



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

PROTEST RECEIVED
Release copies to District
Date: 11/2/05
[Signature]

Date: [REDACTED]

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Legend:

B=
C=
D=
E=

Dear Applicant:

The market for consumer credit counseling services has undergone changes in the past 30 years. In 2002, the IRS began a comprehensive study of organizations offering credit counseling and debt-management services. On July 30, 2004, the IRS Office of Chief Counsel released IRS Chief Counsel Advice (CCA 200431023 2004 IRS CCA Lexis 22 (July 13, 2004)), presenting a comprehensive legal analysis as to whether credit counseling organizations can qualify as charitable or educational organizations described in section 501(c)(3) of the Internal Revenue Code. We have enclosed a copy of the CCA for your information.

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

You were incorporated on [REDACTED]. You are an outgrowth of B's for-profit business, which focuses on financial investment and retirement planning. According to your Articles of Incorporation, you are organized for the following purposes: "to counsel, educate and guide individuals of all economic levels with advice that is sound, practical and founded on biblical concepts, leading to responsible money management and wise financial decisions."

B, your founder and sole proprietor, is one of your directors/officers. She is also a "registered" investment advisor and "certified" financial planner. Your staff will consist of B, C, D and E, and is located in the same office space where B conducts her private for-profit business activities. C, D and E all either own an accounting business, or are otherwise employed full-time in some aspect of the financial planning industry. B, C, D and E will all work on a part-time basis and will each share a portion of your monthly rental payment. You pay C, D and E, as

[REDACTED]

independent contractors, at a rate of \$ [REDACTED] per hour of "actual client meeting time." C, D and E also serve on your Board of Directors.

You have stated that you will charge clients \$ [REDACTED] per hour for services. You will advertise the availability of your services in print, on the radio, through phone listings, and over the website. You have no fundraising program in operation.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar (a for-profit enterprise) for purposes of raising money for scholarships. The board of directors included the bar's owners and accountant, and two other persons. The court reasoned that, because the bar owners controlled the organization and appointed its directors, the organization's fundraising activities could be used to the advantage of the bar owners, and thus, provide them with a maximum private benefit.

The organization claimed that it was independent because there was a separate accounting and that no payments were going to the bar. The court did not agree and maintained that the organization's and the bar's activities were so interrelated as to be "functionally inseparable." A separate accounting did not change that fact. Thus, the organization did not operate exclusively for exempt purposes, but rather benefited private interests – the bar owners. Exemption was properly denied.

In Rev. Rul. 61-170, 1961-1 C.B. 112, an association composed of professional private duty nurses and practical nurses that supported and operated a nurses' registry primarily to afford greater opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

In Rev. Rul. 80-287, 1980-2 C.B. 185, a lawyer referral service that aids persons who do not have an attorney by helping them to select one was not entitled to exemption under section 501(c)(3) of the Code. Although the service provides some public benefit, its principal purpose is to introduce individuals to the use of the legal profession in the hope that they will enter into lawyer-client relationships on a paying basis as a result of their experience.

As was mentioned in the attached memorandum, the selling and administering of debt management plans (DMPs) is not an inherently charitable or educational activity, and is often conducted as a commercial activity.

While you do not appear to be engaged in the sale of DMPs, you are involved in a joint venture with others to promote and sell financial services to the general public. These services seem to be an integral part of the services offered as a part of B's for-profit financial investment and retirement planning business. Moreover, the services cannot be completely distinguished from the kind of services offered by B's for-profit business. In addition, C, D and E are also providing the same services they provide through their own for-profit financial services businesses. This is a substantial non-exempt purpose that defeats exemption under section 501(c)(3).

[REDACTED]

Further, you have not provided substantial evidence that you are not furthering B's private "financial planning" business operation through the sharing of office space, and the conduct of "financial counseling" activities in the same premises. It is possible that at least some of the clients' seeking help through this organization would also have an interest in purchasing the services offered in B's private business practice. At the very least, some individuals and/or families who recover financially will be drawn to the ready availability of the for-profit financial services conveniently located and offered by B. Therefore, the sharing of office rent and space would serve primarily to advance B's private financial interests. You are similar to the nurses' registry described in Rev. Rul. 61-170 in that one of your purposes is to enhance the business of the sole proprietor. Although your activities have some public benefit, your primary benefit will be to the sole proprietor. (Also see P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), in which the court found that the organization and the for-profit enterprise were so interrelated as to be functionally inseparable. Thus, the organization did not operate exclusively for exempt purpose, but rather benefited the private interests of the for-profit owners).

Likewise, C, D and E, as independent contractors, would further their private financial interests through sharing the office space, paying only a portion of the rental payments, and potentially gaining additional clients for their private business interests. As in the case of B, at least some individuals and/or families who recover financially will want to use the "convenient" services offered by C, D and E in their private businesses. These benefits are in addition to the previously mentioned hourly rate they receive for "actual client meeting time," which includes providing commercial services offered by other competing for-profit financial services businesses.

The net effect of the close relationship of your organization to B's for-profit business is to promote and potentially contribute to its financial growth and development. This arrangement serves as a continuation of B's proprietorship in her financial investment and retirement planning business. B, as the sole proprietor, has a substantial business interest in ensuring your success, and thus, the success of the for-profit business. See Rev. Rul. 80-287, in which the Service found that the organization's principal purpose is to introduce individuals to the use of the legal profession in the hope that they will enter into lawyer-client relationships on a paying basis as a result of their experience. Therefore, B's hope is that an individual's "successful" experience with your organization could possibly translate into potential business for the for-profit business. Thus, the private financial interests of B are furthered rather than the promotion of any public interests.

In addition, you have not shown that your income will not inure to the benefit of B, C, D or E. There seems to be great likelihood of inurement to these individuals in that they all serve on the Board of Directors, and have a vote on compensation arrangements, leasing arrangements, and other financial matters that would affect the organization's financial interests as well as their own. This situation gives rise to an inherent conflict of interests that would potentially, adversely impact the financial well being of the organization. Thus, you have failed to show that B, C, D and E, through their positions on the Board, would not benefit from inurement, which is prohibited under section 501(c)(3).

Based on these facts, we conclude that you are operated for the substantial non-exempt

[REDACTED]

purpose of enhancing the private businesses of your founder and C, D and E. Further, you operate in manner that serves private purposes and is likely to result in inurement- the use of your assets and/or income for the benefit of private individuals.

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

Contributions to you are not deductible under section 170 of the Code.

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

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

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

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

Internal Revenue Service
[REDACTED]

If you do not intend to protest this ruling, and if you agree with our proposed deletions as shown in the letter attached to Notice 437, you do not need to take any further action.

[REDACTED]

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

Sincerely,

[REDACTED]
[REDACTED]
Director, Exempt Organizations
Rulings & Agreements

Attachment

✓ IRS Chief Counsel Advice
✓ Notice 437