



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200803024**
Release Date: 1/18/2008

October 16, 2007

UIL:501.03-01

A = Name of Organization	Employer Identification #
B. Address of Organization	Person to Contact/ID#:
	Contact Telephone Number
	Taxpayer Advocate's Office, Address, And telephone Number:

CERTIFIED MAIL

**LAST DATE TO FILE A PETITION
IN TAX COURT**

Dear :

This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code (I.R.C.) as an organization described in I.R.C. section 501(c)(3). Internal Revenue Service recognition of your status as an organization described in I.R.C. section 501(c)(3) is revoked, effective Year 1 . Our adverse determination is made for the following reason(s):

You have not established you are operated exclusively for Charitable, Educational, Scientific, or Religious purposes because you failed to comply with the IRS's requests for information to determine if you still qualify for tax exempt status under IRC 501(c)(3).

Contributions made to you are no longer deductible as charitable contributions by donors for purposes of computing taxable income for federal income tax purposes. See Rev. Proc. 82-39 1982-2 C.B. 759, for the rules concerning the deduction of contributions made to you between February 1, and the date a public announcement, such as publication in the Internal Revenue Bulletin, is made stating that contributions to you are no longer deductible.

You are required to file income tax returns on Form 1120 for all years beginning Year 1 Returns for the years ending Year 1 and Year 2 must be filed with this office within 60 days from the date of this letter, unless a request for an extension of time is granted. Send such returns to the following

address:

Internal Revenue Service
1100 Commerce Street
MC 4920 Mandatory Review
Dallas, Tx 75242

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

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. . You may write to the Tax Court at the following address:

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

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

The last day for filing a petition for declaratory judgment is _____.

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

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above, since this person can access your tax information and can help you get answers. Or you can contact the Taxpayer Advocate office located nearest you at the address and telephone number shown in the heading of this letter.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate, can, however, see that a tax matter, that may not have been resolved through normal channels, gets prompt and proper handling.

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

This is a final revocation letter.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

**Enclosures;
Pub. 892**



**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

DEPARTMENT OF THE TREASURY
Internal Revenue Service

Date: August 28, 2007

Taxpayer Identification Number:

> A
B

Form:
990

Tax Year(s) Ended:

Person to Contact: / ID Number:

Contact Number:
Telephone:
Fax:

Certified Mail – Return Receipt Requested

Dear _____,

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, return the enclosed Form 6018 signed by an officer or authorized representative. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us, a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals Office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.


If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,



Marsha A. Ramirez,
Director, EO Examinations

ENCLOSURES:

Report of Examination: Form 4621, Form 886-A, Form 6018
Publication 892
Publication 3498

Cc:

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
A.		Year 1	

FISSUE:

Whether A (A) is operated exclusively for exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code when it fails to provide records to substantiate that it is engaged primarily in activities that accomplish an exempt purpose.

FACTS:

An audit of A (hereinafter A) for the tax year ending Year 1 was initiated on May 25, 2007.

A's Articles of Incorporation state its purpose is to provide educational programs, budget counseling and debt management services.

This purpose was restated with greater detail on A's Form 1023, *Application for recognition of exemption*, in the narrative description of Part II, *Activities and Operational information*, as "To educate and assist the public with a variety of budgeting and credit issues, special attention is given to budgeting, handling personal credit, credit facts and the consumers' rights. Education of the public in debt management is provided. Counseling to provide information on financial options to the consumer. Counseling and aid to the consumer for debt negotiation. Provide educational information in the form of newsletter, pamphlets. As well as one-on-one and group educational seminars."

A was recognized as an organization exempt from Federal Income tax under Internal Revenue Code (IRC) section 501(c)(3) on Date 1. A was also determined to not be a Private Foundation as an organization described in IRC § 509(a)(2).

In response to the notification of examination, A advised the examiner that it had ceased operations Year 3 by transferring all of its DMP client accounts to Organization 1 a non-profit organization exempt under IRC 501(c)(3). The accounts were transferred without any payment or other consideration.

In vacating its offices, A failed to retain most of its records, specifically those that would establish that its operations were primarily directed to educating the public on matters of personal finance such as the proper use of credit, developing budgets and promoting awareness of consumer's credit rights.

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
A.		Year 1	

LAW:

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c) is exempt from income tax.

Section 501(c)(3) of the Internal Revenue 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 of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in any political campaign on behalf of any candidate for public office.

The term "charitable" includes relief of the poor and distressed. Income Tax Regs. Section 1.501(c)(3)-1(d)(2).

The term "educational" includes (a) instruction or training of the individual for the purpose of improving or developing his capabilities and (b) instruction of the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3).

Section 1.501 (c)(3)-1 (a)(1) of the Regulations provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

The existence of a substantial nonexempt purpose, regardless of the number or importance of exempt purposes, will cause failure of the operational test. Better Business Bureau of Washington. D.C. v. U.S., 326 U.S. 279 (1945).

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.

An organization must establish that it serves a public rather than a private interest and "that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests." Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Prohibited private interests include those of unrelated third parties as well as insiders. Christian Stewardship Assistance. Inc. v. Commissioner, 70 T.C. 1037 (1978); American Campaign. Academy v. Commissioner, 92 T.C. 1053 (1989). Private benefits include an "advantage; profit; fruit; privilege; gain; [or] interest." Retired Teachers Legal Fund v. Commissioner, 78 T.C. 280, 286 (1982).

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
A.		Year 1	

The Service has issued two rulings holding credit counseling organizations to be tax exempt.

Rev. Rul. 65-299, 1965-2 C.B. 165, granted exemption to a 501(c)(4) organization whose purpose was to assist families and individuals with financial problems and to help reduce the incidence of personal bankruptcy. Its primary activity appears to have been meeting with people in financial difficulties to "analyze the specific problems involved and counsel on the payment of their debts." The organization also advised applicants on proration and payment of debts, negotiated with creditors and set up debt repayment plans. It did not restrict its services to the needy. It made no charge for the counseling services, indicating they were separate from the debt repayment arrangements. It made "a nominal charge" for monthly prorating services to cover postage and supplies. For financial support, it relied upon voluntary contributions from local businesses, lending agencies, and labor unions.

Rev. Rul. 69-441, 1969-2 C.B. 115, granted 501(c)(3) status to an organization with two functions: it educated the public on personal money management, using films, speakers, and publications, and provided individual counseling to "low-income individuals and families." As part of its counseling, it established budget plans, i.e., debt management plans, for some of its clients. The debt management services were provided without charge. The organization was supported by contributions primarily from creditors. By virtue of aiding low income people, without charge, as well as providing education to the public, the organization qualified for section 501(c)(3) status.

In the case of Consumer Credit Counseling Service of Alabama, Inc. v. U.S., 44 A.F.T.R. 2nd 78-5052 (D.D.C. 1978), the District Court for the District of Columbia held that a credit counseling organization qualified as charitable and educational under section 501(c)(3). It fulfilled charitable purposes by educating the public on subjects useful to the individual and beneficial to the community. Treas. Reg. § 1.501(c)(3)-1(d)(3)(i)(b). For this, it charged no fee. The court found that the counseling programs were also educational and charitable; the debt management and creditor intercession activities were "an integral part" of the agencies' counseling function and thus were charitable and educational. Even if this were not the case the court viewed the debt management and creditor intercession activities as incidental to the agencies' principal functions, as only approximately 12 percent of the counselors' time was applied to debt management programs and the charge for the service was "nominal." The court also considered the facts that the agency was publicly supported and that it had a board dominated by members of the general public as factors indicating a charitable operation. See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S.T.C. 9468 (D.D.C. 1979), in which the facts and legal analysis were virtually identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, *Supra*, discussed immediately above.

The organizations included in the above decision waived the monthly fees when the payments would cause a financial hardship. The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way.

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
A.		Year 1	

Section 6001 of the Code provides that every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title.

IRC Section 6033(b) states, in part, that every organization described in section 501(c)(3) which is subject to the requirements of subsection (a) shall furnish annually information, at such time and in such manner as the Secretary may by forms or regulations prescribe, setting forth)1) its gross income for the year; (2) its expenses attributable to such income and incurred within the year; (3) its disbursements within the year for the purposes for which it is exempt; (4) a balance sheet showing its assets, liabilities, and net worth as of the beginning of such year; (5) the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors; (6) the names and addresses of its foundation managers (within the meaning of section 4946(b)(1)) and highly compensated employees; (7) the compensation and other payments made during the year to each individual described in paragraph (6); (9) such other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in section 501(c) (other than paragraph (3) thereof) or section 527 as the Secretary may require to prevent a diversion of funds from the organization's exempt purpose, or misallocation of revenue or expense.

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

Revenue Ruling 59-95, 1959-1 CB 627, held that an organization's failure or inability to file the required information return or otherwise to comply with the provision of section 6033 of the Code and the regulations which implement it, may result in the termination of its exempt status, on the grounds that the organization has not established that it is observing the conditions required for the continuation of an exempt status.

EXPLANATION OF ITEMS

Name of Taxpayer:	Tax Identification Number	Year / Period Ended:	Date of Report
A.		Year 1	

DISCUSSION and ANALYSIS:

A determination of an organization's exempt status as an organization described in §501(c)(3), is based on both its stated exempt purposes and its methods of operating to accomplish its purposes. These are both factual determinations. The burden of demonstrating its continued entitlement to recognition under §501(c)(3) lies with A.

The first requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the organizational test. The language included in A's Articles of Incorporation properly limits its activities to those permitted by IRC §501(c)(3). Thus, satisfying this test.

The second requirement of Treasury Regulation Section 1.501 (c)(3)-1 (a)(1) is the operational test. An organization must sufficiently establish that it operates for a qualified public purpose rather than for the benefit of private interests.

A is unable to provide any documents to establish that it was operating primarily in furtherance of a qualified exempt purpose. The record clearly shows that A engaged in establishing Debt Management Plans (DMP) for consumers who met the participation criteria set by their creditors. However, a DMP that lacks additional educational aspects is not an activity qualifying for exemption. Although, A may have conducted numerous activities to educate the public on matters of personal finance, it failed to maintain records to support this claim.

Much like the organization in Rev. Rul. 59-95, 1959-1 CB 627, A is unable to provide any of the information required by IRC §6033 regarding its income and expenses. Nor can it provide records or details about the programs and activities it engaged in during Tax Year ended Year 1. It is A's burden to establish that it is in compliance with the provisions governing its tax exemption status. Without adequate records A cannot overcome this hurdle to continue as an exempt organization.

TAXPAYER'S POSITION:

While A's President and only remaining Director, Officer 1, believes that many consumers were helped and educated by A's telephonic one-on-one counseling activities, she recognizes that records were not properly maintained when the organization ceased its activities and concedes that A is unable to satisfy the "Operational test" of Section 1.501 (c)(3)-1 (a)(1) of the Regulations.

CONCLUSION:

As a result of A's inability to substantiate, in a material way that it was operated exclusively for charitable purposes within the purview of §501(c)(3), its exemption status shall be revoked as of Year 1, the first day of the period under examination.