



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201311029**  
Release Date: 3/15/2013  
Date: December 21, 2012  
UIL Code: 501.00-00  
501.32-00  
501.33-00  
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.

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

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and 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: November 1, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

D= date  
E= date  
F= date  
G= state  
L= individual  
M= business  
p = dollar amount

UIL Numbers:

501.00-00  
501.32-00  
501.33-00  
501.36-01

Dear \_\_\_\_\_ :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

**Issues**

Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.

Do you meet the requirements under section 501(q) of the Code? No, for the reasons described below.

**Facts**

You were incorporated on D as a nonprofit corporation under G law. Your Articles of Incorporation ("Articles") state that you are organized for exclusively 501(c)(3) purposes.

Your primary activity is providing mortgage mitigation services to homeowners who face possible foreclosures. This includes homebuyer education, counseling, default management and education, foreclosure prevention and counseling, community outreach and assistance to help families obtain/sustain homeownership. You promote

your services through HUD, government agencies, banks, lenders and other businesses. Your mortgage counseling process is as follows:

- 1) A client would first contact you, then complete a Client Intake Form, Financial Assessment Form, List of Creditors and completes the reason for delinquency.

The Client Intake Form is a two page form that lists the property, mortgage, and lender information.

The Financial Assessment Form is a one page form that lists the client's personal and financial information.

- 2) The client signs the Authorization Form which authorizes you to contact lenders for negotiation.
- 3) The client submits proof of income (current pay stubs for one month), two most recent bank statements and tax returns, and the most recent mortgage statement. In the event that the client does not have any of these documents, he/she fills out a form that explains why he/she does not have the document.
- 4) You prepare a cover letter and send it with the above documents to the lender.

The cover letter is a one-page letter with the loan number, name of mortgagor, and property address, which asks for a loan modification due to financial hardship.

- 5) You or the client may contact the lender for a follow up.
- 6) The lender informs you of the result.
- 7) You present the results from the lender to your client to avoid foreclosure.

You will conduct homebuyer workshops, classes, and seminars in connection with your mortgage mitigation service. You plan to spend half of your time on workshops, classes, and seminars. You have not yet conducted any educational activities although you have been providing mortgage mitigation counseling. You did not provide details regarding how you will conduct these educational activities. Nor have you conducted any fundraising to date. You plan to conduct fundraising activities once you receive non-profit organization status. You do not have concrete fundraising plans other than two solicitation letters to communities and governmental institutions.

Your service is available to any family that is delinquent on their mortgage. You have conducted mortgage counseling and provided actual forms and logs for the people to whom you have provided services. You stated that you have had no clients when we asked the number of clients you have served. Later you explained that you do not think of them as clients because you did not obtain them through marketing efforts. You do not charge fees for your mortgage mitigation services. Instead, you will apply for HUD

housing counseling agency certification to receive HUD grants or payments. You are also seeking donations from the public.

You have five board members. Among them, L, your president and founder, is the only director/employee who conducts mortgage mitigation counseling and educational activities. His compensation is budgeted at p dollars annually along with a health insurance benefit for each year in which you are in full operation. Your income is expected to be at least \$                      annually during this period. We requested all of your board minutes from your inception. You provided board minutes for one meeting that recorded a resolution for your corporation reinstatement with the State of G. This meeting was held on E. You sent additional board minutes for a meeting that recorded an election of one additional board member. No other minutes were provided.

You stated that you have not had any income or expenses since your inception. However, you have had a lease with M (an unrelated third party) for over two years and the lease payments have been paid by L. You did not provide any evidence or indication whether the lease payments made by L are a loan or a donation. You did indicate that the lease, application fee, and all other fees have been paid out of L's own personal funds and L was prepared for the upfront expenses to start a business.

#### **Law**

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

Section 501(c)(3) of the Code provides that corporations may be exempt from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

(1)(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.

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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) 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(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must show that it serves a public rather than a private interest and specifically 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) in its generally accepted legal sense and includes the relief of the poor and distressed or of the underprivileged.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates 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 Rev. Rul. 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.

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, holding the funds in a trust account and disbursing 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 contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The ruling 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.

The ruling compared this holding with the holding of Rev. Rul. 65-299, which holds that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)).

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. 178 (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.

Rev. Proc. 86-43, 1986-2 C.B. 729, describes the methodology test the Internal Revenue Service uses to determine when the advocacy of a particular viewpoint or position is educational under sections 501(c)(3) of the Code and 1.501(c)(3)-1(d)(3) of the regulations. The revenue procedure states that the focus of section 1.501(c)(3)-1(d)(3) is on the method the organization uses to communicate to others, not the content of its communication. The method of communication is not educational "if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." One factor indicating the method is not educational is as follows: "[t]he approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter." The remaining factors relate specifically to advocacy organizations and the "full and fair exposition" part of the regulation.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held that an organization seeking a ruling as to recognition of its tax-exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code 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, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was 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." 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.T.C. 9660 (D.D.C. 1978), the court held that 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 of Alabama is an umbrella organization made up of numerous credit counseling service agencies. 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. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee 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 the United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded, "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 Case. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service was its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Salvation Navy v. Commissioner, T.C.M. 2002-275 (2002), the Tax Court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that it was not organized to serve the private interests of its founder.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner \* \* \* because they will be turned away unless they meet the criteria of the participating creditors."

### **Application of Law**

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3). Section 1.501(c)(3)-1(a)(1) of the regulations. Based on the information you provided in your application and supporting documentation, you fail the operational test.

### Operational Test

To satisfy the 501(c)(3) operational test, an organization must establish that it is operated exclusively for one or more exempt purposes. See section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you are operated exclusively for one or more exempt purposes.

### *Your Activities Are Not Educational*

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, above, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities because you do not offer counseling that is structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. Rather you are similar to the organization in Solution Plus, Inc. v. Commissioner, above because your goal is not providing the best solution to homeowners who are

experiencing a hardship, rather, you are providing a mitigation service. You gather homeowners' financial data and documents needed to submit to their lender for mortgage mitigation, prepare loan mitigation paper work, search for the right mitigation channel, and negotiate with lenders for lower mortgage payments. Because such work does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process this is not educational. See Rev. Proc. 86-43, above. Accordingly, you failed to establish that your interactions with clients provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

Although you stated that educational workshops and seminars will be your primary activity, you have not conducted any educational activities thus far. You have provided mortgage mitigation services and have an office space for that. Moreover, you did not provide a detailed plan for how, when, and where you will conduct your educational activities, nor have you submitted copies of any educational materials, agendas or schedule of sessions. See Harding Hospital, Inc. v. United States and Salvation Navy v. Commissioner, above. You have the burden of proving that you satisfy the requirements for exemption. Therefore, you are similar to Harding Hospital and Salvation Navy in that you failed to provide a detailed plan of your proposed activities. Furthermore, even if you conduct the educational workshops and seminars as indicated, you do not qualify for exemption under section 501(c)(3) of the Code because your mortgage mitigation service, which is not an exempt activity, is more than a substantial portion of your activity. See, Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), in which 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.

#### *Your Activities Are Not Charitable*

Half of your time and resources are devoted to providing foreclosure consulting (mortgage mitigation) services to any family that is delinquent on their mortgage. Such families are not necessarily poor or distressed. Therefore, your foreclosure mitigation services do not further charitable purposes. Helping any individual avoid taking a loss or having to go through the foreclosure process does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, above and Rev. Rul. 69-441, above which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

#### *You Have a Substantial Nonexempt Commercial Purpose*

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. See B.S.W. Group and Easter House above. Generally, the factors proffered by courts focus on the nature of the activities and how an organization conducts its business. Your activities consist of providing mortgage mitigation services to individuals, which has no educational

component. It consists solely of gathering information and sending the information to lenders for negotiation. The fact that you do not charge fees directly to your clients does not alleviate your commercial purpose. You will receive fee payments from HUD or its intermediaries on behalf of your clients. Thus, you are similar to the organizations in B.S.W. Group and Easter House, above, in the fee structure of your mortgage mitigation services.

Your financial structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You indicated you will fundraise and solicit government grants. However, you have not received any government grants and you do not have a substantial plan to solicit grants in the future. There is also no evidence that you have received contributions or gifts from disinterested members of the public. In fact, your only source of income is from your founder, L. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, above, that received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way (only an incidental amount of their revenue was from fees). Your operational details strongly indicate that you are financed entirely by revenue earned from the HUD payments for mortgage mitigation services to homeowners who face foreclosure on their homes. Receiving support primarily from payments for providing services is indicative of a nonexempt purpose. See Easter House, above.

#### Inurement /Private Benefit

An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 501(c)(3) of the Code; Section 1.501(c)(3)-1(c)(2) of the regulations. Further, a fundamental requirement for an organization that seeks exemption from federal income tax is that it benefits the public rather than its creator, shareholders, or persons having a personal or private interest in the activities of the organization. You are operated in a similar manner to L's private business in terms of governance and operation. Even though you have five board members, there is no evidence that board members other than L are actively involved in the organizational decision making process, including board meetings. Other factors include all of your income has come from L, L was prepared for the upfront expenses to start a business, L is the only compensated person, and L's compensation, including benefits, amounts to more than half of your total income and almost all of the proceeds. You have not demonstrated that your structure and manner of operation do not result in inurement to L in the form of compensation, payments for services and business referrals. You are similar to the organizations in Harding Hospital, Inc. v. United States and Salvation Navy v. Commissioner, above, in that you cannot prove that you are not operated as L's private business and your net earnings do not inure to L.

#### Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling

services” within the meaning of section 501(q)(4)(A) of the Code. Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

You do not meet the requirements under section 501(q)(1)(A)(i) of the Code. The Code requires a credit counseling organization to provide credit counseling services tailored to the specific needs and circumstances of consumers. Your service, however, only focuses on the mortgage mitigation service. In fact, all you provide is the preparation of necessary paperwork, sending the paperwork to the lender and following up with lenders regarding modification offers. Therefore, you failed to meet the requirement of section 501(q)(1)(A)(i) of the Code.

Had you established that you met the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

### **Conclusion**

Based on the facts and information provided, you do not meet the operational test because your activities are not educational or charitable. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals. You do not serve a public rather than a private interest. In addition, you do not meet the requirements under IRC 501(q). Therefore, you are not described in section 501(c)(3).

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

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. 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:

Deliver to:

Internal Revenue Service

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,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure, Publication 892