DEPARTMENT OF THE TREASURY

TAX EXEMPT AND GOVERNMENT ENTITIES DIVISION

Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75242

Number: **200837047**
Release Date: 9/12/2008

July 10, 2008

UIL: 501.03-01

LEGEND
ORG = Organization name XX = Date

ORG
ADDRESS

Person to Contact:
Identification Number:
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN:

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: ________________

Dear :

This is a Final Adverse Determination Letter as to Accelerated Trust, Inc's exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reasons:

You have not been operating exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3). ORG also is not a charitable organization within the meaning of Treasury Regulations section 1.501(c)(3)-1(d). You are not an organization which operates exclusively for one or more of the exempt purposes which would qualify it as an exempt organization. You operate substantially for a non-exempt purpose, for private benefit, and its earnings inure to the benefit of private individuals.

Based upon these reasons, we are retroactively revoking your IRC section 501(c)(3) tax exempt status to January 1, 20XX.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of 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 the rules for initiating suits for declaratory judgment.

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.

You can call and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling or writing to: Internal Revenue Service, Taxpayer Advocates Office.

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 section 6104(c) of the Internal Revenue Code.

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

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

October 18, 2007

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:
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, take no further action. 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:
Publication 892
Publication 3498
Report of Examination

LEGEND
Org = Organization name XX = Date Address = address XYZ = State City = city CO-1 = 1st company EMP-1 = 1st employee Director 1, 2, 3, 4, & 5 = 1st, 2nd, 3rd, 4th, & 5th director

ISSUES

1. Whether ORG is operated exclusively for exempt purposes described within Internal Revenue Code section 501(c)(3):

    a. Whether ORG is engaged primarily in activities that accomplish an exempt purpose?

    b. Whether more than an insubstantial part of ORG's activities are in furtherance of a non-exempt purpose?

    c. Whether ORG was operated for the purpose of conferring private benefit rather serving a public interest?

FACTS

Background:
On July 10, 20XX, ORG filed original articles of incorporation with the XYZ Secretary of State. The articles of incorporation provided that its purpose was "exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code or any corresponding section of any future federal tax code."

The following individuals were listed as ORG's directors:

Director-1
Director-2
Director-3

On July 25, 20XX, ORG (ORG) filed a Form 1023, Application for Recognition of Exemption, with the Internal Revenue Service. In its Form 1023 application, ORG provides the following in Part II, Activities and Operational Information:

1. Organization formed to educate and help individuals and families who have incurred a large amount of unsecured debt (credit card, department store credit, medical bills, old utility bills, etc.) to understand there is another alternative to overwhelming debt besides bankruptcy and incurring more debt through debt consolidation loans

2. Primary activities planned are budget restructuring and debt counseling. ORG will help individuals and families avoid bankruptcy by negotiating with their creditors to lower the monthly interest charged to these people, allowing them to make a larger payment to the principal debt and thereby eventually paying the principal debt in full, allowing the creditor to make their money on the principal amount charged and not having to lose money through a bankruptcy default or loss due to charge-off.

The Form 1023 states that the organization limited its benefits/services to individuals who meet the following requirements:

1. Have to be 18 years or older
2. Must be more than $ in debt
3. Have the desire to eliminate debt
4. Wish to pay their bill, but are buried under the heavy interest rates and would like to avoid bankruptcy or a debt consolidation loan

ORG also stated it will target individuals with low income that can't afford to pay higher fees charged by For-Profit Corporations

The Form 1023 also provides that 70% ORG's income would come from creditor donations and the remaining 30% from debtor's fees.

When ORG submitted its Form 1023 application, the following individuals were listed as its officers and directors:

Position	Name	Address
Director	Director-1	Address City, XYZ
Director	Director-2	Address City, XYZ
Director	Director-3	Address City, XYZ
Director	Director-4	Address City, XYZ
Director	Director-5	Address City, XYZ

In a determination letter dated October 24, 20XX, ORG was recognized as exempt from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

Examination:
On July 30, 20XX, Revenue Agent conducted an interview with Director-1 & 2 the President and Vice President of ORG, respectively. Based on the interview the Revenue Agent established that ORG was founded by Director-1 and applied for exemption in 20XX in order to receive fair share payments from creditors which required recipients to be a 501(c)(3) organization. Director-1 & 2 own a related for-profit entity, CO-1, which predates the exempt entity. CO-1 provided marketing services for ORG. The marketing consisted of maintaining the website which contained the educational materials and providing leads for ORG. CO-1 was paid $ in the year ended December 31, 20XX for services provided to ORG. There was no formal agreement between the related parties.

The activities of ORG consist of providing credit counseling and debt management programs services to qualified individuals. All services of the organization are provided over the telephone by Director-1 & 2. Neither individual received any formal credit counseling education or training as of the year ended December 31, 20XX. EMP-1 provided the educational material for ORG. EMP-1 wrote several credit and debt management articles and posted them on his website. EMP-1's website contained information about ORG and thereby served as a source for prospective clients. ORG stated that 75% of the individuals that call received credit counseling, educational materials, or referrals to other services. Only 25% of the callers qualified and were put on a debt management program.

The primary source of revenue for the organization is generated from providing debt management program services to its clients and a very small amount is from fair share payments. Credit card companies now require organizations to apply for grants instead of making a regular fair share payment to the organization. The organization has applied for these grants and received funds in 20XX and 20XX.

ORG does not limit it services to the poor and distressed, but offers their services to any qualified individual having a problem meeting their financial obligations. The organization charges an initial set-up fee ranging from $ to $ to sign up for the debt management program. The organization also charges a monthly processing fee that ranges from $ to $ per month depending on the amount of the clients debt. ORG's set-up and monthly processing fees were determined by following creditors guidelines. None of the fees charged by ORG for services were waived during 20XX. Director-1 stated "If the client cannot afford to pay the fees they probably cannot afford to make the DMP payments and will not qualify for DMP."

Since the organization's primary activity is providing debt management programs to the public and it does not limit it services to the poor and distressed class of people, the organization is operating in a commercial manner. While ORG may provide some

educational and credit counseling services, the manner in which it operates is indicative of a business, rather than an organization described in section 501(c)(3) of the Code. The organization's primary activity does not qualify as an exempt activity as described in Internal Revenue Code section 501(c)(3).

LAW

Section 501(a) of the Internal Revenue Code provides that an organization described in section 501(c)(3) is exempt from income tax. 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 inure to the benefit of any private shareholder or individual. The term charitable includes relief of the poor and distressed. Section 1.501(c)(3)-1(d)(2), Income Tax Regulations.

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). In other words, the two components of education are public education and individual training.

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.

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. 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).

Educational purposes include instruction or training of the individual for the purpose of improving or developing his capabilities and instruction of the public on useful and beneficial subjects. Treas. Reg. § 1.501(c)(3)-1(d)(3). In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. 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 the status of an organization that provided analyses of securities and industries and of the economic climate in general. The organization sold subscriptions to various periodicals and services providing advice for purchases of individual securities. Although the court noted that education is a broad concept, and assumed for the sake of argument that the organization had an educational purpose, it 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.

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).

An organization formed to educate people in Hawaii in the theory and practice of "est" was determined by the Tax Court to a part of a "franchise system which is operated for private benefit," and, therefore, should not be recognized as exempt under section 501(c)(3) of the Code. est of Hawaii v. Commissioner, 71 T.C. 1067, 1080 (1979). Although the organization was not formally controlled by the same individuals who controlled the for-profit entity that owned the license to the "est" body of knowledge, publications, and methods, the for-profit entity exerted considerable control over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court stated that the fact that the organization's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit entities were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether the for-profit entity benefited substantially from the operation of the organization. The court determined that there was a substantial private benefit because the organization "was simply the instrument to subsidize the for-profit corporations and not vice versa and had no life independent of those corporations."

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.2d 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, discussed immediately above.

The organizations included in the above decision waived the monthly fees when the payments would work 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.

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.

Internal Revenue Code section 501(c)(3) specifies that an exempt organization described therein is one in which "no part of the net of earnings inures to the benefit of any private shareholder or individual." 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. Treas. Reg. § 1.501(a)-1(c). The inurement prohibition provision "is designed to prevent the siphoning of charitable receipts to insiders of the charity . . . ." United Cancer Council v. Commissioner, 165 F.3d 1173 (7th Cir. 1999). Reasonable compensation does not constitute inurement. Birmingham Business College v. Commissioner, 276 F.2d 476, 480 (5th Cir. 1960).

Where an organization provided a source of credit to companies of which a private shareholder was either an employee or an owner, the court found that a portion of the organization's net earnings inured to the benefit of that private shareholder. Easter House v. United States, 12 Cl. Ct. 476 (1987). That such loans were made showed that the companies controlled by the private shareholder had a "source of loan credit" in the organization.

The Credit Repair Organizations Act (CROA), 15 U.S.C. § 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. § 1679b. Significantly, section 501(c)(3) organizations are 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. § 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).

Businesses are prohibited from cold-calling consumers who have put their phone numbers on the National Do-Not-Call Registry, which is maintained by the Federal Trade Commission. 16 C.F.R. § 310.4(b)(1)(iii)(B); 47 C.F.R. § 64.1200(c)(2). Section 501(c)(3) organizations are not subject to this rule against cold-calling. Because 501(c)(3) organizations are exempt from regulation under the CROA and the cold-calling restrictions, organizations that are involved in credit repair have added incentives to be recognized as section 501(c)(3) organizations even if they do not intend to operate primarily for exempt purposes.

GOVERNMENT'S POSITION

Based on the examination conducted, it has been concluded that ORG does not continue to qualify for tax-exempt status as an organization described in section 501(c)(3) of the Code. ORG does not meet the operational test, because more than an insubstantial part of its activities are commercial in nature. By definition, Internal Revenue Code section 501(c)(3) organizations will only qualify for tax exempt status if it is organized and operated exclusively for charitable purposes. Thus, to meet the requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests. ORG is operating in a commercial manner which is not an exempt activity described under Internal Revenue Code section 501(c)(3).

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 purpose of carrying on an unrelated trade or business, as defined in IRC section 513. An organization, which is organized and operated for the primary purpose of carrying on an unrelated trade or business, is not exempt under section 501(c)(3).

The purpose of ORG's activities differs substantially from those of the organizations in Rev. Rul. 65-299, Rev. Rul. 69-441, and Consumer Credit Counseling Service of Alabama, Inc. v. U.S. In this case, ORG engages in minimal activities which further an exempt purpose. Additionally, there is no waiver of fees for persons who are unable to afford the services of ORG. The facts show that ORG received exemption in order to receive fair share payments from its credit counseling operations. The credit counseling operations during this period did not meet the requirements to be exempt. One hundred percent of the funds received by the organization were from DMP clients or fair share payments from creditors.

CROA was enacted to protect consumers by banning certain deceptive practices in the credit counseling industry. If ORG were a for-profit company, CROA would prohibit it from charging fees in advance of fully providing services. In addition, if ORG were for-profit, federal law would prohibit it from purchasing leads and making cold calls to potential customers. Because 501(c)(3) organizations are exempted from provisions of CROA, ORG is able to engage in business practices that Congress intended to prohibit when it passed CROA. As such, ORG is operated for a substantial non-exempt purpose—that of carrying on a business while avoiding certain federal regulations. In addition, ORG could not collect "fair share" payments from creditors if it did not have exempt status. The entire DMP business depended on an organization having tax-exempt status. ORG was formed for the private benefit of its principals. Substantially all operations were performed as a for-profit corporation.

TAXPAYER'S POSITION

The taxpayer has agreed to not contest the proposed revocation by executing a Form 6018.

CONCLUSION

It is the conclusion of the Service that ORG does not qualify for tax exempt status as a credit counseling organization described in section 501(c)(3) of the Code. ORG is not operated exclusively for exempt purposes, because it does not engage primarily in activities that accomplish an exempt purpose, more than an insubstantial part of ORG's

activities are in furtherance of a non-exempt purpose, and ORG is operated for the purpose of serving a private benefit rather than public interests. Accordingly, it is determined that ORG is not an organization described in section 501(c)(3), and is not exempt from income tax under section 501, effective January 1, 20XX.