charge your clients a one-time fee of \$50.00 and a monthly fee of \$30.00. In your sample service contract agreement you stated that the \$50.00 fee will include debt management services, a subscription to a monthly newsletter, and other "benefits." You indicated that the \$30.00 monthly fee will be "for paperwork handling and administrative fees." You stated, in your letter of March 1, 2005, that any "voluntary contribution" that you receive "will be used for individuals and families that cannot afford to pay the initial fee or if a family have (sic) a temporary hardship and need their payment made for a short period of time so that they can continue in the program."

You have not provided copies of any substantive educational materials that you will use to train your "counselors" or "counsel" your clients. The limited materials you provided are directed to the training of employees on how to enroll and sell DMPs to potential clients. Aside from the DMP sample contract, these materials included a client "assessment" sheet to be used to calculate monthly income and expenses. Additionally, you provided a sheet listing a client's creditors, a sample "financial schedule", and a copy of "Creditor Settlement Agreement." You did not indicate who authored these materials. You also provided no information regarding any seminars or workshops you will offer the general public nor any materials you would use to conduct such seminars or workshops.

With regard to your employees, you stated in your letter dated October 28, 2004, that your director of development and fundraising will be paid between \$ and \$; your bookkeeper will be paid between \$ and \$; your interviewers will be paid \$; your secretary will be paid between \$ and \$; and your personnel, training, and labor relations specialists will be paid between \$ and \$.

You stated, in your letter of March 18, 2005, that you will market and advertise your services over the radio, on television, through a monthly newsletter, over a website, in newspapers, word-of-mouth, and in other public forums. You also submitted a proposed advertisement budget for , which showed disbursements for radio, cable television, flyers, and newspapers.

Your proposed budgets, submitted in your Form 1023 Application, show that you expected over \$ in revenue for , and . You have projected that in each of those years you will give \$100.00 in gifts and/or grants to educational and charitable programs. You stated, in your letter dated March 18, 2005, that you expect to pay “between \$350 and \$500” in rental fees for software necessary to process your client’s DMPs. You have not provided evidence that DMP fees will not be your sole source of revenue.

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other exempt 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(b)(1)(i) of the regulations 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.

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(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically 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 the relief of the poor and distressed or of the under privileged 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 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 purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, was indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

In American Guidance Foundation v. U.S., 80-1 U.S.T.C 9452 (D.D.C. 1980), the court held that a religious organization, exempt under section 501(c)(3) of the Code, was not a church under section 170. The court reasoned that certain criteria, namely, the existence of an established congregation served by an organized ministry, the provision of regular religious services and education for the young, and the dissemination of a doctrinal code, are of central importance in distinguishing a "church" from other forms of religious organizations. Because the organization's religious activities were confined to the members of the founder's immediate family, the organization could not fulfill the association role normally associated with the term "church" and thus could not qualify as a church under section 170.

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 Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. 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. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee 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 service fees.

The court found the organizations exempt under section 501(c)(3) because providing information to the public regarding the sound use of consumer credit is charitable in that it advances and promotes education and social welfare. These programs were also educational because they instructed the public on subjects useful to the individual and beneficial to the community. The counseling assistance programs were likewise charitable and educational in nature. Because the community education and counseling assistance programs were the agencies' primary activities, the agencies were organized and operated for charitable and educational purposes. The court also concluded that the limited debt management services were an integral part of the agencies' counseling function, and thus charitable, but stated further that even if this were not the case, these activities were incidental to the agencies' principal functions.

Finally, 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) or to provide its services solely without charge. Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. They charged nominal fees for services that were incidental. Moreover, even this nominal fee was waived when payment would work a financial hardship.

In Easter House v. U.S., 12 Ct. Cl. 476 (1987), aff'd 846 F. 2d 78 (Fed. Cir 1988), the court found that adoption services were the primary activity of the organization. In deciding that the organization conducted adoption services for a business purpose rather for a charitable purpose, the court considered the manner in which the organization operated. The record established a number of factors that characterize a commercial activity and which were evident in the operations of Easter House also. The court determined that the organization competed with other commercial organizations providing similar services; fees were the only source of revenue; it accumulated very substantial profits, because it set its fees in order to generate a profit; the accumulated capital was substantially greater than the amounts spent on charitable and educational activity; and the organization did not solicit and did not plan to solicit contributions. The court also found a corporate-type structure in the classes of memberships (including a single life member having inherent power that the holder could transfer like stock), and dependence on paid employees.

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, 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 section 501(c)(3) of the Code.

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax-exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B.249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

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. The organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax-exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3). Tully v. Commisioner, T.C. Memo, 1999-216.

Our analysis of the information you submitted does not allow us to conclude that you meet the organizational requirements necessary to show that you are organized exclusively for charitable and educational purposes. Moreover, you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. 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 education program with a structured educational methodology in place. In fact, the administrative record demonstrates that you operate for the substantial non-exempt purpose of operating a commercial business, which serves to further your private financial interests. In addition, you have not shown that your income will not inure to the benefit of the members of your board of directors.

Your purposes, as stated in your Articles of Incorporation, include activities that are not in furtherance of exempt purposes, as required under section 1.501(c)(3)-1(b)(1)(i) of the regulations. Counseling clients on paying taxes, credit cards, utilities bills, insurance, and finances are not inherently exempt educational or charitable purposes. These are purposes that may be achieved in a commercial manner as well as in a charitable manner. Therefore, you are not organized exclusively for exempt purposes within the meaning of section 501(c)(3).

That you will be operated in the manner of a commercial business is reflected in the fact that your revenue will apparently come exclusively from fees charged to clients for enrollment in DMPs. You have not provided convincing evidence that you will get revenue from any sources other than fees charged for DMPs. There is no indication that you have a plan in place to solicit public contributions and/or make applications for grants. Moreover, you will advertise the availability of your services over the Internet, on television, in the newspaper and on the radio. These methods of advertising are the kind commonly used by ordinary for-profit businesses. Additionally, your proposed budgets for , and show that you do not anticipate making significant expenditures, including grants and contributions for educational or charitable programs.

You have also failed to provide any evidence that your DMP program will be an incidental adjunct to a substantial and substantive program of public education and individual counseling. You have not shown that you will have a systematic, structured, individually tailored educational program with a bona fide educational methodology. In fact, you have provided no materials that indicate you will have a substantive on-going educational program directed to the individuals and families you serve in your DMP. The limited materials you submitted, including the sample client contract, client assessment sheet, financial schedule, and creditor settlement agreement, were prepared primarily for use by the intake counselor in his efforts to enroll and sell DMPs to potential clients. You did not indicate who authored these materials, and there is no indication that they would be useful for any purpose other than enrolling individuals in DMPs.

You have provided no evidence that you will conduct "credit counseling" seminars and/or workshops directed to the general community. Moreover, you have not provided substantial evidence that you will restrict your debt management services to low-income customers. If you do have "low-income limits" for participation in your debt management program, you have provided no evidence of the specific guidelines that participants are required to meet. You have provided no advertising materials stating that your services will be restricted to low-income individuals and/or families. In fact, the information you provided indicates that your services will be available to the general public without regard to individual or family income.

Your Board is comprised solely of three individuals who are all related by blood and/or marriage. This presents an obvious and inherent conflict of interest where each individual is concerned. This arrangement means that it will be impossible for them to conduct arms-length negotiations as it relates to compensation, leasing, and other financial matters that will affect the organization's financial interests as well as their own. Thus, you have failed to establish that the income of the organization will not inure to the benefit of these three individuals, which is prohibited under section 501(c)(3).

We note that none of the members of your Board of Directors has any prior education or experience in matters directly related to credit counseling. Moreover, you have provided no credible evidence that your "counselors" have been or will be trained and certified by any "credible" credit counseling education organization.

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 sufficiently and fully described your activities as they relate to the number of people you expect to enroll in your DMP and, where, when or how you would "educate" these individuals and families, or provided evidence that you will have a substantive and substantial education program with a bona fide educational methodology, tailored to the specific needs of these individuals and families. Additionally, you have not established that you have or will meet with clients on a regular, systematic basis to provide substantive counseling in credit and financial matters. The vague and nonspecific information and documentation you provided does not meet the burden of showing that your activities and operations are such that you are entitled to recognition of exemption under section 501(c)(3). See Tully, supra.

You have not provided sufficient information and documentation to clearly establish that you will be operated as a supporting organization, a church, a school, or a home for the aged or handicapped. As to operating a school, you did not provide evidence that you will have a designated place for classes, a standardized school curriculum, a regular faculty of qualified instructors, and a regularly enrolled student body. With regard to operating as a supporting organization, you did not provide, in your Articles of Incorporation, that you are organized and operated exclusively for the benefit of, or to carry out the activities, of another specific 509(a)(1) or 509(a)(2) organization. You have not provided any evidence that you will be operating a home for the aged or handicapped. Although you may conduct some activities that are of benefit to the elderly and handicapped, you are not formed to sell or rent housing directly to the elderly or handicapped.

Lastly, you have not established that you will be operating as a church. As stated in your letter dated March 18, 2005, you do not have an established congregation, a regular place where services will be conducted, and religious services and education for the young. Like the church in American Guidance, supra, you have not shown that your religious activities are not confined to the members of the founder's immediate family.

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 file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination

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

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

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

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

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:1)
Danny Smith 3M4
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings and & Agreements

Enclosure
Notice 437