



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release number: **200824025**
Release Date: 6/13/08
Date: March 18, 2008

UIL Code: 501.00-00

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
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.

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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

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



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date: January 18, 2008

UIL: 501.00-00

Contact Person:

Identification Number:

FAX Number:

Employer Identification Number:

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 conclude that you do not qualify for exemption under that section. The reasons for our conclusion are set forth below.

Your Certificate of Restated Articles of Incorporation specifies that you were "organized exclusively for religious, education, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3)" Your Charter does not further describe your operations but these are elaborated on in the bylaws you submitted.

Section 1.2 of your bylaws describes your operations as follows: "(1) Access to information and networking opportunities related to the enhancement of financial well-being for the members; (2) Continued financial educational support as the members work toward building/rebuilding their asset base; and (3) Access to low cost financial services for people that are working toward self sufficiency and economic literacy."

Section 1.3 of your bylaws states that you will provide the following benefits to your members:

- a. Provide disadvantaged youth, adults, and the disabled community with a foundation in economic literacy education, savings and financial management;
- b. Assist in the repair and building a positive credit profile;
- c. Instill asset and wealth accumulation strategies;
- d. Provide investment and retirement strategies;
- e. Facilitate home ownership purchases and education for new home buyers;
- f. Facilitate ownership of assisted technology and van and home modifications for members with disabilities;
- g. Invest in micro and small business ventures with loans and equity infusion; and

- h. Provide reasonably priced financial services and resources to assist in maintaining financial credibility.

Section 3.1 of your bylaws defines the qualifications for membership as follows: "... individuals who have demonstrated the initiative to enhance their financial well-being through financial education, members, clients, program participants and graduates, staff, and officials of the sponsor organizations, all individuals in the state ... who are defined as having a disability by the Americans with Disabilities Act, family members of those individuals, disability advocates located in ... and disability caregivers located in"

Your sponsor organizations include federal and state credit unions, community development organizations and credit counseling services. New sponsor organizations may join your network pursuant to a vote of two-thirds of the board of directors. Members, clients, program participants and graduates, along with the staff and officials of your sponsor organizations are eligible for membership along with their representatives that serve on your board of directors. Section 3.2 of your bylaws provides that the membership fee will be established annually by your board. Additional information you submitted indicates that your current membership fee is \$ per year.

The fact-sheet you submitted with your September 29, 2006 letter and your describes you as a statewide, member driven organization with the purpose of fostering financial literacy and economic independence among your members. It further describes you as a collaborative effort between community-based organizations offering services that include financial education, access to affordable financial services at participating "member" credit unions, small business start-up services, credit counseling/repair, and cooperative buying services. Depending on the service, it may be offered by you directly or through one of your "partners."

Per the summary fact sheet you submitted, your goals include:

- Providing financial services designed to meet the unique needs of different target populations, including but not limited to:
 - People with disabilities
 - 1st time car buyers/home owners
 - Start up Business Owners and Microentrepreneurs and
 - Graduates of credit counseling services.
- Negotiating cooperative buying pools for products and services.
- Supporting organizational networking among those working with populations seeking to improve their financial well-being.
- Advocating policies in support of financial education.

In addition to the fact-sheet and _____, you submitted several tri-fold handouts to be distributed to potential members describing your services to include Consumer Financial Information, Disability Resources, Affordable Financial Services, and Business Support Services along with the availability of discounted products and services. One program, in particular, includes access to savings and checking accounts and other banking services at your member credit unions. Your website states that you will offer "member discounts" and that you have "member only programs." On your webpage, you have language that encourages your credit union and other partners to "Get More Information on Advertising" and you display their logos.

You also plan to operate a program that will focus on providing information and assistance to disabled individuals seeking "to apply for low-interest loans for assistive technology." You have indicated that this program will be made exclusively available to members.

LAW

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

Section 1.501(c)(3)-1(c)(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 and 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 and operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders or the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

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

In 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.

ANALYSIS

The information in your Form 1023 shows that although many of your activities are educational, your primary purpose is to operate a clearinghouse of financial services on behalf of your "member" credit unions and other "sponsoring" organizations that provide financial products and services to their members as well as your membership. These products and services are available to all members upon payment of a \$ membership fee. You state that "Membership is open to any individual who is genuinely committed to improving their own financial well-being." Your bylaws do not limit your membership to the poor, disabled or any other charitable class. In fact, your membership criteria are so broad as to include a cross section of the general public. You indicate that individuals who join your organization will also be eligible to join the member credit unions. You are managed by a board of directors made up of individuals representing the member credit unions and other sponsoring organizations.

In furtherance of your goals, you identify and connect members with sponsor organizations that offer the desired services and products. You approach these service providers as an aggregator of its membership and to negotiate discounts on products and services on behalf of the membership. That your primary focus will be the provision of services to your members is

reflected in your _____, your fact-sheets and your handouts. For example, language in pamphlets you provided mentioned that you will offer "member discounts" and that "Special discounts are available to our members for products & service used most often. Visit our website often to see what discounts are available to you." In your facts-sheets, you clearly state that your goals include: "Providing financial services designed to meet the unique needs of different target populations, including but not limited to: people with disabilities, 1st time car buyers/home owners, Start up Business Owners and Micro-entrepreneurs and Graduates of credit counseling services." Moreover, on your website, you encourage credit unions and other member partners to "Get Information on Advertising" and you display their logos. The educational information offered on your website is restricted to those who are members.

Thus, it is clear that you primarily use your _____, and other materials to promote the availability of discounted financial products and services to participating members, thereby promoting their private financial interests through the savings that are exclusively available to them. The _____ also serves to encourage those who are not members to consider membership in your organization or membership in one of your partner organizations, in order to avail themselves of access to these discounted products and services. The member credit unions and sponsoring partners benefit financially from an increase in the stream of possible new members who will likely purchase the discounted products and services. You have provided no evidence that membership and access to your various services is based on need, or restricted to low-income individuals.

Based on our analysis of your actual and proposed activities, and in light of the applicable law, we have concluded that some of your activities do in fact serve an educational purpose. However, when we consider the totality of your activities, it becomes clear that your primary purpose is to operate for the non-exempt purpose of promoting the substantial private business and financial interests of your member credit unions, sponsoring organizations, and individual members.

We note that your Board of Directors is comprised exclusively of "member" credit unions and other "sponsoring" organizations. As such, the Board of Directors, as presently constituted, gives rise to an obvious conflict of interest, in that any policy decisions made by the board would appear to be solely to promote and protect the financial interests of the organizations that make available discounted financial products and services to individual members who seek to purchase these products and services. This conflict would include controlling the price of products and services, and controlling the amount of any membership fee to be paid by participating members. Control over the pricing of products and services results in the conferring of private benefit to the "member" credit unions and other "sponsoring" organizations.

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.

Your protest statement should be accompanied by the following declaration:

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

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)

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,

Debra Cowen

Robert Choi
Director, Exempt Organizations
Rulings & Agreements