



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **200946058**
Release Date: 11/13/09
Date: 8/21/09
UIL Code: 501.36-01

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.

Since 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.

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, you should 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.

Letter 4038(CG) (11-2005)
Catalog Number 47632S

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: 8/21/09

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

A = Date

B = Name of State

C = Name of Individual

M = Name of Entity

UIL Nos: 501.36-01
501.33-00

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.

ISSUE:

Do you, M, qualify for recognition of tax exemption under section 501(c)(3) of the Code?

FACTS:

You are a corporation formed on A, and operate pursuant to the laws of the State of B. Your Articles of Incorporation state that your specific purpose is to educate individuals on managing their credit and debt, and hold seminars on how to prepare for retirement, purchase homes, and save for future education expenses.

You state that your counseling activities are conducted over the telephone and the Internet. You do not meet customers face to face. Your counseling methodology relies heavily on a wizard-based counseling system in which a computer program is used to provide counselors with questions to ask the customer and a medium to document the answers without having to type anything. In addition to predefined questions and statements, the counseling interface provides the counselor with frequently asked questions, calculators and utilities that are specific to the

topics being discussed. While the customer does most of the talking, the counselor provides the system with the input to configure the correct automated solution. This system will provide the same quality of service for all customers, regardless of the counselor's experience.

The credit counseling process is completed in four primary phases:

1. **Development of Life Situation:** The counselor collects the following information prompted by the counseling wizard interface program:
 - **General Inquiry:** Personal information and credit history are gathered.
 - **Preliminary Questioning:** The customer's financial situation and general feelings are collected.
 - **Preliminary Budget:** The customer's income and expense information are gathered.
2. **Life Situation Analysis:** The counselor collects the following information prompted by the counseling wizard program:
 - **Issue Specific Questioning:** information about foreclosure, repossession, bankruptcy, credit cards, student loans, and utility bills are collected.
 - **Supplementary Budget:** Further financial information is collected to reconcile major differences between the client's budgets.
 - **Debt Management Determination:** If during the evaluation of the customer's life situation, debt management plan was flagged as a possible solution for the customer, the system and counselor would use the established conditions to determine whether a customer should enroll in the DMP. The determination process is guided by the counseling wizard program.
3. **Customer Education and Issue Resolution:** The counselor provides explanations, tips, and other resources on specific issues such as payday loans, student loans, utility bills, repossessions, bankruptcy, foreclosure, and credit card if applicable. Issues are presented by the wizard-based computer system once specific questioning and supplementary budget have been completed.
4. **Resolution Implementation and Procedures:** After client education, the final step in the counseling session is the implementation of any necessary follow-up actions. In most situations there are three things that can occur at the end of the counseling session; the call is terminated without referring the customer to third parties, the call is terminated after the customer has been referred to a third party for further assistance on issues discussed, or the customer begins the process of completing an internal resolution option or program.

According to your description of activities, your planned programs are as follows:

1. **Advanced Credit Education:** This is the initial credit counseling session that consists of three parts: development, analysis, and resolution of life situations. You offer this counseling service free of charge.
2. **Credit Advantage Plus:** This program is intended for consumers who have very little to no credit history such as young Americans between the ages of 18 through 25 to improve their credit situation. For a fee, you generate an action plan for your customers

using information gathered through your credit counseling session and a credit report from a credit rating agency.

3. **Advanced Bankruptcy Education:** While you are currently not licensed as an approved counseling agency to provide both pre-bankruptcy and post-bankruptcy counseling and issue certificates to the public, you plan to seek such approval from the United States Trustee's Office to offer this service to the public.
4. **Enhanced Housing Solutions Program:** This program is designed for individuals seeking to purchase a new home, dealing with delinquent mortgages and other issues relating to home financing. At the moment, your housing counseling program is still being developed and is not yet operational. Thus, all customers in need of housing education will be referred to certified HUD housing counselors.
5. **Debt Management Program (DMP):** Under this program, you will formulate a repayment plan with the customer's creditors to pay off unsecured debt. Your wizard-based debt management system configures the proper monthly payment amount to arrive at a proposal to the creditors. You negotiate the repayment amounts and fees with each creditor. The average length customers are expected to be on the DMP program is between two to five years. Some creditors may pay you a percentage of debt collect through the DMP in the form fair share payments. You have not provided specific information regarding the amounts of fair share payments you will receive. You indicate that you will treat your customers the same regardless if their creditors pay fair share or not.
6. **Advanced Budgeting Plus (Also labeled as Advanced Real-Time Budgeting Program):** The customer uses this program to manage their finances such as personal budgeting, weekly financial planning, and bill payment.
7. **Collections Workout Program:** This program facilitates a repayment plan that can help customers payback virtually any type of debt. The customer has an option to use "Automatic Bill Payment Plan" that is used by customers in your DMP program.
8. **Educational Seminars:** The program provides information to the public about personal finance, personal credit and debt consolidation. You plan to make available credit education seminars to graduating high school seniors, college students and retirees to inform them about the pitfalls of poor credit management. You have not provided any written educational materials, the dates and times of your seminars or names and qualifications of your instructors relating to your educational seminars.

Your total projected income for 2009 is \$ _____ and 2010, \$ _____. **All of your income is derived from fees for services to be rendered.** Your largest source of income is fees received from your debt management program (DMP). Your total projected expense for 2009 is \$ _____ and 2010 is \$ _____. Among your expenses, payroll expenses represent about two-thirds of your total expenditures.

Below is a chart listing your planned programs, the percentage of time, the fees charged, and the projected income from each of your planned programs.

Programs	% to Activity	Fees	Projected Income 2009	% to Total Income	Projected Income 2010	% to Total Income
Advanced Credit Education		None				
Credit Advantage Plus						
Advance Bankruptcy Education						
Enhanced Housing Solutions						
Debt Management Plan (DMP)						
Advanced Budgeting Plus						
Collections Workout Program						
Educational Seminars						
<i>Total Income</i>						

As part of the solutions you offer in the Life Management portion of your _____, you put forth to your customers various product options to improve their financial standing for a service fee. In particular, your debt management program (DMP) will comprise _____ percent of your total activities and will generate _____ percent of your total revenues.

In order to participate in the DMP program, the customer's must have over _____ in unsecured debt. Customers are required to a pay a fee not exceeding _____ for participation in the DMP program. Based on your script, you state that debt management program is but one of your core solutions that you offer. However, when clients are behind on their payments to creditors, your script steers clients to participate in your DMP program. For example,

Because you have been past due, damage to your credit history may have already occurred. However, there is still a possibility that some creditors may not have yet reported your accounts to the credit bureaus as being late or past due and they may or may not be calling yet with regards to the accounts. If you can afford to pay the past due amounts to bring your accounts current before your next due date and a repayment plan is chosen as a part of the overall solution, then we may be able to setup the program in such a way to help possibly reduce your chances of being reported as past due to the credit bureaus... Do you want to try setup the program in such a way to help minimize the possibility of being reported as late to the credit bureaus during the beginning stages of the program... That's great!...

The criteria for which the DMP option is recommended are:

- Customer has good credit, but is living paycheck to paycheck, accounts are current but has less than 300 hundred dollars of surplus income after paying credit cards with higher interest rates (15% and above); or
- Customer has good credit, current right now, but may soon have negative income due to a pending job loss; or

- Customer has good credit, is current, but has little left (less than 100) with lower interest rate accounts (14% and below); or
- Customer has bad credit, recent past due accounts (less than 8 months since last payment), delinquent but not yet charged off.

You provide that the length of time for the initial session, the options discussed in that session, and the type of help that the client needs will help dictate when you recommend a specific approach. Using the DMP program as an example, if time allows and the customer is prepared, you can recommend it as a solution and get a contract submitted to the customer the same day.

You state that bonuses maybe paid out quarterly and that payment of bonuses is dependent on your overall financial health. None of your _____ are at present certified by counseling agencies such as _____

Fee waivers will be given to individuals in situations where financial circumstance may prohibit them from participating in your services. Although you state that you will offer fee waivers, you have not provided information as to how your fee waiver policy and the specific criteria you use in waiving your fees have been made known to the public.

Through the correspondence dated November 18, 2008, we requested that you verify our telephone conversation with C on October 29, 2008, in which C stated that it would not be economically viable for you to operate without your DMP program. In response, you maintain that you do not operate with an overreliance on your DMP program. You claim that you operate in compliance with section 501(q) of the Code. Moreover, you state that section 501(q) of the Code permits consumer credit counseling organizations to receive a maximum threshold of 50 percent of their revenues from debt management plans. Furthermore, you assert that the Service has verbally requested that you reduce your DMP activities to no more than 10 percent of your total activities despite the fact that there is no such requirement either in the Internal Revenue Code or in the Income Tax Regulations.

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 its net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code states that an organization that provides credit counseling services will not qualify for exemption under section 501(c)(3) unless it is organized and operated in accordance with specific requirements.

The organization's fee policy must indicate that the fees charged are reasonable and allow for the waiver of fees for consumers who are unable to pay. Additionally, the revenues of the organization, that are from payments from creditors of the organization's clients, which are attributable to debt management plan services, cannot exceed 50 percent of the total revenues of the organization.

Section 501(q) of the Code also provides that fees from debt management plan services are treated as income from unrelated trade or business under section 513 of the Code unless the debt management plan services contribute importantly to the credit counseling services and is not conducted on a larger scale than is reasonably necessary for the accomplishment of such

services.

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

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. It is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

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

In Revenue Ruling 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.

Section 4.03 of Rev. Proc. 2008-9, 2008-2 I.R.B., provides 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 restatement 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 for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, the Service will generally issue a proposed adverse determination letter or ruling.

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 B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial. In addition, the court found that the organization’s financing did not resemble that of the typical 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than “cost.” And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Airlie Foundation v. Internal Revenue Service, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the “commerciality” doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. “Among the major factors courts have considered in assessing commerciality are competition with for-profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, *inter alia*, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.”

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S. Tax Cas. 9660 (D.D.C. 1978), the court held an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service, which had been recognized as exempt under section 501(c)(3) in a group ruling, is an umbrella organization made up of numerous credit counseling service agencies. In this case, these agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. The professional counselors used only 12 percent of their time for debt management programs. They did not limit these services to low-income individuals and families, but they provided their services free of charge. The court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3). Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. A nominal fee was charged for the debt management services but was waived when payment would work a financial hardship.

The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from fees. Thus, the court concluded that “each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization.” See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the

law was identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

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 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Revenue Ruling 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Revenue Ruling 73-569, 1973-2 C.B. 179 (free counseling to pregnant women); Revenue Ruling 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Revenue Ruling 70-640, 1970-2 C.B. 117 (free marriage counseling); Revenue Ruling 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.

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.

Solution Plus, Inc. v. Commissioner of Internal Revenue, T.C. Memo. 2008-21, held that an organization primarily engaged in provision of debt management programs (DMPs) did not operate exclusively for charitable purposes and did not qualify for tax exemption under section 501(c)(3) of the Code. The court focused on organization's operations to decide whether it satisfied the operational test. Factors that the court considered included: (a) the organization's primary activity which was the provision of DMPs to the general public for a fee from its customers and its customers' creditors; (b) the organization's conduct of this activity in a self-promotional and profit-maximizing manner; (c) the fact that the organization did not limit its DMP services to low-income individuals; and (d) the organization has not established that its proposed DMP fee structure was reasonable. Thus, the court concluded that petitioner did not operate exclusively for charitable purposes.

For an organization claiming the benefits of section 501(c)(3), "exemption is a privilege, a matter of grace rather than right." Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849, 857 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973). The applicant for tax-exempt status under section 501(c)(3) has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson v. Commissioner, 30 T.C. 1151, 1154 (1958). Harding Hospital, Inc. v. United States, 505 F.2d 1068 (6th Cir. 1974), provides that an organization seeking a determination letter or ruling as to the recognition of its tax-exempt status has the burden of proving that it satisfies all of the requirements of the particular tax-exemption category.

RATIONALE:

Based on our analysis of the information you submitted, we conclude that you do not satisfy the operational requirements of the Code and Regulations to be recognized as tax exempt under section 501(c)(3) of the Code. In fact, the administrative record demonstrates that you will

operate for the substantial non-exempt purpose of operating a commercial business. Like a commercial trade or business, you are primarily operated to offer products and services to your customers for a fee. Like a commercial debt consolidation firm, you offer various debt repayment products including Credit Advantage Plus, Advanced Bankruptcy Education, Enhanced Housing Solutions, Debt Management Program, Advanced Budgeting Plus and Collections Workout Program to your customers for a fee.

Our review of the information you submitted shows that you operate for substantial non-exempt commercial purposes in contravention of section 501(c)(3). To qualify under section 501(c)(3), an organization cannot have a non-exempt purpose that is more than insubstantial. However, your DMPs and other debt repayment programs occupy more than insubstantial portion your total activity and revenues. Selling and administering debt management plans (DMPs), debt repayment services and financial services are not inherently charitable or educational activities and may constitute commercial activities. Your activities appear to have an underlying commercial motive that distinguishes your educational activities from that carried out by a university. See Better Business Bureau of Washington D.C., Inc. v. United States *supra*.

You are similar to the organization described in B.S.W. Group, Inc. v. Commissioner, *supra*. Your activities constitute the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Your primary purpose is not charitable or educational, but rather commercial. Like a for-profit business, the vast majority of your revenues are from fees paid by those who receive services from you. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. Your fees however, are set high enough to recoup all projected costs and to produce a profit.

You meet the factors cited in Airlie Foundation v. Internal Revenue Service, *supra*, exemplifying a commercial operation. The services you provide, including debt management plans, collections workout plans and debt repayment programs are in direct competition with similar services offered by debt consolidation firms. These are services are typical of a for-profit debt consolidation firms. Like a for-profit business, your services are rendered in exchange for a fee. You will compensate your counselors with bonuses based on your overall financial health. You intend to advertise your services on your website to the public in a like manner to a for-profit business and do not limit your counseling and consulting services to a charitable class of individuals. Your income is derived solely from fees charged from services rendered. You have not shown that you have an established public fundraising program and have yet to receive any form of charitable contributions from the public. Moreover, you have provided no evidence that your fees will bear any relation to the costs of providing your service, and will not be a purely profit-making tool. You have provided no economic rationale for the amount you will charge for your services. You have provided no financial studies or other information that would justify the amount of any particular fee. Therefore, you have met many of the factors cited Airlie Foundation v. Internal Revenue Service, *supra*, in demonstrating a commercial manner of operation.

Moreover, you represent that you will not limit your services to a particular charitable class of individuals such as minorities, low-income, or elderly. There are no limitations of your services, except with respect to those individuals and their families who would clearly benefit from those services. You do not relieve the poor and distressed as shown in section 1.501(c)(3)-1(d)(2) of the Regulations. Therefore, you are unlike the organization described in Revenue Ruling 69-441, 1969-2 C.B. 115, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed. The organization described in the Revenue Ruling 69-441 also provided educational and counseling programs free of charge. You state that you will waive your fees for those unable to pay for your services. However, you have provided no

evidence that your customers will ever receive free services, or services according to their ability to pay. The information you present to the public do not show any written evidence of your fee waiver policy.

You are unlike the organizations described in Rev. Rul. 78-99, Rev. Rul. 76-205, Rev. Rul. 73-569, Rev. Rul. 70-590, Rev. Rul. 70-640, Rev. Rul. 68-71, as you are not supported by contributions from the public and most of your programs are not free of charge.

Your financial structure does not resemble that of a typical charity either because it solely relies upon revenues earned by selling your DMPs, collections workout plans and other debt repayment programs to your customers. You have not demonstrated that you have an established fundraising program. Thus, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, Inc. v. United States, *supra*, which received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. These organizations only received an incidental amount of their revenues from fees. Therefore, you are operated in the manner of a trade or business.

Your operational focus is on your debt management plans and debt repayment programs for a fee rather than financial education. You have not shown that you are operated exclusively to educate individuals for the purpose of improving or developing their capabilities. You seek to expand your client base and add new customers to your planned programs in order to generate revenues. Despite your claim that you will offer educational seminars to high school seniors, college students and retirees, you have not provided any educational materials relating to the seminars in plan to conduct. Once a customer signs up for your DMP services, all you will do is to provide audits to verify accuracy of information in the accounts and confirm the terms of negotiations agreed upon with creditors. Although there is an educational component to your credit counseling program, the public benefit from this single program appears limited compared to your overall debt repayment counseling services and debt management plans you provide. It is clear from your planned programs that your primary purpose is the sale and servicing of DMPs, debt repayment programs, and other services for a fee rather than public education. Accordingly, we conclude that you have a substantial non-exempt commercial purpose. You are similar to the organization described in American Institute for Economic Research v. United States, *supra*, in which the court held that the organization's sale of publications and sale of advice for a fee to individuals, were indicative of a business. Therefore, the organization had a significant non-exempt commercial purpose that was not incidental to the exempt purpose, and was not entitled to be regarded as tax exempt.

You are comparable to the organization described in Solution Plus, Inc. v. Commissioner of Internal Revenue Service, *supra*, in that your primary activity is the provision of DMPs to your customers for a fee. You devote 45 percent of your total activities to the operation of your DMP program. More than 56 percent of your revenues are generated through the operation of your DMP program. Like the organization described in Solution Plus, Inc. v. Commissioner of Internal Revenue Service, *supra*, your DMP operations comprise a substantial component of your overall operations. Additionally, you conduct your activities in a self-promotional and profit-maximizing manner. You do not limit your DMP services strictly to low-income individuals. You have not established that your proposed DMP fee structure is reasonable. Therefore, you are not operated exclusively for a charitable purpose but rather, for a substantial non-exempt commercial purpose.

Applicant's Position:

You state that you do not operate with an overreliance on your DMP program. You indicate that because your DMP revenues are not greater than 50 percent, you operate within the requirements of section 501(q) of the Code. In addition, as neither the Internal Revenue Code nor the Income Tax Regulations provide for a specific percentage limitation on the operations of the DMP program, you believe that you meet the requirements for recognition of tax exemption under section 501(c)(3) of the Code.

Service Response to Applicant's Position:

We concur that neither the Internal Revenue Code nor the Income Tax Regulations establish a set percentage of time and resources that a consumer credit counseling organization may devote to the operation of its DMP program. As there is no established percentage that a credit counseling organization may devote to DMP services, the Service does not request that you limit your DMP services to 10 percent of your overall services. However section 501(q) of the Code does state that fees from debt management plan services are treated as income from unrelated trade or business under section 513 of the Code unless the debt management plan services contribute importantly to the credit counseling services *and is not conducted on a larger scale than is reasonably necessary for the accomplishment of such services*. As your primary activity is the operation of debt management plans, your DMP services appear to be conducted on a larger scale than is reasonably necessary for the accomplishment of your credit counseling services.

Moreover, even if your revenues from DMP services are 50 percent or less, this does not necessarily mean that you meet the requirements of section 501(q) of the Code. Section 501(q) of the Code states that the revenues of the organization, that are from payments from creditors of the organization's clients which are attributable to debt management plan services, cannot exceed 50 percent of the total revenues of the organization. This provision of the Code establishes that consumer credit counseling agencies may not receive **fair share payments** from DMP services in excess of 50 percent of total revenues in order to be in compliance with section 501(q) of the Code. **This provision does not specifically limit the amount of revenues from the overall operation of debt management plans by a consumer counseling organization.** Although you represent that your income from fair share will be within the limitations of section 501(q) of the Code, you have not provided specific information regarding the amount of fair share payments you will receive from creditors. You have not described the proposals that you send to creditors and the fair-share payment that will you receive from the creditors in sufficient detail to show that you are in compliance with section 501(q) of the Code. As described in Harding Hospital, Inc. v. United States, Nelson v. Commissioner, Christian Echoes National Ministry, Inc. v. United States, and Rev. Proc. 2008-9, *supra*, the burden is on the applicant organization to demonstrate that it has met the specific requirements of the particular provisions of the Code and Regulations for which it is seeking recognition of tax-exempt status.

Conclusion:

You do not meet the requirements under sections 501(c)(3) and 501(q) of the Code because you fail the operational test. As your primary purpose is to sell DMPs and other financial debt repayment services rather than to educate the general public, we find that you operate for a substantial non-exempt commercial purpose. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code or under any other section of the Internal Revenue Code.

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. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in 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 appeal 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 the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201
Attn:

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202
Attn:

You may 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,

Robert Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure: Publication 892