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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **201232035**
Release Date: 8/10/2012

Date: May 15, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.32-00; 501.32-01; 501.33-00

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.

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

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: March 29, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = date
C = state
D = individual
E = individual
F = individual
G = business
H = business
J = business
K = individual
L = business
m = dollar amount
s = dollar amount
v = dollar amount
w = dollar amount
x = dollar amount

UIL:

501.32-00
501-32-01
501.33-00

Dear :

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

Issues

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

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

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

Facts

You were incorporated on B under C law. Your Articles of Incorporation ("Articles") state, in Article II, that your specific purpose is to:

".. provide unsecured debt solutions, mortgage modification program and credit enhancement program."

Your Bylaws do not include a purpose clause. Provisions related to the election of directors indicate that board members serve until their successor is elected, the term of each director is two years and directors may not serve more than three consecutive two-year terms. The submitted Bylaws appear to be adopted from a template that has not been modified as they contain many sections or provisions that are identified as alternatives or additions as appropriate. Finally, you stated separately that directors serve indefinite terms.

You have three officers, D, E and F, who are also directors. D is your CEO, E is your Secretary and F is your CFO. D, E and F are all related to each other through blood or marriage. E and F are both licensed real estate brokers. D, E and F will each be compensated by you. K, who is related to D, E and F through marriage, is a compensated employee, but is not on your board.

G is a for-profit entity, owned by D, that offers credit repair services to clients for a fee. H is an S corporation. operated by D, that offers loan modifications for a fee. You initially stated that J was a non-profit organization, however, subsequently it was determined that J is a for-profit organization based upon records on file in the state corporation bureau. J also provides services in the field of debt management, debt settlement and credit repair.

The lease agreement you submitted was entered into by G in 2007. You stated that while the lease was not renewed it was extended with no increase by the landlord. G has a contract with J to operate as an affiliate to offer debt settlement/debt management programs. If a client qualifies, debt settlement paperwork is prepared by your employee and forwarded to J. G receives a percentage fee based upon the amount of debt of the referred client.

You submitted copies of your website pages. The website includes your phone number and address as well as information regarding the services that you offer. Services listed include credit restoration and enhancement services, assistance in buying a new house, debt negotiation & reduction consultation and a do-it-yourself assistance program for loan modifications. The website also includes a section on FAQs regarding loan modifications

Your credit counseling sessions begin with an initial appointment that includes an explanation of the eligibility requirement of the program and how the Debt Management Program (DMP) offered by J, your service provider, works. You explain how the client will benefit from the DMP, how the program works as well as the terms and conditions to manage existing debt while in the program. Only one meeting with the client is required before you make a recommendation. A written budget analysis is provided to the client. You plan to enter into an affiliate agreement with J identical to the one that exists between G and J. You do not have an educational program for clients nor do you conduct workshops or seminars for the public. Your employees will be trained by J. Your initial inquiry lasts approximately 30 minutes and subsequent calls range from 10-20 minutes. You plan to purchase leads once your operations grow.

You charge an evaluation fee (m dollars), which includes a credit report and counseling from the client, as well as a fee received from J as debt is paid off. The client signs an agreement with J for the DMP program. J charges a fee equal to 20% of the client's total debt that is enrolled in the program which is payable up front. In addition, a onetime enrollment fee equal to 2% of the total enrolled debt is due at enrollment in the program. You also submitted a copy of the independent contract broker agreement that you plan to enter into with J. Under the agreement you will perform consulting and marketing services of J's services in exchange for both referrals (leads) and completed client files.

You receive fees for completed client file enrollments and for debt management enrollment, debt negotiation/debt settlement enrollment, tax offer & compromise enrollment, financial literacy and credit education services program enrollment. These fees range between $20 to $100. You also receive a portion of J's settlement fee for enrolling clients in debt negotiation/settlement. Under the contract with J, you will collect a reasonable enrollment fee from the client, a portion of which you pay to J for servicing of the DMP.

Your mortgage foreclosure counseling and loss mitigation program is limited to homeowners that have a true hardship caused by curtailment of income and 31% of their gross income must be less than their current mortgage payment. You obtain proof of income and information regarding household expenses from the client. You do not provide any workshops, classes or seminars as part of your program. You meet with your clients once before recommending a particular approach. You charge a non-refundable fee of s dollars, which includes a credit report, property value and assessment report and preliminary report and financial evaluation and counseling. You have not waived this fee for any of your past clients. You also charge a second fee of v dollars after the loan modification has been approved by the lender.

You provide credit repair and restoration services for a fee of w dollars, payable in advance. You will assist in the correction and improvement of obsolete, erroneous and disputable credit information. The purpose is to effect sufficient changes in a credit report enabling clients to become eligible for mortgage loans. If a client needs credit repair services he/she is referred to J. Your activities are identical to those previously conducted by G and H. G and H will not continue to operate if you receive your tax-exempt status. Clients that do not wish to receive services from J or receive loan modification services from you are advised that they can make payment arrangements directly with their creditors, to borrow funds from relatives to help them with their current debt, look for additional sources of income, and to pay their delinquent mortgage payments.

You also have a referral agreement with L. L was exempt under section 501(c)(3) of the Code, however, the exemption has since been revoked. You stated that you were unaware of this fact. You refer clients to L that are not behind on their credit card payments but want to consolidate their debt, reduce interest rates, principal and payments. You receive a referral fee per client from L.

E and F are each compensated by you in the amount of x dollars per month. Both E and F are active licensed real estate agents. Each employee also receives a commission of 25% of the fee collected from each client counseled. You indicated on page 3 of Form 1023 you do not follow a conflict of interest policy to approve compensation arrangements nor will you approve compensation arrangements prior to paying compensation or document in writing the date and terms of approved compensation arrangements. As previously indicated all three of your directors are related by blood or marriage and each is compensated by you. You also submitted copies of a newspaper ad and a flyer that you distribute to publicize your services to the public. The newspaper ad includes E and F's pictures as well as the names of their for-profit real estate entities. The ad states that you "solve debt and credit problems." Included are brief descriptions of your programs including loan modification, debt negotiation and reduction and credit restoration and enhancement. The statement, "we can also assist you buy your new home" is also included in the ad. The flyer is identical to the ad. Your submitted lease agreement was entered into by F/G for a two year term beginning November, 2007. Finally, you stated that while the lease was not renewed it was extended with no increase by the landlord.

Your submitted budgets indicate that you do not anticipate receiving any gifts, grants or contributions. All of your income will be derived from fees from services provided to clients or rental income from the use of your facility by others.

Law

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

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

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

(A) The organization--

(i) 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).

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

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

Section 501(q)(2)(A)(ii) provides that if an organization is described in section 501(c)(3) and is providing credit counseling services as a substantial purpose, it may be exempted from tax only if its aggregate revenues from payments by creditors of consumers of the organization attributable to debt management plan services do not exceed a specified percentage of total revenues.

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

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

Section 1.501(c)(3)-1(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 provides that an organization's assets must be dedicated to an exempt purpose, either by an express provision in its governing instrument or by operation of law.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an applicant organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

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

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

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 178 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B.249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

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

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

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of the typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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

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

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded that "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." *See also*, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Case. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In People of God Community v. Commissioner of Internal Revenue, 75 T.C. 127 (1980), the court found that part of an organization's net earnings inured to the benefit of private individuals because their compensation was based on a percentage of the organization's gross receipts with no upper limit. The court held that the petitioner was not exempt as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954.

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

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

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the. commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

> Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

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

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll individuals in DMPs." 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 spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of private interests.

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

Application of Tax Law

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

Organizational Test

To satisfy the organizational test, an organization must have a valid purpose clause and a valid dissolution clause. Section 1.501(c)(3)-1(b)(1)(i) and 1.501(c)(3)-1(b)(4) of the regulations. 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 your purposes to one or more exempt purposes. Specifically, providing unsecured debt solutions, mortgage modification program and credit enhancement programs can serve a nonexempt purpose. For example, this provision allows you to provide services to non-charitable beneficiaries and make referrals to for-profit organizations which can also be a commercial purpose, as evidenced by the fact that G had the same purpose. Thus, your Articles do not limit your purposes to one or more exempt purposes. Therefore, you do not have a valid purpose clause.

Operational Test

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

Your Activities Are Not Educational

You are distinguishable from the organizations in Consumer Credit Counseling Service of Alabama, *supra*, and Rev. Rul. 69-441 by the methodology you use to conduct your counseling activities. You stated that your credit counseling sessions begin with an initial appointment that includes an explanation of the eligibility requirements of the program and how the debt management program offered by J, your service providers works. Your mortgage foreclosure counseling and loss mitigation counseling is limited to obtaining proof of income and information regarding household expenses from the client. However, unlike the organizations in Consumer Credit Counseling Service of Alabama, *supra,* and Rev. Rul. 69-441, *supra*, you do not offer counseling sessions that are structured primarily to improve your clients' understanding of their financial problems or their skills in solving them. Only one meeting with the client is required before you make a recommendation for a particular service/program. You provided no evidence that your employees do anything other than sit down with your clients to obtain enough information to determine which service is needed and make a referral. Your employees have prior experience with G providing essentially the same services to clients, however, that does not demonstrate that your counselors are equipped to provide individually-tailored financial recommendations or do anything beyond merely referring clients to J. Communicating with a client to fill out a financial worksheet and an intake sheet is not an educational activity because the communication does not provide a development from the relevant facts that would materially aid a listener or reader in a learning process. Rev. Proc. 86-43, *supra*.

Your website includes your phone number and address, information regarding the services that you offer as well as a section on FAQs regarding loan modifications. You do not offer any workshops, classes or seminars to the public nor do you provide an educational program or materials to your clients. Although your website contains some educational content, it is not sufficient to establish that your interactions with clients provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations.

You do not operate a substantive on-going educational program. You do not dedicate any revenue to activities involving educational programs. You do not allocate any expenses to training employees. Like the organization in Solution Plus, *supra*, you did not provide evidence that you help clients develop an understanding of the cause of their financial problems or provide a plan to address their financial problems. You provided no evidence that you intend to establish long-term counseling relationships with your clients, in fact, clients who do not wish to receive services from you or your service providers are advised to borrow funds from relatives, seek new sources of income and pay their delinquent mortgage payments.

Your operational focus is on generating fees from your consulting activities. You charge fees for credit counseling, loan modification, credit repair, and receive referral fees from service providers. You pay a fee to J for each client that enrolls in their DMP program. You receive referrals fees from J and L depending upon the service that is provided to your referred clients. Similar to the organization in Solution Plus, *supra*, your efforts are focused on informing potential clients about the range of services available and signing them up for either your loan modification service or those provided by J or L. Like the organizations described in Solution Plus, *supra*, Better Business Bureau, *supra*, and Easter House, *supra*, your activities have an underlying commercial motive that distinguishes your activities from those carried out by an educational institution.

Your Activities Are Not Charitable

Most of your time and resources are devoted to marketing the products of for-profit service providers that are commercial entities or to providing loan modifications for a fee to individuals who are not part of a charitable class. The foreclosure consulting services you provide to homeowners do not further charitable purposes. You are not described under section 1.501(c)(3)-1(d)(2) of the regulations as your services are marketed and available to those who can afford your fees rather then those who are poor and distressed.

The foreclosure consulting services you provide to individuals do not further charitable purposes as you do not limit your services to low-income individuals. You indicated that the service is limited to homeowners with a hardship caused by curtailment of income whereby their current mortgage payment exceeds 31% of their gross income. Further, you do not waive your fees for those clients who cannot afford to pay for your services. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra* and Rev. Rul. 69-441, *supra*, which aided low-income individuals and families who have financial problems, thereby relieving the poor and distressed.

Unlike the organizations in Consumer Credit Counseling Service of Alabama; *supra*, and Rev. Rul. 69-441, *supra*, you charge fees for all of your services. "[P]rimarily providing services for a fee ordinarily does not further charitable purposes." Solution Plus, *supra*. Thus, you failed to establish that your activities are charitable within the meaning of section 501(c)(3) of the Code.

You Have a Substantial Nonexempt Commercial Purpose

The courts have developed guidelines intended to help discern whether an organization has a substantial nonexempt commercial purpose. *See e.g.*, B.S.W. Group, *supra*; Easter House, *supra*; Airlie, *supra*; Living Faith, *supra*. Generally, the factors proffered by courts focus on the nature of activities and how an organization conducts its business.

Your activities consist exclusively of providing consulting services to clients for a fee, making referrals of clients to for-profit services providers or providing loan modification services to anyone who can afford to pay your fee. Your activities do not further an exempt purpose, as recognized by statute or by case law, but rather a substantial nonexempt commercial purpose. The fees do not entitle your clients to any educational programs or services beyond those that offered by for-profit businesses or the loan modification service you provide. The loan modification service consists of preparing the paperwork required by the lender to request a modification. This is evidenced by the fact that G was operated in the same manner offering essentially the same services. You will enter into contracts with J and L identical to those currently held with G. Adopting a fee structure that is identical to that used by a for-profit also demonstrates that you are operating like a commercial organization seeking to maximize profits, rather than as a charitable or educational organization seeking to serve the public. Your budgets do not include any money for educational or charitable activities. The compensation structure you adopted which includes a commission of 25% of the fee collected from each client in addition to a base salary of x dollars a month also demonstrates that you are focused on profits. Thus, similar to the organization in Easter House, *supra*, the profit-making fee structure of your consulting services overshadows any of your other purposes.

Your finance structure further demonstrates that you operate for a substantial nonexempt commercial purpose. You do not expect to fundraise or solicit government grants. There is also no evidence that you have received contributions or gifts from disinterested members of the public. All of your income will be derived from client fees for services or fees received from referrals to J or L. Accordingly, you are unlike the organizations described in Consumer Credit Counseling Service of Alabama, *supra*, that received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way (only an incidental amount of their revenue was from fees). Your operations are financed entirely by revenue earned from selling services to homeowners and fees received from for-profit service providers as a result of client referrals. Receiving support primarily from consulting fees is indicative of a nonexempt purpose. Easter House, *supra.*

Like the organizations in Easter House, *supra*, Airlie, *supra*, and Living Faith, *supra*, you are in direct competition with commercial businesses because you conduct activities generally conducted for a profit. In fact, the activities you conduct were previously conducted by predecessor for-profit entities. You conduct many of your activities in the same manner as commercial enterprises. For example, you use similar pricing, financial structure, advertising, and relationships with other for-profit companies. Accordingly, your commercial activities evidence a substantial nonexempt commercial purpose.

The activities you identify as "educational" are incidental to your purpose of providing foreclosure consulting services for a fee. You only meet with clients once to determine if a referral to J or credit repair/loan modification services from you are required. If the client is not interested in any services he/she is advised to make arrangements directly with their creditors or borrow money from relatives. 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.

Inurement

An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 501(c)(3) of the Code; Section 1.501(c)(3)-1(c)(2) of the regulations.

Your net earnings inure to the benefit of your directors. You provided a lease agreement entered into in 2007 between G and the lessor. You indicated that G and H will not continue to operate once you receive your tax-exempt status, however, you will continue to use the facility formerly occupied by G. Your budgets include amounts for occupancy expense which indicates that you paid the rent due under a lease entered into by G despite the fact that you were not yet conducting operations at this location. Thus, you conferred a direct benefit on your directors, who own G.

Your directors determine their own salaries and you have not adopted a conflict of interest policy. Even if you had a conflict of interest policy it would be impossible to enforce due to the fact that all three of your directors and employees are related by blood or marriage. Your directors also intend to pay themselves commissions on clients fees, which is non-fixed compensation based on business results. There is no upper limit on the amount of your directors' compensation. Compensation based on a percentage of revenues with no limit has been held to be inurement. People of God Community, *supra*. As your net earnings inure to the benefit of your directors you are not described in section 501(c)(3) of the Code.

Private Benefit

An organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. *See* section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The marketing and referral services you provide to for-profit corporations substantially benefits J and L in several different ways. First, by serving as an intermediary for the service providers, you facilitate new clients. Second, your employees gather information that J and L would otherwise have to collect on their own. Third, you perform a mortgage modification on behalf of the lender, as well as other functions the lender would otherwise have to perform. Therefore, you have not demonstrated that your operations serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii).

Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must, in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

You do not comply with certain provisions of section 501(q) of the Code. 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 a fee waiver 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). All of the voting power of your board of directors is vested in persons who are employed by the organization and 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). Accordingly, you do not have a board of directors that is controlled by persons who represent the broad interests of the public as required by section 501(q)(1)(D)(i). You also fail to meet the requirements of sections 501(q)(1)(D)(ii) and (iii), which generally specify the percent of voting power that is allowed to be vested in financially interested persons.

Therefore, had you established that you provide educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure as a substantial purpose, and that you otherwise met the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You are not organized exclusively for exempt purposes as required by section 1.501(c)(3)-1(b)(1)(i) of the regulations because your Articles of Incorporation do not restrict you to section 501(c)(3) purposes. You are not operated exclusively for an exempt purpose as required by sections 1.501(c)(3)-1(a)(1) and 1.501(c)(3)-1(c)(1) of the regulations because you are not educating your clients nor do you provide your services to poor or distressed individuals. You are organized and operated for commercial purposes. Any public purposes for which you may operate are only incidental to this primary nonexempt purpose. You have not demonstrated that you do not allow your net earnings to inure to private individuals as required by section 1.501(c)(3)-1(b)(2) of the regulations. You do not serve a public rather than a private interest as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations. Therefore, you are not described in section 501(c)(3).

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

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

Types of information that should be included in your appeal can be found on page 2 of Publication 892. These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

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

Your appeal will be considered incomplete without this statement.

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

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

Enclosure, Publication 892