



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Release Number: **201203024**  
Release Date: 1/20/2012  
Date: October 26, 2011  
UIL Code: 501.03-30  
501.32-00  
501.33-00

Contact Person:  
Identification Number:  
Contact Number:  
Employer Identification Number:  
Form Required To Be Filed:  
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

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

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

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

Sincerely,

Lois Lerner  
Director, Exempt Organizations

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: August 23, 2011

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

B = individual  
C = individual  
D = business  
E = business  
F = business  
G = business  
H = business  
M = state  
N = date  
O = date  
p = dollar amount  
q = dollar amount  
r = dollar amount  
s = dollar amount  
t = dollar amount  
U = program  
V = program

UIL #;s

501.03-30  
501.32-00  
501.33-00

Dear

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

Issues

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons given below.

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

### Facts

You were incorporated under M law on N. Your Articles of Incorporation ("Articles") state your specific purpose is the dissemination of information to the general public pertaining to foreclosure prevention/intervention, and credit counseling services. Your articles do not have a clause regarding the dissolution of your organization.

Your bylaws indicate your purpose is the dissemination of information to the general public pertaining to foreclosure prevention/intervention, and credit counseling services. The scope of your services shall include, but are not limited to the holding of educational meetings, and the preparation and distribution of educational materials, as it relates to finance.

Your Form 1023 ("application") indicates you "will provide services to the general public by performing counseling services directly pertaining to foreclosure prevention/intervention, and credit counseling". You will call your program "U". This program will "disseminate information, and educational materials that will be utilized in saving American families homes from the threat of foreclosure during these difficult economic times".

You included information from the "V" web site and indicated, in an expedite request, that you will attempt to obtain certification from the training. Per the web site information provided, V's "(f)oreclosure intervention counseling training prepares homeownership practitioners with the knowledge and skills to successfully deliver specific housing counseling assistance to delinquent and foreclosure clients".

Your bylaws state you will have at least three board members. However, the Form 1023 indicates you have two board members, B and C. You stated that "we currently only have two members at this time. This is due to the fact that we are not operational as of the date of this letter. Our intention is to add additional board members upon receipt of our approval to become an exempt organization".

You project around r dollars in gross receipt revenue, s dollars in occupancy expense and t dollars in professional fees for you first three years of operations.

You do not have a facility. After exemption is received you will locate a facility. Until such time you "will offer services via telephone, and the internet" from the home of B.

You "project no salaries during the start-up phase" of your operations. After the 12-month "start-up phase" all employees will be compensated with an hourly wage. The 12-month delay in compensation also applies to the Director of Operations.

B, who will also be your President, has experience in "developing a financial plan for clients to meet their future monetary goals as it relates to foreclosure prevention and loss mitigation". His primary expertise is in "Management, Finance, and Loss Mitigation negotiations".

B has previously participated in for-profit activities related to loan modification and foreclosure prevention with D, a for-profit entity. After tax exemption is received, D will cease loan modification and foreclosure prevention activities.

C, who will also be your Vice-President, has expertise in "Real Estate, property management, property development, and understanding Real Estate transactions".

The Director of Operations will oversee daily operations. Duties "will include but not necessarily (be) limited to: Provid(ing) individual, family and group education to clients and their families". The Director of Operations will:

- a) Perform comprehensive, in-depth assessments for a variety of program services
- b) Provide a full range of case management, counseling, advocacy, educational and related services
- c) Learn and utilize agency and community resources
- d) Assess community conditions affecting clients to identify resource gaps and discrepancies
- e) Recommend financial assistance for clients
- f) Represent and interprets programs of organization in (the) community
- g) Meets organization expectation for quantity of direct service
- h) Complies with organization recordkeeping expectations
- i) Other duties as assigned by the board of directors

Your Loss Mitigation Specialists will "perform the processing of various loan workouts based on the Director's recommendation in conjunction with investor, insurer and client guidelines. Obtain/submit/receive required documentation to/from (the) investor, insurer and/or client for approval of the elected workout, if applicable". The specialists will:

- a) Work with internal personnel and borrower(s) through both written and oral negotiations in an attempt to mitigate foreclosure
- b) Must be able to review/analyze borrower's financial documents such as: financial statement, hardship letter, tax returns, bank statements, pay stubs, listing contracts, agreement of sales, closing costs and settlement sheets and credit bureau reports, if applicable
- c) Responsible for documenting the Loss Mitigation Workstation (notes, steps), generate letters/tasks and adding documents to the imaging system to substantiate the recommendation, as required
- d) Notify (the) foreclosure attorney regarding status of loss mitigation activity, if applicable
- e) Maintains extensive investor, insurer and client guidelines/timeframes required for processing a loan workout
- f) Creates and updates managerial detail reports and/or spread sheet(s) pertinent to the workout function and/or progress of the loan(s) on a daily, weekly or monthly basis, as required
- g) Other duties as assigned

A third party provides training for your counselors in accordance with HUD standards.

You do not advertise. You will “perform search engine optimization in an effort to increase website visibility, along with offering our services to local and state communities by corresponding through the appropriate community and government channels”.

We asked you to walk us through a typical client encounter from the first phone call through the expected services you will provide. You indicated that:

- A client may contact you via phone or an online request
- Information is provided by the client and entered into your proprietary software
- The client is qualified for the requested service (pre-purchase or loss mitigation counseling)
- The client is assigned to a specialist, a new case file, and member identification number is generated
- Your specialist issues the client an outline of objectives, educational materials, applicable contracts, and class schedules
- The client pays for admission to the course(s)
- Educational materials are reviewed with the client during an online/teleconference call
- After the course is completed, your specialist arranges for a one on one teleconference to review materials, complete an exam and obtain the necessary documentation
- If loan modification services are being provided, your specialist will complete the necessary request forms, forward the required documentation, and communicate with the mortgage lender until a final decision is made by the lender
- The specialist will update the client at least monthly. Any final determination will be verbally communicated to the client and written confirmation of the results will be sent by mail
- If pre-purchase counseling services are being provided, upon the successful completion of the course and exam, a Certificate of Completion will be issued to the client
- Lastly, the client receives an “exit” letter

You do not collect up-front fees. All fees are course related and collected at the time a course is taken.

Your fee structure is as follows; p for the foreclosure intervention seminar and g for the pre-purchase buyer certification course. You do not have a fee waiver policy.

None of your services will be funded in whole, or in part, by fee for service agreements with lenders, creditors or debtors.

You do not provide any debt management services. No one on your board of directors has ever been an officer, director, or employee of a credit counseling agency, credit repair agency, or organization issuing credit cards.

We asked for specifics regarding your mortgage foreclosure counseling and loss mitigation. You repeated the steps in the before mentioned client encounter, adding that a client's mortgage institution is contacted directly to verify loan balance, terms and delinquency and

that, dependent on the mortgager's criteria, a financial statement may be provided in an effort to expedite the process.

You do not limit your services to any particular class of individuals.

It is your intention to offer four distinct workshops, as follows:

- a) Loss Mitigation Counseling/Alternatives to Foreclosure-this 90-minute interactive webinar course will help a client assess their default situation to determine whether an alternative to foreclosure is appropriate. Clients will learn about various workout options to select and execute the optimum alternative for the situation.
- b) HAMP (Home Affordable Modification Program) Determining Imminent Default-this 90-minute webinar provides the requirements for determining imminent default on clients who are current or less than 60 days delinquent. The webinar topics include an "Imminent default evaluation process overview", "When lenders will likely consider a client for imminent default" and the "Imminent default evaluation process".
- c) HAMP Overview-this 90-minute webinar course will provide details of the features and benefits of the HAMP. The webinar provides insights on processing and executing a modification under the HAMP and features discussions on program parameters, structure, required documentation and available tools and resources.
- d) Pre-Purchase Counseling-this 90-minute interactive webinar will discuss the criteria for buying a home, review mortgage products for first time homebuyers, determine a budget and overall credit history information, understand the steps to buying a home, and learn about closing and post closing information. Counselors will assist clients in preparing an "action plan" to follow to prepare for homeownership.

You do not offer, or plan to offer, additional services such as loans, credit repair, negotiating with creditors (except as directly related to loss mitigation services), bankruptcy counseling, or down-payment assistance.

However, your web site indicates you are a "not for profit firm that prides itself on unparalleled service and performance. We are committed to providing unbiased advice and prudent strategies for credit counseling, foreclosure prevention, and debt management".

The web site further indicates that "Working with our certified credit counselors, we will;

- Develop a workable budget and payment plan,
- Help you save up to 50% on your total credit card debt,
- Lower your interest rates by up to 50%,
- Consolidate your unsecured debts into one easy monthly payment,
- Help you along the way to become debt free."

When asked about this discrepancy you stated that:

"...we do not intend to offer any debt management services, credit repair, loans, negotiations with creditors (accept as directly related to loss mitigation services), or down-payment assistance, once our exemption status is approved. Furthermore, we have no(t) participated in any of the aforementioned services to date with any clients, as our organization has not been fully operational. Upon approval of our exemption status

this verbiage will be promptly removed from our website and replaced by the services that we are seeking exemption approval under”.

“The services that currently appear on our website in relationship to debt management were never to be directly provided by our organization, and those services were to be referred to other non-profit entities. After careful consideration we have come to the conclusion that we do not want to provide such services, nor refer these services to other companies”.

Your website included information relating to D, E and F. You indicated that after exemption is granted, you would create a separate website for your non-profit entity. While E, a limited liability company, is owned by B, no other direct relationship exists between the companies. E was “created solely to provide a marketing reference/umbrella company to provide potential for-profit Clients with brand recognition”.

You provided information regarding related for-profit entities as follows:

D, the for profit entity, provides residential mortgage origination services. E, the limited liability, provides marketing services and web design. F provides commercial mortgage services and commercial financial products such as facilitating commercial mortgage note buying/purchasing. The address of each for-profit entity is the same as your address, and each has a name similar to yours.

“A major difference between the way that our...for-profit entities currently conduct activities, and the way that our organization will conduct activities is that our...for-profit entities do not offer any type of educational assistance to assist their clients in not only preventing foreclosure, but also ensuring that they understand the various ways to never find themselves in a similar situation. The...for-profit entities do currently assist clients in preventing foreclosure, however this is only done by collecting the necessary information and documentation that will allow the for-profit company to negotiate with the lender. Also, no...for-profit entity offers pre-purchase counseling services”.

Regarding your board, you indicated that B is the President/Owner of D, E and F. C is the Director of Sales & Investor Relations for D.

H, listed on your website, is a DBA of D, not a separate entity. H has an affiliate/broker type relationship with G. “We are only able to refer clients seeking residential and/or commercial mortgage financing to the above referenced entity-They are in no way related to any of our organizations”. You will not obtain any clients from G.

An exhibit attached to your response titled “Fee Schedule and Service Outline” indicates you will work to re-structure a client's mortgage. The exhibit, which is provided to your clients, indicates, in part, that:

“A Loan modification can be done in several ways or in a combination of ways listed below:

- The loan's interest rate may be decreased



- The interest rate could be changed from an adjustable to a fixed rate
- The period of time the borrower has to pay the loan back can be lengthened
- The type of loan could be changed altogether
- Mortgage credit history may be "Rolled Back" and reflect a "Current" status
- A Forbearance (postponement) of payments due may be issued
- Late fees & past due charges may be waived

As previously mentioned you will prepare a loan modification proposal for the compensation amount noted above, and will provide the following services free of charge.

- Prepare and forward all of the Lender required loan modification documentation
- Provide the proper Lender required documents for the Lender's consideration/qualification of a Loan Modification
- Negotiate the terms of a favorable loan modification between the Lender and Client
- Provide Client with real-time status of request"

A Consultant Agreement was submitted which enables you to "act as Client's agent in counseling client with certain problems resulting from mortgage delinquency and/or foreclosure situations, and to prepare a proposal that will analyze the Client's financial situation".

### Law

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 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(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(b)(4) of the regulations states that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt

purposes, or to a State or local government, for a public purpose, or to the federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

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 states an organization must show that it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer

for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

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

- (i) requires that any fees charged to a consumer for services are reasonable,
- (ii) allows for the waiver of fees if the consumer is unable to pay, and
- (iii) except to the extent allowed by State law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan, or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

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

- (i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,
- (ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and
- (iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

Section 501(q)(4)(A) of the Code 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.

In Rev. Rul. 61-170, 1961-2 C.B. 112, an association composed of professional private duty nurses supported and operated a nurses' registry to help make the nurses' services more readily available to the general public. The association's bylaws stated that its specific purposes were to provide employment for its members as well as to organize an adequate and available nursing placement service for the community. Its membership was open to both registered and practical nurses who met specified requirements. The organization maintained a registry of its members showing their respective qualifications and the types of services they perform. Reference and placement from the register were made on a rotating basis upon request for nursing services. The association was operated primarily to afford greater employment opportunities for its members, and only incidentally for the benefit of the general public. This was evidenced by the fact that it drew its support

primarily from members and was controlled by a board of trustees composed of professional nurses, without public participation of any kind. Thus, the association was not organized or operated exclusively for exempt purposes as described in section 501(c)(3) of the Code.

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. The organization did not charge fees for counseling services or proration services. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions. 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.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Operating for the benefit of private parties constitutes a substantial nonexempt purpose. Old Dominion Box Co. v. United States, 477 F. 2d 340 (4th Cir. 1973), cert. denied 413 U.S. 910 (1973).

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

The Consumer Credit Counseling Service of Alabama was an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. As such, the community and

education counseling assistance programs were the agencies' primary activities. 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."

In Church by Mail, 765 F. 2d 1387 (9<sup>th</sup> Cir. 1985), affg. TCM 1984-349, Tax Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. Furthermore, the Tax Court found it unnecessary to consider the reasonableness of payments made by the applicant to a business owned by its officers. The 9<sup>th</sup> Circuit Court of Appeals, in affirming the Tax Court's decision, stated 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, 12 Cl. Ct. 476 (1987), aff'd, 846 F. 2d 78 (Fed. Cir. 1988) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court found that the health-related services were merely incidental 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 International Postgraduate Medical Foundation v. Commissioner, T.C.M. 1989-36, the court held that an organization that had the substantial nonexempt purpose of benefiting a related for-profit travel agency, from which it purchased travel services, did not qualify for exemption under IRC 501(c)(3).

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (7<sup>th</sup> Cir. 1991), the U.S. Court of Appeals for the Seventh Circuit 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 nonexempt commercial purpose, rather than for an 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 ("DMPs"). The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials to provide to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

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

The Tax Court further held the organization would operate for the private interests of its founder because the founder and his 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 the private interests of creditors as well.

### Application of the Law

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) (Section 1.501(c)(3)-1(a)(1) of the regulations).

First, an organization must have a valid purpose clause. A valid purpose clause limits the organization's purposes to one or more exempt purposes and does 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. Your articles do not limit you to an exempt purpose which is not compliant with section 1.501(c)(3)-1(b)(1)(i) of the regulations. Second, your articles do not ensure that upon dissolution assets will be dedicated to an exempt purpose which is not compliant with section 1.501(c)(3)-1(b)(4) of the regulations. You fail both tests and are not in compliance with Section 1.501(c)(3)-1(a)(1) of the regulations.

You do not operate exclusively for educational purposes within the meaning of section 501(c)(3) of the Code or for exclusively exempt purposes under Section 1.501(c)(3)-1(c)(1) of the regulations. Your website does not indicate any substantial educational purpose. It currently has information regarding credit card consolidations, debt management, and contains information about related for-profit entities, making it difficult to determine which activities will be conducted by you and which by related for-profit entities. You have stated that after exemption is received, a website will be created devoted solely to your non-profit entity. However, we can only make our determination based on the information in the file, not possible future changes. Thus, you have not demonstrated that you are operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

Further, as seen in Church by Mail, the Court concluded that the extent of the integration between the operations of a non-profit entity and related for-profit entities controlled by the non-profit directors precluded exemption. The current setup and structure of your site does not allow for an observer to separate the two. The site appears to primarily serve the private interests of the related for-profit entities.

Though you offer "information to the general public pertaining to foreclosure prevention/intervention, and credit counseling services" you failed to establish that such activity primarily serves a charitable purpose as you provided no copies of any educational material. Like the organization in Solution Plus, you did not provide sufficient evidence that you help clients develop a significant understanding of the cause of their financial problems or a plan to address their financial problems.

You stated that you serve people in need of foreclosure consulting services of all income levels and your services will not be limited to any charitable class. This does not provide relief to the poor and distressed within the meaning of section 1.501(c)(3)-1(d)(2) of the regulations or serve any other purpose recognized as charitable. Accordingly, you are unlike the organization described in 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, and Rev. Rul. 69-441, *supra*, you charge fees for the majority of the services provided. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Solution Plus, T.C. Memo. 2008-21, 22. Thus, you have not demonstrated that the provision of these

services exclusively furthers charitable purposes within the meaning of section 501(c)(3) of the Code.

You have no facility and operate from the home of B. The addresses of D, E and F are the same as your address. Currently, D conducts foreclosure/credit counseling (which you indicate will stop once you receive exemption). Each of these facts demonstrates the comingling of activities between you and each related for profit entity created and managed by B. This is not in compliance with section 1.501(c)(3)-1(d)(1)(ii) of the regulations which states an organization must show it serves a public rather than a private interest and, specifically, that it is not organized or operated for the benefit of private interests, such as designated individuals or persons controlled, directly or indirectly, by such private interests. The interrelationships and common control of you and the for-profit entities is a substantial non-exempt purpose similar to the operations of the organizations in International Postgraduate Medical Foundation v. Commissioner and Old Dominion Box Co. v. United States. Your relationship with the commonly controlled for-profit entities is also a single non-exempt purpose which precludes exemption (Better Business Bureau of Washington, D.C., Inc. v. United States).

You conduct many of your activities in the same manner and in direct competition with commercial businesses, like the organizations in Easter House, Airlie Foundation and Living Faith. As indicated earlier, you have no facility and operate from the home of B. The addresses of D, E and F are the same as your address. D is a commercial enterprise that provides several of the same services you provide. Most importantly, the foreclosure intervention services you provide are in direct competition with banks and other commercial firms that provide these services. You failed to establish that the fees you charge to provide foreclosure intervention and other financial services entitle your clients to any educational programs or services beyond those that are offered by commercial firms. Accordingly, your activities evidence a substantial nonexempt commercial purpose.

The activities you identify as educational and charitable are merely incidental to your business of providing services for a fee. Thus, more than an insubstantial part of your activities are 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.

You failed to establish that you do not confer a direct benefit on your president through your operations. Your net earnings inure to the benefit of B as the owner of related for-profit entities. This is not in compliance with section 1.501(c)(3)-1(c)(2) of the regulations.

You are controlled by a board of directors composed of real estate professionals, without public participation of any kind. This indicates that you are operated for the benefit of your directors rather than the public, as in Rev. Rul. 61-170. Your board of directors is composed entirely of persons who stand to gain financially from your activities, unlike the organization in Rev. Rul. 69-441, whose board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.



Because your operations substantially benefit your directors 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.

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. An organization that engages in such activities as a substantial purpose must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q). You do not meet the requirements of section 501(c)(3) and you do not meet the requirements of section 501(q).

An exempt credit counseling organization must establish and implement a fee policy which requires that any fees charged to a consumer for services are reasonable and allows for the waiver of fees if the consumer is unable to pay. Section 501(q)(1)(C). You failed to establish that you have such a fee policy.

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 (section 501(q)(1)(D) of the Code). You have two board members, B and C. B is a financial services professional and C is his employee. Furthermore, the fact that you have only two board members is not compliant with your own internal rules of operations (bylaws) which indicate you at all times will have three board members. This further illustrates you serve the private interests of your directors and not the broad public interest.

Accordingly, you do not have a board 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.

### Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(b)(1)(i) of the regulations. More than an insubstantial part of your activities are in furtherance of a nonexempt purpose and you have not demonstrated that you do not allow your net earnings to inure to 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.

You also do not meet the qualifications set forth in Section 501(q) of the Code pertaining to organizations that provide credit counseling services. Had you established that you otherwise met the requirements of section 501(c)(3) of the Code, your failure to satisfy the requirements of section 501(q) would disqualify you from exemption under 501(C)(3)

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

*Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:*

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

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*Your appeal will be considered incomplete without this statement.*

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

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse

determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

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

Deliver to:

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

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

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

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure, Publication 892