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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: April 28, 2004

Contact Person:

Identification Number:

Telephone Number:

UIL: 501.00-00

Employer Identification Number:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The reasons for our conclusion are set forth below.

You were incorporated in the state of on Your Articles of Incorporation state the following purposes: "for one or more of the purposes as specified in section 501(c)(3) of the Internal Revenue Code, including more specifically, education of consumers on the principles of financial responsibility and debt management." Your Form 1023, Application for Recognition of Exemption (Application), Part II, 1, further explains that you are

On Form 1023, you state:

> In addition to teaching clients the principles of responsible money management, will negotiate on behalf of clients with their creditors to lower their interest rates and monthly payments in an attempt to satisfy their debts. In order to accomplish the two missions of namely the education of clients regarding money management, and the negotiation with the creditors of clients to achieve lower interest rates and lower monthly payments in order to allow clients to avoid possible bankruptcy, will hire and train credit counselors. These counselors will work with clients individually and teach seminars.

Your Articles of Incorporation indicate that your Board of Directors originally included , and In a letter dated you stated that your current directors are , You state that

> but do not clarify whether they are the
> which might make them disqualified persons within the meaning of section 4958 of the

Internal Revenue Code. A memorandum from dated states:

Your Form 1023 application and letter of state that board members will not be compensated for their services in that capacity. You provided no other information on whether these individuals will otherwise be compensated, with the exception of who will be paid a salary of $ per year as your general manager.

Your letter of states that your start-up money, in excess of $ came from Our letter of October 17, 2003, at 23, asked for documentation of the terms and conditions of any startup loans or grants you received. Although your letter states that you it is not clear whether any of the money from the (who are insiders, not outsiders) has been in the form of loans to you. You have provided no documentation of these amounts or of any of the terms.

Your statements about your relationship with are inconsistent. You submitted, as part of your application, a sample Debt Management Agreement between you and one of your clients and a sample client engagement letter dated This document was signed by as General Manager of A memorandum to from dated states that has been serving as a to you.

In your letter of you state that you currently employ individuals, including who is paid $ per year. You have counselors who You state that the counselors are paid a weekly salary but no bonuses. Starting counselors will be paid around $ per year; experienced counselors will receive from $ per year.

Your application contains the following materials, apparently to illustrate your educational function: a copy of a 362-page document, without title page or cover, described as a document entitled published by the a copy of a document entitled containing only the table of contents of the manual, but not its text. There are also copies of a -page document entitled and a script to be used for telephone contacts entitled,

Your application does not clarify the use you intend to make of the documents you submitted other than the

We note, however, that in your you mention to clients that your newsletter

You further state:

indicate whether the vendors pay you toadvertise in the newsletter. Encouraging your clients to clip coupons and patronize businesses that advertise in your newsletter promotes the private interests of those vendors. It is difficult to conclude that such directed shopping will do much to solve the problems of the debtors you claim as customers.

We further note that as part of your forms/correspondence, you submitted that provides information to clients on starting a DMP. The attachment contains a section that is titled Your use of the language implies that the process for starting and completing a DMP involves a limited, general discussion of the client's financial circumstances rather than a series of an in-depth counseling and education sessions directed to the client's particular financial situation.

You state in your Form 1023 that you generate business by purchasing leads and contacting the individual leads by telephone. Your letter of states that you purchased the following leads in and from the following sources: (1) leads leads; (2) leads (3) leads leads; (4) leads leads; (5) leads leads; (6) leads leads; (7) leads leads; (8) leads leads; (9) leads leads. You further stated in your letter of

In our letter dated October 17, 2003, at 18, we asked, among other things, how many calls each employee is expected to make per hour. The answer you submitted was not responsive to the question. Your letter (18) stated that, You did not explain your basis for making that statement and it is clearly refuted by the following information that you submitted on other occasions.

In your letter dated you indicated that You did not indicate what information would be provided in a typical lead. In the same letter, you described your contacts with leads:

This scenario is reflected in the in which an employee initiates the first telephone contact. The following is the entire you submitted

After the initial 30-day period, it appears that the client is turned over to In response to a question about whether you have a continuing service relationship with your clients, you responded by letter dated at 30:

Your budget submitted with your application lists as the primary source of income. In your letter dated at 27, you state,

Your materials do not document any activities other than putting clients on debt management programs.

In your letter of you stated: '

The instructs employees to say:

In our letter to you dated October 17, 2003, we requested that you provide, among other things, a description of all budget and financial planning that occurs before a client is referred for a debt management plan; the amount of time a counselor spends in budget analysis before deciding whether to refer a client to a DMP; a comprehensive financial plan; a written DMP; copies of material distributed to clients before they sign up. You did not respond to these requests. We requested information on the amount of time a counselor typically spends with an individual client, the amount of time spent on education versus the time spent in soliciting, enrolling, and retaining the client in a debt management plan. You did not respond to these requests. The October 17, 2003, letter, specifically asked for data about your retention rate, i.e., the number of clients who complete their debt management plans. You did not supply this

20044044 E

information.

In the same letter, we requested that you list each workshop or seminar that you have conducted since your inception, and submit copies of the agenda or material distributed, indicate date, place, subject, audience, etc. You have not responded to this request.

On Part II, 5, of your application, you answered "No" to the questions: "Does the organization control or is it controlled by any other organization? Is the organization the outgrowth of (or successor to) another organization, or does it have a special relationship with another organization by reason of interlocking directorates or other factors?

It is evident that your have a special relationship with appears to be your service provider or data processor. Resumes of and your new Board members, indicate that they were all previously employed by In a letter dated your agent states that you and share no board members. has

states that he formerly served as sales manager for but severed that relationship, effective

You state in your letter of that

In other statements, you imply that you will maintain a continuing relationship

Letter dated at 30.

Attachment One to your client contact letter, entitled is written as if the client is dealing only with Describing what happens in the second half of the first month, it states:

The document concludes with the statement:

In our letter of March 11, 2003, we asked for information about or other organizations with which you do business: "Are your services provided in conjunction with any other entities, such as credit counseling agencies . . .? You responded by letter dated at 21:

We asked again by letter dated October 17, 2003: "Please explain the terms of your relationship with Who are the principal owners or partners in ? Does make referrals to you; do you make referrals to them? Does provide back-end services to you? Submit all agreements, contracts and memorandums of understanding spelling out your rights and responsibilities with and to You responded by letter of (?):

20044044E

In our letter of October 17, 2003, we asked, "Please state the name and address of the credit counseling organization you or your directors are currently associated with." You responded by letter of at 26:

Your responses to our questions about your relationship with other entities, including have been incomplete and misleading. We asked: "Have any of the members of your board of directors been an officer, director, or employee of a credit counseling, credit repair agency or organization issuing credit cards? If so, please explain in detail." Letter of at 16. You responded:

Letter dated May 16, 2003, at 16.

Similarly, in the March 11, 2003, letter we asked: "Are any of the members of your board of directors related to anyone who is or has been an officer, director, or employee of a credit counseling, credit repair agency or organization issuing credit cards? If so, please explain in detail." You responded:

Letter dated at 17.

You have submitted contradictory information concerning the fees you charge your clients. On the application, Part II, 1, you state:

But, the Debt Management Agreement specifically describes monthly fees and a first month contribution. Later in the application, at Part II, 12a, you state:

None of the documentation you submitted supports this claim. Nowhere, not in the the or elsewhere, is there any indication that you provide assistance to those unable to pay.

Attachment One to the client contact letter, entitled tells clients:

The Debt Management Agreement, i.e., a client contract, that you submitted sets forth the fee structure as $ per month per creditor plus a first payment or "contribution" used to cover operational costs.

Debt Management Agreement at F. Neither the nor the refers to an option for waiver of fees.

At one point, you state,

Letter dated

In our letter dated October 17, 2003, at 10a, we asked for data on the number of clients that have not paid the initial contribution and posed other questions seeking client statistics, such as number of clients serviced by the service provider, number of clients referred for a Debt Management Plan (DMP), how many clients continue in the program; how many have dropped out? Your response was:
In that letter of (??) you stated that you needed more time to answer the questions concerning client data. As of today's date, you have not submitted any clarification.

The also describes a Cash Back Incentive Program to speed clients' payment of their debts.

The % additional disbursement is available for twenty-five months, totaling one complete payment over time.

There is no provision for this % payment in the client contract. The client contract states that the client's final payment will be made by you in the amount of the client's initial

The Debt Management Agreement contains a clause D, stating:

Clause K of the Debt Management Agreement states:

You have also submitted conflicting information regarding your sources of support. You state on your application that
Part II, 2. Your proposed budgets for your first two years of operation indicate, however, According to your financial information

Your letter of states that the financial information is The IRS letter dated October 17, 2003, asked for further information. This information has not been provided.

In our letter dated March 11, 2003, we asked for an explanation of financial information, including "what are the back end expenses? Identify the back end service provider to whom these fees are paid." Your letter dated May 16, 2003, does not respond to this question.

In your letter of you stated: '

Your budgets submitted on application reflect income in the amount of $ per year in contributions from business, civic groups, etc.

Your proposed budgets for your first two years of operation show $ in income for year one. Of this amount you will expend $ in office expenses, and $ in processing cost. In year two, you expect $ in income. Of this amount you will expend $ in office expenses, and $ in processing cost. Your budget information does not identify to whom you will pay your processing fees and does not reveal to whom or from whom back-end service fees are paid or received. Your excess of revenue over expenses will total $ in year one, and $ in year two. Your budgets do not show any expenditure dedicated specifically to advertising costs. Your budgets do not show any expenditure in the form of gifts, grants, or contributions to any programs or organizations engaged in educational activities or programs.

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other purposes, provided that no part of the net earnings of which inures to the benefit of any private shareholder or individual.

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

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

(a) Limit the purposes of such organization to one or more exempt purposes; and
(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3).

An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(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) defines the words "private shareholder or individual" in section 501 to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization must be organized and operated to serve 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) of the Code in its generally accepted legal sense and includes the relief of the poor and distressed or of the under privileged 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.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purposes of carrying on an unrelated trade or business.

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 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 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. Rul. 71-529, 1971-2 C.B. 234, held that a nonprofit organization providing assistance in the management of participating colleges' and universities' endowments or investment funds for a charge substantially below cost qualified for exemption under section 501(c)(3) of the Code. Most of the operating expenses of the organization, including the costs of the services of the investment counselors and the custodian banks, were paid for by grants from independent charitable organizations. The member organizations paid only a nominal fee for the services performed. These fees represented less than 15 percent of the total costs of the operation. By performing these services for a charge substantially below its cost, the organization was performing a charitable activity for purposes of section 501(c)(3) of the Code.

Rev. Rul. 72-369, 1972-2 C.B. 245, held that an organization formed to provide managerial and consulting services at cost to unrelated exempt organizations did not qualify for exemption under section 501(c)(3) of the Code. Providing managerial and consulting services on a regular basis for a fee is a trade or business ordinarily carried on for profit. The fact that the services were provided at cost and solely for exempt organizations was not sufficient to characterize the activity as charitable for purposes of section 501(c)(3) of the Code. "Furnishing the services at cost lacks the donative element necessary to establish this activity as charitable."

Rev. Rul. 76-244, 1976-1 C.B. 155 , held that home delivery of meals to the elderly free or with charges on a sliding scale, depending on recipients' ability to pay, is a charitable purpose.

Rev. Rul. 78-99, 1978-1 C.B. 152, held that the provision of individual and group counseling for widows based on their ability to pay is an educational activity.

Rev. Proc. 84-36, 1984-1 C.B. 541, provides in part, that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere statement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of

the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. American Science Foundation v. Commissioner, T.C. Memo. 1986-556; La Verdad v. Commissioner, 82 T.C. 215, 219 (1984); Pius XII Academy v. Commissioner, T.C. Memo. 1982-97. Exempt status can be recognized in advance of operations if proposed operations can be described in enough detail to permit a conclusion that the organization will clearly meet the requirements of section 501(c)(3). American Science Foundation v. Commissioner, T.C. Memo. 1986-556.

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.

** rewrite:In The Founding Church of Scientology v. U.S, 188 Ct. Cl. 490, 506 (1969), the Court of Claims found as a damaging fact that one of the reasons Scientology was organized as a religion was to evade regulation, as one state was investigating Scientology for operating a medical school without a license.

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 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 has been recognized as exempt under section 501(c)(3), 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. They did not limit these services to low-income individuals and families, but they provided such services free of charge. As an adjunct to the counseling function, they offered a DMP. Approximately 12 percent of a professional counselor's time was applied to the DMP activity as opposed to an educational activity. Moreover, the agencies charged a nominal fee of up to $ per month for the DMP. This fee was waived in instances when payment of the fee 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 counseling fees. In 1974, the Service ruled that each of the agencies constituted organizations described in section 501(c)(3). However, two years later, the Service notified the agencies that it had made a mistake and was reclassifying them under section 501(c)(4). The reasons given by the Service for revocation of section 501(c)(3) were that: (1) the agencies were not organized and operated exclusively for charitable or educational

purposes; (2) the debt management service is not limited to low-income individuals or families; and (3) fees are charged for the services rendered.

The court did not agree with the Service and directed verdicts for the plaintiff. Providing information regarding the sound use of consumer credit is charitable because it advances and promotes education and social welfare. These programs were also educational because they instructed the public on subjects useful to the individual and beneficial to the community. The counseling assistance programs were likewise charitable and educational in nature. Because the community education and counseling assistance programs were the agencies' primary activities, the agencies were organized and operated for charitable and educational purposes. The court also concluded that the limited debt management services were an integral part of the agencies' counseling function, and thus were charitable and educational undertakings, but stated further that even if this were not the case, these activities were incidental to the agencies' principal functions.

Finally, 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, the agencies did not charge a fee for the programs that constituted their principal activities. A fee may be charged for a service that was an incidental part of an agency's function, but even when a fee was so charged, it was nominal. Moreover, even this nominal fee was waived when payment would work a financial hardship. Thus, the court ordered 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 Centers of Alabama, Inc. v. United States, discussed immediately above. Thus, the court ordered that the consumer credit counseling agencies were described in section 501(c)(3) as charitable and educational organizations.

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. There is nothing inherently charitable in providing consulting services.

The court found that the corporation failed to demonstrate that its services were not in competition with commercial businesses. The court relied on the fact 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 had failed to limit its clientele to organizations that were section 501(c)(3) exempt organizations.

The court in est of Hawaii v. Commissioner, 71 T.C. 1067(March 28, 1979) found that an organization formed to educate people in Hawaii on the theory and practice of "est" was a part of a "franchise system which is operated for private benefit," and therefore may not be recognized as exempt under section 501(c)(3) of the Code. The applicant for exempt status was not formally controlled by the same individuals controlling the for-profit organization owning the license to the est body of knowledge, publications, methods, etc. However, the for-profit exerted "considerable control" over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court found the fact that the applicant's rights were dependent upon its tax-exempt status evidenced the likelihood that the for-profit corporations were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether it benefited substantially from the operation of the applicant. The court determined that there was a substantial private benefit because the applicant "was simply the instrument to subsidize the for-profit corporations and not *vice versa* and had no life independent of those corporations.

In P.L.L. Scholarship v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no payments were going to the bar. The court was not persuaded:

> A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The court went on to conclude that, because the record did not show that the organization was operated for exempt purposes, but rather indicates that it benefited private interests, exemption was properly denied.

**rewrite In St. Louis Science Fiction Limited v. Commissioner, T.C. Memo 1985-162,*cite April 2, 1985, the Court reviewed the annual convention of a science fiction organization. It held that while the conventions may have provided some educational benefit to some of the individuals involved, that social and recreational purposes, and private benefit predominated. The Court distinguished Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337 (1980) in which the organization provided public art education by using juries to insure artistic quality and integrity.

In Church By Mail, Inc. v. Commissioner, T.C. Memo 1984-349, *aff'd*765 F. 2d 1387 (9th Cir. 1985) the tax court found that a church was operated with a substantial purpose of providing a market for an advertising and mailing company owned by the same people who controlled the church. The church argued that the contracts between the two were reasonable, but the Court of Appeals pointed out that "the critical inquiry is not whether particular contractual

payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

In Easter House v. United States, 846 F. 2d 78 (Fed. Cir. 1988), aff'g 12 Cl.Ct. 476 (1987), 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 adoption activity was a non-exempt commercial purpose. It found that the adoption services did not further the exempt purposes of providing educational and charitable services to the unwed mothers and children. Rather, the services for unwed mothers and children were merely provided "incident" to the organization's adoption service business. Moreover, the court found that "adoption services do not in and of themselves constitute an exempt purpose."

The court also agreed with the IRS' determination that the agency operated in a manner not "distinguishable from a commercial adoption agency" because it lacked the traditional attributes of a charity. First, the agency's operation made substantial profits, and there was a substantial accumulation of capital surplus in comparison to direct expenditures by the agency for charitable and educational purposes. Second, the agency's operation was funded completely by substantial fixed fees charged adoptive parents. It relied entirely on those fees and sought no funds from federal, state or local sources, nor engaged in fund raising programs, nor did it solicit contributions. In fact, the agency had no plans, nor intention to seek contributions, government grants or engage in fund raising relative to its operations. Third, the fixed fees the agency charged adoptive parents were not subject to downward adjustment to meet potential adoptive parents' income or ability to pay. Fourth, the agency's single life member had near total control of the operations of the agency. And fifth, the agency functioned by means of a paid staff of 15 to 20 persons, with no volunteer help.

In addition to furthering a substantial non-exempt purpose, the court ruledthat the taxpayer failed to show that no part of its earnings inured to the benefit of any private individual or shareholder as defined by sections 1.501(c)(3)-1(c)(2) and 1.501(a)-1(c) of the regulations. The court found the organization provided a source of credit (i.e. loans) to companies in which the private shareholder was either employed or owned. The fact that the loans were made showed that the companies controlled by the private shareholders had a "source of loan credit" in the organization and the ability to use the organization's assets for their personal benefit.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36,*cite the court found an organization that ran tours aimed at doctors and their families was operated to benefit the private interests of both an individual who controlled the organization and a for-profit travel agency (H&C Tours) that handled all of its tour arrangements.

The organization used the H&C Tours exclusively for all travel arrangements. There was no evidence that the organization solicited competitive bids from any travel agency for travel arrangements for its tours other than H&C Tours. The organization physically located its office within the offices of H&C Tours, which provided it secretarial, clerical, and administrative personnel for a fee equal to H&C Tours' costs. The organization spent 90 percent of its revenue on travel brochures prepared to solicit customers for tours arranged by the travel agency. The

brochures emphasized the sightseeing and recreational component of the tours, but did not describe the medical curriculum for the seminars and symposia that was the basis for exemption. Educational activities occurred on less than one-half of the days on a typical tour.

The court found that a substantial purpose of the organization's operations was to increase the income of H&C Tours. The president of H&C Tours controlled the organization and exercised that control for the benefit of H&C Tours. Moreover, the administrative record supported the finding that the organization was formed to obtain customers for H&C Tours.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court concluded that an alleged exempt organization was operated for a substantial non-exempt purpose. It based this conclusion on the manner in which the organization conducted the operation of its conference center. "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." Thus, the court looked at the business methods of the organization as a way to infer whether its purpose was to serve the public or whether there was a substantial non-exempt purpose of operating a business for profit. See section 1.501(c)(3)-1(e), of the regulations.

The court determined that, if private individuals or for-profit entities have either formal or effective control of a non-profit organization, it is presumed that the organization furthers the profit-seeking motivations of those private individuals or entities. This is the case, even when the organization is a partnership between a non-profit and a for-profit entity. (citing Redlands Surgical Services v. Commissioner, 113 T.C. 47 (1999)).

The Credit Repair Organizations Act ("CROA"), 15 U.S.C. section 1679 et seq., effective April 1, 1997, imposes restrictions on credit repair organizations, including forbidding the making of untrue or misleading statements and forbidding advance payment, before services are fully performed. [section 1679b] Section 501(c)(3) organizations are excluded from regulation under the CROA. The CROA defines a credit repair organization [section 1679a(3)] as:

> (A) any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—
>
> (i) improving any consumer's credit record, credit history, or credit rating, or
> (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

The courts have interpreted this definition broadly to apply to credit counseling agencies. The Federal Trade Commission's policy is that if an entity communicates with consumers in any way about the consumers' credit situation, it is providing a service covered by the CROA. In Re National Credit Management Group, LLC, 21 F. Supp. 2d 424, 458 (N.D.N.J. 1998).

In FTC v. Gill, 265 F.3d 944 (9th Cir. 2001), aff'g 183 F. Supp. 2d 1171 (2001), the appellate court inferred that a credit repair organization that first promised a "free consultation," but charged fees in advance of the full performance of services was being operated as a charity primarily for purposes of evading regulation under the CROA.

In Credit Counseling Centers v. S. Portland, 814 A.2d 458 (S. C. Me. 2002), the Supreme Court of Maine denied state tax exemption to a credit counseling agency that provided significant benefits to creditors. Credit card companies commonly make payments to credit counseling agencies of a portion of the funds they receive from clients of the agencies. These payments are known as "fair share" payments and are a source of substantial funding for credit counseling agencies. In this case, the credit counseling agency received 60 percent of its income from "fair share" payments from credit card companies, at the rate of 8.5% to 9% of debt payments.

Businesses are prohibited from cold-calling consumers who have put their phone numbers on the National Do-Not-Call Registry, which is maintained by the Federal Trade Commission ("FTC"). Section 501(c)(3) organizations are not subject to this rule either. This registry was created by rules promulgated by the FTC and the Federal Communications Commission. See 16 C.F.R. section 310.4(b)(1)(iii)(B); 47 C.F.R. section 64.1200(c)(2).

Based on the following analysis of the information provided in your Form 1023 and supporting documentation, we conclude that while you are organized for charitable purposes you are not properly operated under section 501(c)(3) of the Code. You fail the operational test for a number of reasons. You have not established that you are or will be operated for either a charitable or educational purpose. In fact, your application demonstrates that you operate for the substantial non-exempt purpose of operating a business that is prohibited under the CROA. In fact, you appear to have been established as a section 501(c)(3) organization primarily to avoid regulation under the CROA. In addition, you have not shown that your income does not inure to any private individual. The information you submitted leads to the conclusion that you operate for the private benefit of the company that processes your DMPs, its shareholders or managers or others with whom you conduct business. Finally, your operations also substantially benefit the credit card companies to whom your clients owe money because you function as a collection agent for those companies.

An organization must establish through the administrative record that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. Revenue Procedure 84-36, 1984-1 C.B. 541; American Science Foundation v. Commissioner, T.C. Memo. 1986-556; La Verdad v. Commissioner, 82 T.C. 215, 219 (1984); Pius XII Academy v. Commissioner, T.C. Memo. 1982-97.

Rev. Proc. 84-36, requires an applicant to submit sufficient information during the application process for the Service to conclude that the organization is in compliance with the organizational and operational requirements of section 501(c)(3) before it must issue a ruling. You failed to fully describe your activities in regard to In particular, you refused or

failed to answer the following: Who are the principal owners or partners in Does make referrals to you? Do you make referrals to Does provide back-end services to you? We also asked you to submit all agreements, contracts, and memorandums of understanding spelling out your rights and responsibilities with and to You answered with the following:

You also failed to clarify whether the start-up money received from the was in the form of loans to you; you failed to provide data on the number of clients serviced by your service provider, the number of clients referred to a DMP, the number of clients who continue in the program, and the number of clients who may have dropped out. In addition, you failed to identify your back-end provider; and, you provided inconsistent statements as to whether is your general manager or your consultant

Because you refused to provide the requested information, you have not fully described the activities in which you expect to "engage, including the standards, criteria, procedures, or other means adopted or planned." See Rev. Proc. 84-36, supra. Thus, in accordance with the revenue procedure and the previously mentioned Tax Court cases, you have not provided sufficient information to adequately detail how you will satisfy the operational test. The Service may decline to issue a favorable ruling under these circumstances.

You state in your application that your purpose is to

You state further that you provide credit counseling and debt-management for your clients. Providing individual counseling to clients on credit matters may be educational or, if provided in a charitable manner, may be charitable within the meaning of section 501(c)(3). See, e.g., Rev. Rul. 78-99, 1978-1 C.B. 152 (individual and group counseling for widows based upon their ability to pay is an educational activity). You have not submitted sufficient documentation, however, that the counseling you do is either charitable or educational in the sense recognized by the law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as operating exclusively for exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. Providing services exclusively for the benefit of the poor, a recognized charitable class, furthers charitable purposes. For instance, counseling the poor about economics and personal finance can achieve an exempt purpose. See Rev. Rul. 69-441, supra.

You do not restrict your activities to the benefit of the poor. The DMP you offer is sold to anyone who has unsecured debt and is willing to purchase your services. No court or Service ruling has indicated that the sale of DMP's is a charitable activity. Since the sale of DMP's to the general public appears to be a substantial purpose of yours, we cannot conclude that you are operating for charitable purposes rather than commercial purposes.

Further, based on the information you submitted, you have not established that you operate for educational purposes within the meaning of section 501(c)(3). Training an individual to develop his capabilities or instructing the public on subjects useful to the individual and beneficial to the community are both educational purposes, recognized as exempt. See section 1.501(c)(3)-1(d)(3) of the regulations. Financial counseling could be carried out as an educational activity. Consumer Credit Counseling Service of Alabama, Inc. v. United States, Rev. Rul. 69-441, supra. While education is a broad concept, the Service and the Courts require that some rigor must be evident. St. Louis Science Fiction Limited, supra. *provide further discussion.

Your file provides no basis to conclude that you offer either education to the public on subjects useful to the individual and beneficial to the community or training to the individual. It is essentially devoid of any support that you provide education. Your letter of May 16, 2003, describing the process your counselors go through when they contact potential clients does not include any educational material or counseling component. Rather, you describe the methods and procedures used by your counselors to enroll clients in your which is a You failed to provide substantial evidence of a specific, detailed program which would You have not submitted any evidence of plans for future educational activity, and have neither hired competent employees to teach, nor budgeted to provide it. Your board of directors has no experience in educational methods, and there is no evidence that it plans to acquire any expertise. You submitted a copy of what appears to be an employee' training manual which consists of over pages, and is quite detailed and comprehensive in the training information provided to credit counselor candidates. You have not indicated, however, how this manual is or will be used in your operations.

In your application, Part II, 1, you state that your counselors will You failed to submit documentation that you are providing any community service or education programs. There is no indication as to how, when or where these seminars would occur. Nor do you describe in detail the likely content of any such seminars. In fact, the content of submitted with your forms/correspondence, has a beginning section titled The use of the language implies that your interactions with clients will be of short duration. There is no evidence that you plan to provide a series of sessions with in-depth education directed to the particular needs of the client or to dedicate the time necessary to address the financial problems faced by a particular client. This consultation format appears to be designed to expedite the enrollment of clients in DMP's.

In addition, you submitted the which describes in detail how your counselors are to converse with potential clients. Nothing in this document contains substantive educational material to assist persons in need of financial counseling. Rather, it continually importunes your counselors to make an effective presentation of a DMP, and how to close DMP sales. Although you speak over the telephone one on one with the individuals you contact, you describe a process that seems to solely focus on how to enroll clients in DMPs. You have not provided specific evidence that these calls are educational.

20044044E

The service that you provide to individuals appears to be entirely devoted to the business of marketing the benefits of your debt management plans. The that you submitted focuses solely on assisting your counselors in selling debt management plans, not on how to educate the client in personal finance, responsible buying practices, or even a general understanding of consumer credit.

It appears that the vast majority of the time of all of your counselors is spent in selling debt management programs, with no time spent on public education or on meaningful personal counseling. The budget that you included with your application shows no separately budgeted item for educational activities. Based on the amount of time that you spend with each client and the types of information the gives in discussions with your clients, we are not persuaded that you intend to educate individual clients. Rather, it appears that your intent is to market your debt management plans to the general public. Evidence of your intent to conduct business with the general public is even found in your where you direct clients to use your newsletter to clip coupons to save money in order to more quickly pay off creditors. You have not explained how these arrangements with vendors to pay for advertising in your newsletter serves the needs of your clients. This activity just generates another income stream for you. In addition, using your newsletter as an advertising vehicle promotes the for-profit business interests of these vendors. Any potential benefit to your clients would clearly be incidental to the private benefit realized by the vendors advertising in the newsletter.

Your activities are completely different from those found to be providing community education and individual training by the court in Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978). Unlike the organizations reviewed by the court, you submitted no evidence that you provide general education for the community. You represented that your counselors would conduct seminars but you have provided nothing to support that statement. You provided no agenda, schedules, or any educational materials for any seminars.

Second, the counselors in Consumer Credit Counseling Service of Alabama spent their time providing information to the general public through speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. You have submitted no evidence that you provide any similar information to the general public.

Also, in contrast to the organization in Consumer Credit Counseling Service of Alabama, you have not demonstrated the individual training content of your sessions with your clients. In that case, counselors spent additional time in individual counseling concerning budgeting and the appropriate use of consumer credit to individuals and families. The professional counselors used only percent of their time for debt management programs. The you provide your counselors is entirely aimed at selling and servicing DMPs. Following your model presentation leaves no time for your counselors to provide any educational content during their contacts with your clients

In addition, one of the hallmarks of a charitable organization is that it serves the public interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. However, the terms of your Debt Management Agreement with your clients makes it clear that you are not operating for their benefit. The client must agree that his first monthly payment, which you term a (based upon the amount he owes to creditors) will not be disbursed to the creditors. You or your back-office provider, possibly will retain it. If the client stays in your program for the full period that it takes to pay off credit card debt, you state that the first payment will serve as the final payment to the creditors. Retention seems highly unlikely, especially in light of your start-up structure. In the beginning of your relationship with the client, your charges exacerbate the problem. Your retention of the first month fee causes your client to be late in payments to his creditors. Your client's only recourse would be to pay both you and his creditors for the first month on the program. The difficulty here is twofold. The client has to be aware that this situation will occur and have the extra funds to pay twice. This would be unlikely, given that your clients are signing up with you due to their precarious financial condition.

Under the terms of your Debt Management Agreement, each and every one of your financially distressed clients that drop out of your program will forfeit the entire first months' payments they make to you. That amount Your clients pay a penalty. The forfeit of the entire first payment is akin to a provision that is negotiated and found in business contracts or imposed in the business-world on customers to further a money-making purpose.

You indicate that you charge significant monthly fees. You charge $ per creditor to a maximum of $ As far as we can tell from the informationyou submitted, you perform the following activities: You sign individuals up for DMP plans. You formulate a proposal and contact creditors asking for acceptance of the proposal. For this activity, you are compensated by your retention of the first month's fee. After that, or another service provider, receives a single payment from a debtor, divides that payment among the creditors and in most cases transfers the funds electronically to the creditors. If the individual did the paying and mailing services himself the cost would be a check, an envelope, and a stamp for each creditor. You failed to explain why your costs are so much greater than the costs an individual would incur.

You operate in a manner that it is strikingly different fromthe charitable credit counseling organization described in Rev. Rul. 69-441. That ruling states:

> 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 in the revenue ruling assisted the debtor by using all of the debtor's funds to pay off creditors. You, on the other hand, put your clients in a worse financial picture than they started with by your retention of the first month's payment and your significant monthly charges.

20044044 E

You also represented that you purchase several thousand leads at a cost of $ to $ per lead. However, merely speaking with those leads to determine whether they are interested in the benefits of your DMP program cannot be considered counseling or education. It is more in the nature of an advertising technique. You purchase leads and your counselors work with these leads to convince people to purchase your services. In your letter you stated that you abandon discussions with leads if they do In this regard, you operate in a manner indistinguishable from a commercial phone solicitor. Moreover, it appears that you may, intentionally or not, be using some deception to lure potential clients into a DMP. For example, in initiating the first phone call to a client, you state:
At first blush, it is quite possible that an ordinary citizen would view this statement as an offer to take-out a loan to cover his/her debts, rather than an invitation to purchase and enroll in a DMP.

*Is this in the file –that the leads come from loan applications? *what about deductibility? What is even more troubling is that the potential client is being told by you that the phone call is a continuation of an application the potential client initiated not with you but with a totally different potential lender. When you ask for financial information, the potential client thinks that this is in response to the application they made. They have no idea that they are really being subject to a cold call attempting to sell an entirely different service. Thus, the intended or unintended effect is to get the potential client to listen to at least part of the counselor's sales pitch and to disclose financial information that they may not have wished to share with you. Without the reference to the potential client may have shown no interest at all. This is a very disturbing practice. The counselor training material you submitted makes it quite clear that counseling is a relationship built on trust. Chapter one of your training manual starts with a section titled which discusses the importance of counselors developing a bond of trust between themselves and potential clients. The makes it clear that your relationship with your clients is built not upon trust but upon deception.

Moreover, there is no evidence that your counselors are otherwise trained or qualified to provide any meaningful counseling for debt-distressed individuals. Your provides a detailed description of how your counselors are to interact with clients and potential clients. Nowhere does it reference or suggest that your counselors should engage in meaningful counseling. There is only time for and emphasis on closing the sales of DMPs. The corresponds with the description of how you operate. No specialized training or qualifications on counseling debt-distressed individuals is necessary to conduct you DMP activity. The information you submitted indicates that this is your only activity.

Finally, on your application you maintain that you counsel clients on the principles of money management. However, the information you discuss with clients, set forth in the shows that you are not counseling and educating, rather you are actively engaging in a marketing strategy to enroll them in a DMP. This is no different from a for-profit collection agency and it is not educational. Moreover, you may be engaged in some amount of deception of clients in order to market your DMP's. For example, in the you describe a Cash Back Incentive Program to speed clients' payment of their debts. You represent in the that after consecutive payments, will send the

client's creditors a grant for an additional % of the client's payments, totaling one complete payment over time. However, there is no provision for this in the client contract. The client contract states that the client's final payment will be made by you in the amount of the client's initial This inconsistency between what is said in the and what is said in the client contract is deceptive, and means the client will not likely get the full benefit of what he/she bargained for. You have also provided contradictory information concerning the fee you charge your clients. In your Form 1023 application, you indicated that clients would not be required to pay you for the services provided to them or on their behalf, But, your Debt Management Agreement specifically describes monthly fees and a first month contribution. Moreover, neither the nor the Debt Management Agreement indicates that you provide assistance to those unable to pay.

That you lack the traditional attributes of a charity is also a basis for concluding that you operate for a substantial nonexempt purpose. First, you lack the public support and public oversight that are characteristic of a charitable organization. Unlike the agencies in Consumer Credit Counseling Services of Alabama, you receive token or no support from contributions from the general public, government or private foundation grants, or assistance from the United Way. In fact, you have virtually no fundraising program to solicit such contributions. According to your proposed budgets for 2004 and 2005, you plan to receive all your revenue from fees from setting up and processing clients' DMPs and fair share payments from creditors. For-profit business enterprises are supported by fees paid by those who receive services. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. In B.S.W. Group, Inc. v. Commissioner, *supra*, the court cited lack of solicitation and sole support from fees as negativefactors for exemption. See also, Easter House v. United States, *supra.*

Second, your organization shows none of the public involvement that characterizes public charities. The lack of public involvement was cited as a factor for denying exemption in Easter House v. United States, *supra.* Your activities are carried out exclusively by paid employees rather than by volunteers. Your small Board of Directors is neither responsive to, nor representative of the community. It is also self-perpetuating. You are unlike the credit counseling organization described in Rev. Rul. 69-441, *supra,* in which the organization's Board of Directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. A Board of Directors that represents a broad cross-section of the community is more likely to be involved in and responsive to the needs of the community.

Third, you operate in the manner of a common for-profit business enterprise because you neither serve an exclusively charitable class, nor offer services free or at substantially below cost to members of a charitable class. Providing free or low-cost services to a charitable class is a factor the IRS and the courts consider when an organization charges fees for services. For instance, in Rev. Rul. 76-244, *supra*, the IRS held that home delivery of meals to the elderly free or with charges on a sliding scale, depending on recipients' ability to pay, is a charitable purpose. Likewise, in Rev. Rul. 71-529, *supra*, the Service held a nonprofit organization that provided assistance in the management of participating colleges' and universities' endowment or investment funds for a charge substantially below cost qualified for exemption under section

200440445

501(c)(3). You provide services to individuals who are struggling with their financial condition. Unlike the elderly or low-income individuals, this group is not a specific, identifiable charitable class. Moreover, you have not provided specific demographic data to show that the clients you serve are in fact from a charitable class.

In Rev. Rul. 78-99, 1978-1 C.B. 152, the IRS held that the provision of individual and group counseling for widows based on their ability to pay is an educational activity. Recently, the judge in the Airlie Foundation case analyzed the organization's fee structure and found that it did not provide services substantially below cost, and only limited reduced rates for some exempt organization clients. You provided no evidence that any of your fees have any relationship to your processing costs, much less are below cost. Moreover, you have provided no evidence that any of your fees are based upon the ability of your clients to pay.

Fourth, you accumulate large sums of revenue without using that money to further any tax-exempt purpose. In just your second year of operation you project amassing $ up from earning $ the first year. You have provided no evidence that you are incurring, or plan to incur, expenditures for charitable or educational purposes. All of your revenue is being used, predominately, to operate and expand your for-profit business. You are similar to the organization described in Easter House v. United States, *supra*. That organization made substantial profits, and accumulated a substantial amount of capital surplus in comparison to direct expenditures for charitable and educational purposes.

Fifth, like Easter House v. United States, *supra*, you function by means of a paid staff with no volunteer help. An exclusively paid staff is characteristic of a commercial corporation, rather than a charitable nonprofit organization.

Sixth, unlike the agency held to be exempt in Consumer Credit Counseling Services of Alabama, *supra*, which obtained its clients through referrals from employers, union leaders, and clergymen, you pay for referral lists of potential clients. Calling the leads from lists that you have purchased because they may contain some people to whom you can sell your services is a normal part of the telemarketing process.

Your apparent attempt to avoid regulation under the CROA also indicates that you are operated for a substantial non-exempt purpose. See 15 U.S.C. section 1679 et seq This statute imposes restrictions on credit repair organizations, including forbidding advance payment before services are fully performed. 15 U.S.C. section 1679b. Section 501(c)(3) organizations are by definition excluded from regulation under the CROA. As stated above, the courts have interpreted the CROA so as to apply to the activities of credit counseling organizations.

The information you have provided can only be interpreted as evidence that you charge an advance fee, a practice forbidden to for-profit organizations under the CROA. Your Debt Management Agreement provides a fee structure of $ per month per creditor plus a first payment or for operational costs. Neither your debt management agreement nor your refers to an option for waiver of fees. You have not provided any data on the number of clients that have not paid the initial The first payment one of your

clients makes might be refunded in your Cash Back Incentive Program, but only if the client finishes the program. Only tax-exempt charitable organizations are permitted under the CROA to charge any of these advance fees. From the information you have submitted, it is clear that you are operating as the intake arm of a for-profit service provider to avoid regulation under the CROA. You market debt management plans through an aggressive system of purchased leads, cold calls and misleading information. Any successful sale is serviced entirely by an organization that is not controlled by you. Your role in this plan is to assure that the real service provider will not be subject to either the CROA or the Do Not Call List.

In FTC v. Gill, 265 F.3d 944 (9th Cir. 2001), aff'g 183 F. Supp. 2d 1171 (2001), the appellate court inferred that a credit repair organization that first promised a "free consultation," but charged fees in advance of the full performance of services was being subsequently operated as a charity primarily for purposes of evading regulation under the CROA. The conjunction of your lack of documentation of educational or other charitable purposes and your operation for the substantial non-exempt purpose of operating a business, suggests that your attempt to be recognized as a tax-exempt charitable organization is for the purpose of evading regulation under the CROA.

An organization cannot prove that it is entitled to exemption where one of its purposes is the avoidance of regulation. See The Foundation Church of Scientology v. U.S., 188 Ct. Cl. 490, 506 (1969). Since that it is one of your purposes, you are not entitled to exemption.

In addition to operating for substantial non-exempt purposes, you also benefit the private interests of a select few. Under section 1.501(c)(3)-1(d)(1)(ii) of the regulations, an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public benefit rather than a private interest. An organization must 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. You failed to submit sufficient information to show that you do not substantially benefit the private interests of its shareholders or managers or others. In fact, you have been non-responsive, inconsistent and incomplete in your answers to the questions we raised regarding your relationship with Although we note that an organization with a similar name is recognized as exempt under section 501(c)(3), you have submitted no information to indicate that the organization you are associated with by that name is anything other than a for profit organization.

** Can we say this? We note that if, in fact, is exempt under section 501(c)(3), it would be entitled to a presumption that it is carrying on activities which would be consistent with permissible exempt purposes under section 501(c)(3). This presumption, however, is subject to rebuttal with evidence that is, in fact, engaged in activities that would be inconsistent with charitable or educational purposes under section 501(c)(3) or would be subject to unrelated business income tax within the meaning of section 511-13 of the Code. In addition, because you have not submitted a valid contract with a back end provider, we have no way of knowing with any certainty who your back end provider will be. But, from the information you submitted, it is clear that you propose to conduct your activities through a third party service

provider. Your failure to submit a contract makes it impossible for us to ascertain with any certainty that the relationship will not result in private benefit to third parties.

* This would be OK if clearadebt is exempt. I'm not sure this furthers our argument. I'd leave out these 2 paragraphs. When private individuals or for-profit entities have either formal or effective control of a non-profit organization, it raises questions concerning whether the organization furthers the profit-seeking motivations of those private individuals or entities. You chose to manage the processing of your DMPs. Indeed many of your documents are written as though your clients will be dealing with not you. For instance, your letter states that a client stays with you for 30 days then deals with A majority of your present board was previously employed by

Control is an important factor in determining whether an organization operates for the benefit of private interests. As in est of Hawaii, *supra,* you are dependent upon a business that exerts over all of your operations. effectively operates much of your activity.

You are like International Postgraduate Medical Foundation, *supra,* where an alleged exempt organization was found to have been established to provide business to a travel agency owned by the same individual. Other cases on point are P.L.L. Scholarship and KJ's Fundraisers, *supra*, in which charitable fundraising was conducted on the premises of for-profit businesses in such a way as to benefit the businesses by attracting customers. Even though the organizations provided some scholarships, the court found that they had a substantial nonexempt purpose in promoting for-profit businesses. A substantial purpose in your creation appears to provide business to or other back end providers. Despite repeated requests for information about and other organizations with which you do business, you failed to provide that information. You have not submitted sufficient information for us to determine that you do not provide an improper benefit to its shareholders or managers or other organizations. Your failure to provide this information does not allow us to properly determine whether your organization and in fact, have an arms-length relationship, and that there are no conflicts of interests involving individuals in the respective organizations. Your failure to provide this information leads us to conclude that you are operating for substantial private benefit.

You also provide substantial private benefit to credit card companies in a manner similar to the organization in Credit Counseling Centers v. S. Portland You stated in your letter that In the absence of any charitable or meaningful educational activities you are operating as a collection agency for these companies. The paid by the credit card companies would undoubtedly result in significant savings over the possible costs of not recovering any of the unpaid debt owed them. Thus, these companies clearly realize substantial financial benefits through their business relationship with you.

Lastly, it appears that your assets inure to the benefit of your insiders. You have not shown that your assets do not benefit your officers and directors. According to section 1.501(c)(3)-1(d)(1)(ii) of the regulations, an organization is not organized or operated exclusively

for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must 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(a)-1(c) defines the term "private shareholder or individual" to mean persons having a personal and private interest in the activities of the organization. (See section 1.501(c)(3)-1(c)(2) of the regulations.)

Your start-up money, in excess of $ came from Letter dated Our letter of October 17, 2003, at 23, asked for documentation of the terms and conditions of any startup loans or grants you received. Although your letter states that you it is not clear whether any of the money from the (who are insiders, not outsiders) has been in the form of loans to you. You have provided no documentation of these amounts or of any of the terms. Consequently, we cannot conclude that your assets do not inure to the See Easter House, *supra*, in which the taxpayer similarly failed to show that no part its earnings inured to the benefit of any private individual.

Based on our analysis of your actual and proposed activities and, in light of the applicable law, we have determined that you are not operated for exempt purposes. Your primary activity is the marketing of debt management plans. This activity, standing alone, does not achieve charitable or educational purposes but is a business ordinarily carried on for-profit. Even if we determined that some of your activities were charitable and/or educational, you would not qualify for exemption because you are operated for the substantial non-exempt purpose of promoting the commercial business interests of your organization, or any other back end provider, and the credit card companies. You have not demonstrated that you public rather than private purposes or that your assets do not improperly inure to the benefit of private individuals.

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 of the Code.

You have the right to protest this ruling f you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section 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 administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Danny Smith, T:EO:RA:T:4
1111 Constitution Ave, N.W.
Washington, D.C. 20224

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

Sincerely,

Marvin Friedlander
Acting Manager, Exempt
Organizations Technical Group 4