



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Release Number: **201419019**
Release Date: 5/9/2014
Date: 2/11/14
UIL Code: 501.32-00

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,

Director, Exempt Organizations

Enclosure

Notice 437

Redacted Proposed Adverse Determination Letter

Redacted Final Adverse Determination Letter



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: 12/13/13

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B =
C =
D =
F =
O =
P =
Q =
R =
S =
T =
U =
V =
W =
X =
x dollars =
y dollars =

UIL:

501.32-00
501.33-00
501.35-00

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 with respect to your tax-exempt status is set forth below.

Issues:

- Do you qualify for exemption 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 formed in the state of O on date P. Your purposes are to provide community advocacy and counseling.

Your Articles of Incorporation states, in pertinent part, you are "... organized exclusively for charitable, religious, educational and scientific purposes." Your articles also state your business activity is: "To provide community advocacy to help Americans keep their homes affordable and reduce the foreclosure rate due to high interest rates and loss of employment and to counsel and advocate."

Your Bylaws provide in Article 2, Section 2 that your specific objectives and purposes are: "(1) Community Advocacy – Advocacy for home retention; loan modifications and foreclosure prevention. (2) Counseling – Loan modification and foreclosure avoidance; assisting mortgage investors and homeowners in foreclosure prevention and loan modifications." In addition, Article 3, Section 1 states that you shall have 7 (seven) directors. At the time your application was submitted, you had three directors. They were B, C, and D.

You plan to advocate for home retention, loan modifications, and foreclosure prevention. You plan to provide counseling on loan modification and foreclosure avoidance; assisting mortgage investors and homeowners in foreclosure prevention and loan modifications. All of these activities will commence after you are granted exemption under section 501(c)(3) of the Code.

C began assisting consumers nearly seven years ago. Most of the assistance was free

Letter 4034 (CG) (11-2011)

Catalog Number 47628K

or at a very low cost. You charge homeowners specifically for mortgage assistance and modifications. You have assisted over 300 families during 2010 with everything from credit counseling to modifications of their loans. You had a near zero failure rate in obtaining lower mortgages and are currently serving homeowners in five states. You currently serve homeowners in five states and hopes you can reach more families in need of home preservation with your program.

C will conduct the program. C has nearly eight years of experience in housing and counseling services. You state there will be over 300 clients that benefit annually from your program. Your target goal is to assist all homeowners in need of help and not turn anyone away. You plan to conduct your program six days a week from 8:00 a.m. to 5:00 p.m. Each client's program lasts three to six months or more depending on the severity of the case. The program is open to the public with low fees for the services provided. Once you are granted 501(c)(3) exemption and receive grant funds through Q, you will not charge fees for your services to clients who have a combined household income of *y dollars* or less or meet specific guidelines of each grantee. Clients who do not meet the specific guidelines will be charged for loan modifications and foreclosure prevention with a fee of *x dollars*. This program commenced on date R.

Your main purpose is to assist homeowners and consumers in retaining their homes through various government programs. You will advocate on behalf of consumers in avoiding foreclosure and finding solutions that make their mortgages more affordable. Your goals are to counsel consumers regarding debts and financial expenses that can affect homeownership or to help homeowners keep their homes. You will educate the consumers on the programs that are available to them for homeownership and affordability.

You will be offering pre-purchase programs and post-purchase support. Also, assistance to consumers who are at risk of losing their homes and need relocating into affordable homes or apartments will be provided. You will make your information available through internet and the Yellow Pages. Your consumers will also be referred to you by Q, S, T, U, and V.

You have not yet engaged in substantial operations and you can only provide a prospective description of your proposed activities. Prior to pursuing mortgage foreclosure and loan modification counseling, you will clarify with the borrower if it is their intention to stay in the home or not. Each client's circumstance is different and the discussions with the homeowner will guide which action is best to pursue.

Any homeowner that is at risk of foreclosure or has unusually high interest rates and can show hardship in paying the mortgage will be counseled by you to assess their need. The process and elements are as follow:

- The homeowner must be experiencing a financial hardship that precludes timely mortgage payment.
- You conduct an evaluation to determine the reason for the mortgage delinquency and whether the delinquency is short-term or long-term.
- Your housing counselor will review closing documents to determine how loan was structured, look for indicators of predatory lending, and identify potential preventive strategies.
- Your housing counselor will complete financial, budget and credit analysis and develop an action plan.
- Loss mitigation options may consist of loan modifications, repayment plans, special forbearance, pre-foreclosure sale, deed-in-lieu of foreclosure, and/or home safe.
- You may refer the homeowner/borrower to other agencies for legal issues and bankruptcy options.

Your services will not be limited to any class of individuals; though you anticipate your services will primarily be provided to those individuals who have encountered significant financial hardship, often by reason of job loss or medical concerns. Following clarification of the financial difficulty, an alternative to foreclosure will be considered if it is because of the homeowner's financial situation is beyond their control. You will provide assistance to homeowners who meet the strict guidelines applicable to government programs, mortgage services, and investors.

Although you intend to create and conduct workshops / seminars, you have not yet begun this activity. Thus you have not submitted educational materials. If you offer the workshops and/or seminars, you will include financial literacy, foreclosure, clinics, and homebuyers' educational classes which will be open to the public. You do not plan to charge fee for the workshops and seminars.

When the homeowner decides to work with you, a forty-five minute to one hour consultation will be provided. The consultation will include documentation explaining the steps required to apply for a loan modification, the requirements that must be met for the service and what to expect during the process. You will obtain information during the initial interview to better provide the options available. The initial presentation also provides the counselor with specific information such as the investor or servicer of the loan and you may begin making efforts to contact the investor, servicer or the national servicing center of Q and request specific remedial actions on the loans.

You intend to provide financial management courses and foreclosure prevention clinics, but no formal plan has yet been created. Subsequent consultations will help you to provide better options and services to the homeowners. You plan to receive referrals from previous clients, real estate attorneys, and tax accountants. You refer your clients to churches which historically have donated food and clothes and provided shelters to

those in need.

You will charge low-cost fees for your services, but will not charge fee for clients who have a combined house income of *y dollars* or less. Upon Q approval, clients not meeting the specific guidelines administered by each grantee or governmental entity will be charged for loan modifications and foreclosure prevention a fee of *x dollars*. You currently have no fee waiver policy, but you plan to provide free services to two families per month.

You have not conducted any activities since incorporation, but C began assisting consumers nearly eight years ago while working with another organization. C has not been compensated, nor has anyone else. D is no longer a board member and there are no new officers or directors.

Your sources of financial support come from grants, donations, and fundraisers. Your officers and directors administer the fundraising programs which are held quarterly and consume 100% of your time. Your expenditures go toward salaries, occupancy expenses, professional fees, program expenses, and other office expenses.

Law

Section 501(a) of the Internal Revenue 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 exempted 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:

(A) The organization--

- (i) provide 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).

(F) The organization receives no amount for providing referrals to others for debt management plan services, and pays no amount to others for obtaining referrals of consumers.

Section 501(q)(2)(A)(i) provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if it does not solicit contributions from consumers during the initial counseling process or while the consumer is receiving services from the organization.

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(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(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(d)(1)(ii) of the regulations provides 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. Thus, to meet the requirements of this subsection, 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) 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 Service found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling and 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.

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.

Section 4.01 of Rev. Proc. 2013-9, 2013-2 I.R.B. 225, provides that a favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279 (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 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 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 professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service 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.T.C. 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 People of God Community v. Commissioner of Internal Revenue, 75 T.C. 127 (1980), the court found that part of an organization's net earnings inured to the benefit of private individuals because their compensation was based on a percentage of the organization's gross receipts with no upper limit. The court held that the petitioner was not exempt as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

In Easter House v. U.S., 12 Cl. Ct. 476 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907 (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 is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

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. As the court stated:

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, 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 member's 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 (Debt Management Plans)." 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 "...nonselect manner ... because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of private interests.

Finally, the Tax Court held that the facts in Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) “ ... stand in stark contrast ... ” because “ ... the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal.”

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) as specified in section 1.501(c)(3)-1(a)(1) of the regulations. While you meet the organizational test, you fail the operational test.

Operational Test

To satisfy the IRC section 501(c)(3) operational test, an organization must be operated exclusively for one or more exempt purposes, as stated in section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish that you operate exclusively for one or more exempt purposes.

Your Activities Are Not Educational

You plan to provide (1) community advocacy – advocacy for home retention; loan modifications, and foreclosure prevention and (2) counseling – loan modification and foreclosure avoidance; assisting mortgage investors and homeowners in foreclosure prevention and loan modification. You will assist homeowners and consumers in retaining their homes through various programs. You will advocate on behalf of consumers in avoiding foreclosure and finding solutions to make their mortgages more affordable. You intend to create and conduct workshops or seminars, however, none have been conducted to date and educational materials have not been submitted. You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities. Unlike those organizations, you offer counseling sessions that are structured primarily to offer other services such as referrals to other organizations or to decide what other services you can provide. You provided no evidence you do anything more than review a client's financial situation and decide what remedies or services may be provided. Referrals and discussion of client's financial circumstances are not an educational activity because it does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process, as described in Rev. Proc. 86-43, *supra*.

You did not provide any educational materials. In fact, you have not created any educational materials nor conducted any educational seminars or workshops at all. Therefore, 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.

You do not operate a substantive on-going educational program. You do not dedicate any revenue to activities involving educational programs. You do not allocate any expenses to training employees. Like the organization in Solution Plus, *supra*, you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems. You provided no evidence that you intend to establish long-term counseling relationships with your clients. Your service typically lasts three months to six months.

Your operational focus and efforts are on generating revenue in the form of fees from your counseling and advocacy on foreclosure prevention and loan modification activities. You also focus on pre-purchase programs and post-purchase support. You also refer your clients to other organizations to provide certain services which you are not offering. All of these activities are offered to the public for a fee. Like the organizations described in Solution Plus, *supra*, Better Business Bureau, *supra*, and Easter House, *supra*, your activities have an underlying commercial motive that distinguishes your activities from those carried out by a university. Thus, your activities are not educational within the meaning of section 501(c)(3).

Your Activities Are Not Charitable

A more than insubstantial part of your time and resources are devoted to providing counseling and advocacy services to individuals who are not poor, distressed or underprivileged within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable.

You represent you offer your services to "all in need." You submitted no evidence that you limit your services to low income individuals or to the poor, distressed or underprivileged. "All in need" is not synonymous with "poor and distressed". Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Unlike the organizations in Consumer Credit Counseling Service of Alabama; *supra*, and Rev. Rul. 69-441, *supra*, you charge a fee to your clients for your services,. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes."

Solution Plus, supra. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

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 e.g., B.S.W. Group, supra; Easter House, supra; Airlie, supra; Living Faith, supra. 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 foreclosure prevention, homeowner advocacy, loan modification, and credit counseling services to individuals. Your clients do not receive any educational programs or services other than a half-hour to one hour counseling session for your employees to understand their circumstances. Understanding clients' financial circumstance for referrals or additional services for decision making in either keeping the homes or selling is not an exempt purpose, as recognized by statute or by case law, but rather a substantial nonexempt commercial purpose. This is evidenced by the fact that N, a for-profit entity, was operated in the same manner and offering exactly the same services. In addition, you and N charge fees for the services. Providing the same services as those provided by a for-profit also demonstrates that you are operating like a commercial organization seeking to maximize profits, rather than a charitable or educational organization seeking to serve the public. Your income is used to pay C's salary. Your use of funds also demonstrates that you are focused on paying C's salary and other employees, occupancy expenses, professional fees, and other office expenses. Thus, similar to the organization in Easter House, supra, the profit-making fee structure of your consulting services overshadows any of your other purposes.

Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You indicated that you will fundraise and solicit government grants. However, you have not received any government grants, and you do not have a substantive 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. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, supra, 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 operations are financed by gifts, grants, donations; fees for services; and fundraisers. As noted in Easter House, supra, receiving support substantially from fees for services is indicative of a nonexempt purpose.

Your operational focus and efforts are on generating revenue in the form of fees from your counseling and advocacy on foreclosure prevention and loan modification activities. You also focus on pre-purchase programs and post-purchase support. All of your programs are offered to the public for a fee. Like the organizations described in Solution Plus, supra, Better Business Bureau, supra, and Easter House, supra, your activities have an underlying commercial motive that distinguishes your activities from those carried out by a charitable and/or educational organization.

Like the organizations in Easter House, supra, Airlie, supra, and Living Faith, supra, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. In fact, you conduct the same activities as a related commercial firm owned by the same person. You conduct many of your activities in the same manner as commercial enterprises. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose.

The activities you identify as "educational" are merely incidental to your business of providing housing counseling. Thus, more than an insubstantial part of your activities is in furtherance of a nonexempt purpose, in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. Therefore, you are not operated for an exempt purpose.

Inurement

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.

C's compensation was determined under a conflict of interest policy. You originally had four directors: B, C, D and F. B later resigned. None of the other directors have a conflict of interest policy. C's fixed compensation is almost 25% of your projected revenues. C's salary is budgeted to increase each year as your income increases, with no indication of an upper limit. See People of God Community, supra.

You have paid certain expenses of C. In addition, C's compensation arrangement essentially provides the director with an ownership interest because C's compensation increases as revenue increases. In addition, you state there has been no official meetings since you were incorporated. Therefore, it appears the salary arrangements are primarily decided by C who is the president of the organization.

Under the standard described in section 4.01 of Rev. Proc. 2013-9, the Service will not issue you a favorable determination letter on exempt status unless your application and supporting documents establish that you meet the particular requirements of section 501(c)(3). Thus, before the Service recognizes your exemption, you must prove that

you are organized and operated exclusively for an exempt purpose and that no part of your net earnings inure to the benefit of any private shareholder or individual. You have failed to establish inurement will not occur due to C's significant control, influence and compensation structure.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest as stated in section 1.501(c)(3)-1(d)(1)(ii) of the regulations. You are serving a private interest by providing credit counseling, referrals, foreclosure prevention, and loan modification services to individuals for a fee. Your clients are not limited to a charitable class. Therefore, the benefit of the service provided does not serve an exempt purpose, nor is the benefit incidental because the credit counseling, referral, foreclosure prevention, and loan modification services are your main focus. The credit counseling, referral, foreclosure prevention and loan modification services relieve your clients of the responsibility of contacting the creditors themselves. Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Providing a credit counseling service and information regarding credit may fall within the parameters of the above definition. Thus, even if you had established that you engage in educational 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 would not comply with certain provisions of section 501(q) of the Code.

IRC section 501(q)(1)(D) states that credit counseling organizations must be governed by a board controlled by persons representing the broad interests of the public rather than by persons who benefit from the organization's activities. All of the voting power of your board of directors is vested in persons who are employed by the organization or related. More than 20% of the voting power of your board is vested in individuals who will benefit financially, directly or indirectly, from your 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). Accordingly, you do not have a board of directors that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i). You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons.

Furthermore, you charge a fee for your services and have not provided the actual fees of each service. Your fees will be lower than for-profits providing the consumers with same or similar services. Your fees structure is inconsistent with the requirements of section 501(q)(2)(A)(i) which states that an organization providing credit counseling services as a substantial purpose may be exempted from tax only if it does not provide the upfront fees structure to consumers during the initial counseling process or while the consumer is receiving services from the organization.

Therefore, had you established that you provide educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure as a substantial purpose, and that you otherwise 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).

Applicant's Position

You state C worked for other organizations in credit counseling and home retention area for which C has gained experience.

Your fees are or will be lower than for-profit businesses providing the same or similar activities. You also provide services to "... all who are needed."

You have not adopted any fee waiver policy since you have not been granted tax exempt status. The educational materials will be created once you receive your 501(c)(3) exemption statuses.

Service Response to Applicant's Position

You provide your services for fees. You failed to demonstrate that your activities will be conducted in furtherance of an educational or charitable purpose. Your activities are similar to that of a for-profit business. You have failed to establish your operations will not inure to the benefit of your founder, C.

Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

Conclusion

Based on the facts and information provided, you are not operated exclusively for exempt purposes. You are operated for commercial purposes in contravention of section 1.501(c)(3)-1(c)(1) of the regulations. 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 as required by section 1.501(c)(3)-1(c)(2) of the regulations. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. 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 that 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, *How to Appeal an IRS Decision on Tax-Exempt Status*.

Types of information that should be included in your protest can be found in Publication 892. The statement of facts (bullet 4) must be declared true under penalties of perjury. This may be done by adding to the protest the following signed declaration:

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

Your protest will be considered incomplete without this statement.

If an organization's representative submits the protest, a substitute declaration must be included stating that the representative prepared the protest 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. To be represented 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. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not 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 to you. 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

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure: Publication 892