



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: 201117036  
Release Date: 4-29-2011  
Date: February 2, 2011  
UIL Code: 501.32-00  
501.36-01  
501.33-00

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.

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,

Lois G. Lerner  
Director, Exempt Organizations

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: December 8, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = State

C = State

D = Date

M = Organization.

O = Web site

P = Vendor

R = Program

UIL Nos: 501.32.00  
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 qualify for recognition of tax exemption under section 501(c)(3) of the Code? No, for the following stated reasons, you do not qualify.

**Facts**

You are a corporation formed on D, and operate pursuant to the laws of the State of B. Your Articles of Incorporation state that you are organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

In your application, you describe your activities as follows:

You, (M), shall provide Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) compliant Pre Bankruptcy counseling via telephone interview and online education/information collection sessions.

Cost/fee for this service is \$ . A sliding scale for fees will be applied for distressed clients unable to pay for counseling.

A portion of the Post Bankruptcy counseling may be completed online with third party assistance from P. P is a non profit credit counseling agency, that has developed an online program (R) to fulfill the counseling requirements of the BPACPA. There is a small cost/fee of \$ per online session, and/or a work booklet.

You shall issue upon completion, the appropriate certificates of completion for bankruptcy counseling. No additional fee is charged for issuance of certificates of completion. The fee for counseling session(s) shall be paid prior to issuance of certificates. A sliding scale for fees shall be applied for distressed clients unable to pay for counseling.

You shall assist client(s) with identification of debt for possible inclusion in the bankruptcy petition. Important debt information includes the name and address of each creditor, balance of account, and current owners of debt(s) in question. Most credit reports do not include creditors contact information. All three credit bureau reports for an individual may have a cost/fee of \$ (\$ per bureau roughly). Since credit reporting agencies do not allow the resale of their credit reports, a custom report developed from the data from all three credit bureaus has been designed to be provided to individual clients.

You stated that since each consumer's situation is different, not only in the content of their situation but in the form of communication they choose to use with your counselors, there will be no set counseling time. You provided the guidelines and noted that the minimum time frames you expect range from 5 minutes to 2 hours depending on the subject and client.

You described your anticipated interactions with clients from the first encounter through the completion of the relationship. It is expected that all counseling will be provided via the internet. That is not to say that client contact will not occur via the telephone or in person. Counseling may be completed via these media. However, all initial contact is expected to be through your website. Those clients, who contact you via the website, Q, will be greeted by a home page explaining services. If they decide to use those services they will be able to proceed into the website, complete a registration, and, depending on the service chosen, the client will be prompted to complete data collection forms using their personal financial information, so as to assist the counselor in providing the counseling needed for the services the consumer is trying to receive. Clients who need assistance in the completion of the forms will have a number of ways to contact counselors for assistance. Clients will be able to email, telephone or mail questions which will be answered in the order received, during normal business hours. Counselors will be able to access the consumer's application, assist the client in completing it or review it for counseling and certification. Counselors will be able to contact clients via e-mail, telephone or mail to ask questions and provide the necessary counseling based upon the needs of the client's situation. All applications for assistance will be completed in a timely fashion by professionally trained, certified, and caring consumer credit counselors. Regardless of which services the client chooses, the counseling session will be tailored by the counselor to fit the client's specific and individual financial needs, while staying within compliance of the US Trustees' requirements for certification.

You provided a step by step summary of your registration process and pre-petition bankruptcy counseling.

- Once the consumer enters the website and has chosen to utilize your services, the consumer creates an account by entering user name, password, social security number, first name, last name, e-mail, phone number, address, city, state, and zip code.
- After account is created, the consumer is allowed to access the services: pre-petition bankruptcy

counseling, post bankruptcy financial management course, budget calculator, credit bureau dispute kit, credit report request, education/self help resources, edit account information, company contact information, and donations.

- Pre-Petition page explains the process the consumer will go through, the cost for the service, how payment can be made, the information they will need to have available, the time frames involved for counseling and processing, and how to obtain a fee waiver.
- The next web page is where payment is collected. The consumer will have various choices for the payment.
- Once payment information is completed, the next page collects the consumer's personal information: spouse's name and social security number, contact phone number, and best contact time.
- On the next web page, the consumer enters income information: gross monthly household income, client and spouse's per pay period and paycheck frequency, social security or pension income, and other income.
- On the next web page, the consumer enters expense information: mortgage payments, rent, utility expenses, car payments and maintenance costs, telephone and cable payments, food expenses, insurance and medical expenses, and other expenses.
- On the next web page, the consumer enters asset information: value of home and property, value of vehicles, value of miscellaneous household goods, and other assets.
- On the next web page, the consumer enters the creditors' information: creditor name, current balance, and monthly payment. As an option, the consumer can enter current interest rate and delinquency status.
- The next page is a summary page that compiles all of the information the consumer entered, allowing the consumer to ensure the information accuracy. The page will show net monthly income for payments to creditors and net equity.
- The next page asks the consumer to give a written explanation of his/her current financial status and to explain what caused the financial crisis they are facing. The page also asks if they have any current legal actions against them and if they face foreclosure, eviction, repossession, garnishment, or utility disconnection.
- The consumer chooses preferred form of communications and counseling: online instant messaging, telephone, e-mail, and letter or in person. Once communication and counseling method and preferred contact time is chosen, the final page will confirm the consumer's completion of the registration form being sent to your counseling center.
- After the completion of registration and information gathering, an employee will get the notification and go to the administrative section of the website to find and print out the completed registration. A client file will be created, payment will be processed and the file will match social security number and name. The counselor will then review the data entered by the consumer starting with the consumer's explanation. The counselor will then check the consumer's financial situation to see if their budget is balanced and if there is a positive cash flow left over. The counselor will then review the consumer's assets and liabilities and check the net result and whether it is in the positive or negative. The counselor will then review the consumer's creditors and if there is money left over in the client's budget also a possible

repayment plan. Once the counselor has reviewed the consumer's financial situation the consumer will be contacted using the consumer's preferred contact method. The counselor will ask the consumer any needed follow up questions, advise on possible adjustments to make the budget more efficient, suggest alternative options, refer the consumer to any services that might assist them and answer any of the consumer's questions without giving legal advice. Once counseling is completed the counselor will issue a written review of the counseling session and the certificate of counseling, sending it to the consumer and the consumer's attorney if requested.

For the pre-discharge financial management course you will use the R course developed by the non-profit credit counseling agency, P. All consumers utilizing your services for pre-discharge financial management certification will utilize the "R" online course. No other services offered by P are expected to be used nor is there any kind of partnership other than the client's use of their education program. All payment for those services will be collected by you through your website or via money order through the mail. P will then be paid as a vendor for services provided to you. Payment is a base charge for each client registered with their website for course completion. Consumers wishing to utilize this service will register through your website. Once registration is complete, payment collected, and identities verified for US Trustee compliance, the consumers will be e-mailed, telephoned or mailed the instructions and codes needed to take the course online. They will then be able to take this course at their leisure, spending a minimum of two hours on the course. Once the course is completed you will be notified via e-mail of the client's completion, with notification of the final grade. If the consumer passes the course, a certificate will be issued and then mailed, e-mailed or faxed to the consumer. If the consumer does not successfully complete the course a follow up e-mail or phone call will be placed to the consumer to review the areas missed.

Links will be available through your internet site to your other services. Those wishing to use your budget calculator will click on the appropriate link, which will connect them with a spreadsheet where they can enter their income and living expenses. This spreadsheet will calculate how much income they have available for debt repayment. The spreadsheet will then have the consumer list their creditor information, showing monthly payments, interest rates, and balances due. The spreadsheet will then calculate the total debt, the consumer's debt to income ratio, and provide an approximate term of repayment based upon the total of the monthly payments. This page will allow users to print out the budget and results. Those wishing to use your "kit" to submit disputed information to one of the Credit Bureaus will click on the appropriate link which will give access to an explanation page. The fee for this kit is expected to be \$ If they wish to purchase the kit they will fill out the purchase request form with the appropriate payment information. A notification of purchase will be sent to your counseling center and a kit will be forwarded to the consumer, once payment has been processed. A link also will be available to connect those interested in purchasing a credit report. They will be asked to fill out the purchase request form with the appropriate payment information. A notification of purchase will be sent to our counseling center and a report will be pulled once payment has been processed. Finally, those wishing to find further educational resources will click on your educational/self-help resource link. This will take them to your educational resources section where the consumer will find free printable pamphlets, worksheets and links on budgeting, shopping, saving, foreclosure, bankruptcy, and so forth. You will create these pamphlets and worksheets once approval has been obtained. The links will be only to free internet resources, other non-profit services or government agencies, since your policy is to do no direct referrals to for profit companies.

You stated that you will spend about fifty (50) percent of the time on pre-bankruptcy counseling and twenty-five (25) percent on post-bankruptcy and twenty-five (25) percent on credit history dispute and other activities. You also stated that your objective is to provide all counseling via the internet. For those who do not have access to the internet, you will collect information and conduct the counseling via telephone or in-person. However, you anticipate that in-person or telephone counseling will be minimal, since your marketing will be strictly internet directed.



Revenue projections that you have submitted also indicate that you expect that most of your income will come from fees collected for the provision of counseling and other services over the internet. In addition to the fees you charge to your clients via your website, you state that you have a plan to raise funds through grant applications to governments, and solicitations to corporations and non-profit organizations. However, you allocated only \$ for grant proposals, and there is no other fundraising expense indicated in your proposed budget.

You state that you do not plan on targeting any specific populations among bankruptcy bound people. However, you intend to open offices in two geographic areas, B and C, that have experienced high rates of bankruptcy filings. Nevertheless, you will make your marketing and services available to all groups in all geographic areas since your operation is internet-based.

You will offer the counseling for free or at a reduced fee for those who meet the criteria for the eligibility as follows: "The counseling fee will be reduced or waived if the consumer can provide proof that; they are receiving free legal assistance from Legal Aid, that the court has agreed to waive their filing fee, or that their current household income is equal to or less than the estimated poverty threshold for their applicable family size as published in the current Federal Poverty Levels Guidelines." You estimate that one percent of the clients may use the means test to apply for low or no cost service.

According to the meeting minutes of your governing body, only one board meeting has occurred. The meeting, held on December 8, , authorized the applications for tax exemption and bankruptcy counseling agency. The only board member participating was selected as president and secretary, the sole identified officer of the organization.

In correspondence you also provided descriptions of two typical counseling sessions. Although the specific facts differed, in both scenarios the counselor discusses financial options and recommends cutting expenditures, consideration of what would be needed to satisfy outstanding debts, the impact that liquidation of assets would have on the client's financial situation and the impact the bankruptcy option will have on their ability to borrow in the future. Both scenarios end with the counselor issuing certificates of counseling without any closer look at other options to bankruptcy filing.

## Law

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of 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. These requirements include that the organization provide credit counseling services tailored to the specific needs and circumstances of consumers, and that the organization is organized and operated in accordance with the following requirements:

(A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

(C) The organization establishes and implements a fee policy which--

(i) requires that any fees charged to a consumer for services are reasonable,

(ii) allows for the waiver of fees if the consumer is unable to pay, and

(iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(D) At all times the organization has a board of directors or other governing body--

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

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 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) of the Code. 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)(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 Internal Revenue Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, which held the funds in a trust account and disbursed the funds on a partial payment basis to



the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon voluntary contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling as a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

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

In 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) organization. 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 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.

In Airlie Foundation v. Commissioner, 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 Solution Plus, Inc. v. Commissioner of Internal Revenue, T.C. Memo. 2008-21: Taxpayer, corporation engaged in provision of debt management programs (DMPs) and also purportedly engaged in financial management education, failed organizational test for charitable tax-exempt status; articles of incorporation did not limit taxpayer's activities to educational ones, no educational materials were offered other than one-page handouts, planned student education programs were an insignificant part of taxpayer's overall activities, and the entire credit counseling program was geared toward DMPs. The court focused on petitioner's operations to decide whether petitioner satisfies the operational test: (a) Petitioner's primary activity would be to provide DMPs to the general public for a fee that it hopes to collect from its customers and from its customers' creditors; (b) petitioner would conduct this activity in a self-promotional and profit-maximizing manner; (c) petitioner would not limit its DMP services to low-income individuals; and (d) petitioner has not established that its proposed DMP fee structure is reasonable, and the court concluded that petitioner does not, or, more accurately, would not, operate exclusively for charitable purposes.

### **Application of Law**

Tax exemption is recognized for organizations that have organizational structures and operations that are exclusively charitable and/or educational. Based on an analysis of the information you submitted, you do not satisfy the operational requirements of the Internal Revenue Code and Regulations to be recognized as 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.

#### **Not Exclusively Charitable and/or Educational**

Based on the information you provided in your application and supporting documentation, you are not operated for exempt purposes under section 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, educational, or other exempt purpose. You failed to meet the operational test of section 1.501(c)(3)-1(a)(1) and section 1.501(c)(3)-1(c)(1) of the Regulations because you are organized for substantial private and commercial purposes, and operate in the same manner as a private commercial entity.

To qualify under IRC section 501(c)(3), an organization cannot have a non-exempt purpose that is more than insubstantial. Your primary activity is the provision of pre-bankruptcy certification and post-bankruptcy counseling for fees. You devote most of your time and activities to selling bankruptcy certifications to the general public under the guise of financial counseling. You have not shown that you are operated exclusively to educate individuals for the purpose of improving or developing their capabilities. Rather, the fact that no educational materials will be provided unless the client registers for a counseling session is an indication of operation for a primarily business purpose. Your primary focus is to expand your client base and to issue bankruptcy certificates as quickly as possible in order to generate revenue. Analogous to the organization described in Better Business Bureau of Washington D.C., Inc. v. United States *supra*, your activities appear to have an underlying commercial motive that distinguishes your educational activities from that carried out by a university or educational institution.

You do not limit your services to a particular charitable class of individuals such as minorities, low-income, or elderly, as described in section 1.501(c)(3)-1(d)(2) of the Regulations. There are no limitations of your services, except with respect to those individuals and their families who would clearly benefit from those services. 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 had 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 apply a sliding scale for fees or waive a fee for those unable to pay. However, a sliding fee scale is not evident, and according to the forecast you provided, the anticipated amount of fee waiver is less than one percent of the total fees you will charge. Such nominal fee waiver for less than one percent of the people you will serve does not satisfy the charitable purpose requirement under Code section 501(c)(3) and Section 1.501(c)(3)-1(d)(2) of the Regulations.

You do not operate a substantive on-going educational program. Your operational focus is on fees generated from the issuance of pre-bankruptcy and post-bankruptcy certificates rather than providing on-going financial education for the general public. Your role is to register clients and issue certifications after fees have been collected. You have failed to substantiate that you follow an educational methodology. You do not conduct any seminars, workshops, interactive on-line classes, or other educational forums on money management, consumer buying, budgeting, or financial management. It is clear from your own description that your primary purpose is the sale of bankruptcy certificates for a fee rather than financial education of the public as a whole. Pre-bankruptcy counseling consists of information gathering and a recommendation and advice session that concludes with issuing a certification. There is a significant dearth of educational elements. Your post-bankruptcy service is not educational because you do not actually conduct the post-bankruptcy class. You are, in fact, a middleman that connects your clients to the company that specializes in post-bankruptcy education. This supports the conclusion 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 activities, the sale of publications and the sale of advice for a fee to individuals, were indicative of a business. Therefore, since the organization had a significant non-exempt commercial purpose that was not incidental to the exempt purpose, it was not entitled to be regarded as tax exempt.

#### Commerciality

In Airlie Foundation v. Commissioner, *supra*, the court cited several aspects of an organization's activities that exemplified a commercial operation. Like a trade or business, your services are rendered in exchange for a fee. The information you present to the public through your planned website predominantly features your pre-bankruptcy and post bankruptcy certification services but does not mention that you provide any form of on-going interactive public educational program on financial matters. You do not limit your counseling services to a charitable class of individuals. 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. Therefore, you have manifested many of the factors cited in Airlie Foundation v. Commissioner, *supra*, demonstrating a commercial manner of operation.

Your financial structure does not resemble that of a typical charity because it relies primarily on revenues earned by selling your bankruptcy certification services to the public. The income from fees is more than enough to cover your operation. Furthermore, your registration process and web site set up begins with fee payment, after the collection of basic personal information, which illustrates that the fee revenue is the main source of the income and the primary concern. 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 received only an incidental amount of their revenues from fees. Unlike these organizations, M is operated in the manner of a trade or business.

#### Basic Business Purpose

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, most of your revenue comes from fees paid by those who receive pre-bankruptcy counseling and post-bankruptcy service. You stated that you also will raise funds through fundraising and grant applications. However, you allocated only one thousand dollars to support fundraising efforts and do not have a solid, feasible funding plan. In fact, your fee structure and policies are sufficient to support your entire operation without help from outside donations. While charitable institutions often do provide personal and tailored services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. However, you are set up to rely on the fees you charge. There is not much need of any other source of income because computer based counseling will greatly reduce the cost of operation.

You are also similar to the organization in Solution Plus, Inc. v. Commissioner of Internal Revenue Service, *supra*, which the court concluded did not operate exclusively for charitable and educational public purposes. The primary activity of the organization in this case was providing Debt Management Plans (DMP's) to the public for fees. In many respects this is quite similar to your organization. M's counseling serves as a means to support and justify a client choice to file for bankruptcy and for M to issue a certification. M's primary activity is to provide bankruptcy certifications for fees in a self-promotional and profit-maximizing manner.

#### IRC section 501(q)

You have not demonstrated that the structure and operation of your governing body conforms to requirements under IRC sections 501(c)(3) and 501(q). The fact that you have provided minutes for only one board meeting indicating participation by only one board member, who is compensated by the organization, and is apparently the organization's sole officer, further supports the conclusion that you are operated in the same manner as a private, for-profit enterprise. Therefore, you do not operate exclusively for charitable and public purposes.

In addition, IRC section 501(q) requires that the organization must provide credit counseling services tailored to the specific needs and circumstances of consumers. According to your online counseling web pages and samples provided, most of your processes and activities will be accomplished by means of a sophisticated computer program. There will be minimal person-to-person counseling - that is especially true for the online method of counseling. Although you have made person-to-person and telephone counseling available, these alternatives are a very small portion of your credit counseling activity. Therefore, it is evident that you do not provide counseling that is tailored to the specific needs and circumstances of each client in a manner consistent with the requirements of section 501(q) of the Code.



## Conclusion

In summary, you do not meet the requirements under IRC section 501(c)(3) because you fail both the organizational and operational tests. You have not established an educational methodology, and your primary purpose is to sell certifications for the bankruptcy filing rather than to educate and counsel the general public. You operate for non-exempt commercial purposes, and you have failed to establish that your activities further a tax-exempt purpose within the meaning of IRC section 501(c)(3). Accordingly, you do not qualify for exemption as an organization described in IRC section 501(c)(3), 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. 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](http://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

Deliver to:

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

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