TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200450039**
Release Date: 12/10/04
UIL: 501.00-00

Date: 09/14/04

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

Dear Applicant:

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

You provided a filing receipt showing that you have filed the documents necessary to allow your organization to be incorporated under the laws of the state of N. However, you have not provided us a conformed and state certified copy of your Articles of Incorporation and Bylaws. In your 1023 Application, you provided the following description of your activities: "an organization available to consumers nationwide who are experiencing financial hardship. The program offers individuals a plan for paying off their (liabilities) by consolidating their unsecured debts into one low monthly payment. By negotiating terms such as lower interest rates and waived late fees with most creditors, M establishes more affordable payments for the consumer. As a result, greater portions of each payment may be applied toward the principal."

Your website has information, which describes you in the following manner: "

You also stated the following: “

”

You also made the following representation as to your ability to assist individuals to get out of debt: “ ! “ Your debt management program is apparently now in operation in that your website features an application form for potential clients. We are enclosing a copy of your website for your review.

Your current board of directors consists of C and D. In your letter dated March 1, 2004, you stated that B “is no longer a manager at M.” You further stated that C is your director, and has a Masters degree in history. His responsibility will be to manage and oversee the counselors. D has a Bachelors degree in business management. Her responsibility will be to supervise the processing department and to manage quality control.

You have indicated that you will employ five counselors in the beginning of your operation. In your letter dated March 1, 2004, you stated the following with regard to counselors: “Counselors must have a high school diploma and must have experience in the financial industry. Every counselor will be required to take an exam to become certified. Counselors will be paid a base salary of x per year.” You did not identify the examination that counselors would be required to take in order to be certified. You have indicated that your services will be provided in-house, and that none of your employees will work for back-end providers. Moreover, you have represented that “counselors will not receive bonuses and incentives.”

In your letter dated March 1, 2004, you provided the following description of how your services will be provided:

> Clients will call into M and request help with their bills. A counselor will ask the client what type of bills they would like help with before they educate them on budget planning. After the counselor has determined that budget planning is right for them, they send out literature to educate them furthermore. After a client agrees to the plan, the counselor sends out an agreement, which explains the plan once more. The counselor contacts the client and goes over every page of the agreement step by step to answer any questions the client may have. After the client agrees and fills out all documents in the agreement, the client sends it back to the counselor so that the counselor can come up with a monthly payment suitable for the client. The client then agrees to the payment or disagrees. In the event that a client agrees to the debt management plan, the counselor sets up the client’s first payment. After the client’s first payment is received, the counselor submits all paperwork to the client services department, where proposals and welcome packages are sent to creditors and clients. We will then start to receive accepted proposals from all creditors and we contact the client to let he/she know that proposals are accepted and that they are on their way to financial recovery. In the event that a client disagrees to the plan after they have already signed an agreement, the counselor submits the application with the word “VOID” across the cover page to his/her manager where the file is shredded.

In your March 1, 2004 letter, you represented that your employees will not have a prescribed

amount of time to spend discussing budgeting with clients versus preparation for enrolling clients in the debt management program (DMP). You further stated that: "eight out of ten times a counselor will recommend that a client enroll in a budget management plan program." You also stated that your employees "will spend 100% of time educating a client about the appropriate use of credit and 100% of time talking about debt management planning."

You have provided a copy of the script to be used by your employees in promoting your DMP to potential clients. In the second paragraph of the script you make the following statement: "Ok what kind (sic) bills do you need help with are they credit cards or loans? Secured or unsecured? Are you current or behind? How many months are your behind? Are you being harassed by creditors? Just so you know once you join our program these phone calls will stop. How much do you think you owe all together?" In paragraph four of the script you make the following representations about the benefits of working with a "non-profit" debt management company: "(1) We're going to reduce your monthly payment to make things a bit more comfortable for you if necessary (2) We're also going to reduce your interest rates; in some cases we can get them as low as 0% or close to it (3) Late fees and over the limit charges are going to be waived (4) Past due amounts will be brought back to a current status without you having to pay the past due amount, so these …months that you're behind, you're not going to have to repay those months to be considered current, basically you're starting off with a clean slate." The script makes no direct or indirect reference to debt management classes, counseling sessions, workshops, or any other substantive educational activities to be provided by you.

You have provided a copy of four sheets of information, which you distribute to clients describing and explaining how your DMP operates. This information includes a sheet that illustrates, in numbers, how much a client could potentially save by enrolling in your DMP. At the top of the sheet, you have in bold letters the following statement: "MAKE COPIES AND PASS THIS ALONG TO ALL OF YOUR FRIENDS!!!!" There is a sheet describing the role of the client, counselor, and creditor in the debt management program. There is a sheet containing a privacy statement (How you use and protect a client's personal information). There is also a sheet titled "For Your Guidance", which contains general reminders to clients of the requirements for continued and "successful" participation in the DMP.

According to your client service agreement, you will charge your clients a one-time "payment design" fee and a monthly maintenance fee. The payment design fee is equivalent to one proposed monthly payment and payable upon the client's acceptance of the contract. Under the agreement, this would be returned to the client upon "completion" of the program. In your letter of March 1, 2004, you stated the following: "If a client feels that they cannot afford the full payment we will ask the client to pay at least half to cover overhead expenses. If the client cannot pay half, M will continue to provide services to those particular clients." You further stated that: "M will charge a minimum monthly fee of $5 per account or $25 whichever is greater. The maximum fee charged will be $75. We will not refuse any client who will not or cannot pay the required fee. We will most certainly provide full service to those clients who will pay less than the required fee." You also stated the following with regard to the monthly payment: "This proposed Monthly payment will not increase by more than thirty ($30) dollars without your consent when the DMP is put into effect as explained below, unless the debt

actually owed to any of your creditors is greater than the amount owed by you to M." Furthermore, you stated the following: "If you are current on your creditor payments and you can afford to, you must make this month's payment to avoid your creditors reporting to credit reporting agencies that you were thirty (30) days late. M's payments to creditors will not start until it receives your second payment which is due thirty (30) days after you pay the Payment Design Fee." You have stated that a client's average length of time in your DMP will be between 3-5 years.

The service agreement also indicates that you will provide "Debt Settlement Services" to clients. This service would allow you to negotiate, on the client's behalf, a full settlement of the client's debts, for a fee of twenty-five percent of any savings negotiated, not to exceed 10 percent of the total amount the client owes to all of his/her creditors.

You have provided a copy of the proposed "fair share" agreement you will use in dealing with your client's creditors. In the second paragraph of the agreement, you make the following statement: "Since there is a 30-day coordination period in setting up our program, we ask that you do not report any delinquencies to the credit bureaus on the above-named client." In paragraph three, you make the following statement: "For the success of this program, it is requested that all further interest and late fees be waived. In return, we will advise you if this person falters or fails to fulfill their obligations to this office." In the fifth paragraph, you make the following request: "We request your assistance by making a voluntary tax deductible contribution of 15% of all remittances we submit to your company."

With regard to establishing a minimum monthly payment to creditors, you made the following statement in your March 1st letter: "Yes, we will establish a monthly payment, which is based on a certain percentage of the client's current balance. Most creditors require 2% of the current balance, however each creditor has different guidelines. The client plays an important role in this process because we want to make sure that the client will be comfortable with their new monthly payment. In most cases, a client can apply for a hardship, where the creditor may allow a payment, which is less than the required payment amount."

In your Form 1023 Application, you indicated that your sources of support would be derived exclusively from client fees and fair share contributions. In our letter to you dated February 4, 2004, we requested that you provide projected budgets for , and , showing all income and expenses including salaries and wages in each respective year. Your response, in your letter of March 1, 2004, failed to provide the requested proposed budget information.

You stated in your March 1st letter that you will advertise on your website, in newspaper ads, and on local radio stations. You also indicated that about 25% of your resources would be dedicated to advertising expense.

In our February letter, we asked if N required that you be licensed, bonded and insured. You stated in your March 1st reply that N does require that you meet those requirements and that you were in the "process of obtaining a N state license."

Section 501(c)(3) of the Code exempts from federal income tax corporations organized and

operated exclusively for charitable, educational, and other purposes, provided that no part of its 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 provides that, in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

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

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

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

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

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational" refers to:

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

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

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

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

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

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

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

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

Rev. Proc. 90-27, 1990-1 C.B. 514, provides in part that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere statement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The

organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned, and the nature of the contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

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

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purposes, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

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

The Consumer Credit Counseling Service, which had been recognized as exempt under section 501(c)(3) in a group ruling, is an umbrella organization made up of numerous credit counseling service agencies. In this case, these agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. The professional counselors used only 12 percent of their time for debt management programs. They did not limit these services to low-income individuals and families, but they provided their services free of charge. The court found that the law did not require that an organization must perform its exempt functions solely for the benefit of low-income individuals to qualify under section 501(c)(3). Nonetheless, these agencies did not charge a fee for the programs that constituted their principal activities. A nominal fee was charged for the debt management services but was waived when payment would work a financial hardship.

The agencies received the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from 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 Cas. 9468 (D.D.C. 1979), in which the facts were virtually

identical and the law was identical to those in Consumer Credit Counseling Centers of Alabama, Inc. v. United States, discussed immediately above.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services was not exempt under section 501(c)(3) because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, nor scientific, but rather commercial.

In addition, the court found that the organization's financing did not resemble that of the typical 501(c)(3) organization. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was from fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to charge a fee less than "cost." And finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

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

> Petitioner relies heavily upon Goldsboro Art League v. Commissioner, T.C. Memo 1985-162, (April 1985) in support of the contention that it is tax-exempt. In Goldsboro Art League, the taxpayer was an organization that operated two art galleries that exhibited and sold artworks. We held that the taxpayer was tax-exempt under section 501(c)(3) because it was organized and operated exclusively for an exempt purpose--art education. We noted that in order to insure artistic quality and integrity, the artworks displayed were selected by jury procedures. We also noted that the taxpayer was the only such museum or gallery within its county, or any contiguous county. We held that it served public, rather than private interests and that its sales activities were incidental to advancing its exempt purpose. By contrast, petitioner in this case did not apply any controls to insure the quality of the books and artworks sold at its convention. Also, the tone of petitioner's convention is substantially, if not predominantly, social and recreational, rather than educational. In addition, petitioner's huckster's room and art auction provided substantial benefit to private interests that is not incidental to its exempt purpose. Consequently, we think the case Goldsboro Art League is clearly distinguishable on its facts from the instant case.

In Easter House v. United States, 846 F. 2d 78 (Fed. Cir. 1988), aff'g 12 Cl. Ct. 476 (1987), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because it operated for a substantial commercial purpose rather than for the exempt purposes of providing educational and charitable services to unwed mothers and children. The services for unwed mothers and children were merely provided "incident" to the organization's adoption service business. The agency's operation was funded completely by the fixed fees charged adoptive parents. It relied entirely on those fees and

sought no funds from federal, state or local sources, nor engaged in fund raising programs, nor did it solicit contributions. Moreover, the court found that "adoption services do not in and of themselves constitute an exempt purpose."

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. "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."

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

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

15 U.S.C. section 1679a(3). The courts have interpreted this definition broadly to apply to credit counseling agencies. The Federal Trade Commission's policy is that if an entity communicates with consumers in any way about the consumers' credit situation, it is providing a service covered by the CROA. In Re National Credit Management Group, LLC, 21 F. Supp. 2d 424, 458 (N.D.N.J. 1998).

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

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

An organization seeking exemption must establish that it operates as a section 501(c)(3) organization. Denial of exemption may be based solely upon failure to provide information describing in adequate detail how the operational test will be met. See, Rev. Proc. 90-27; American Science Foundation v. Commissioner, T.C. Memo. 1986-556.

Rev. Proc. 90-27 requires an applicant to submit sufficient information during the application process for the Service to conclude that the organization is in compliance with the organizational and operational requirements of section 501(c)(3) before a ruling is issued. You failed to provide a conformed, state certified copy of your Articles of Incorporation. You failed to provide projected budgets for , and , showing all income and expenses, including salaries and wages in each respective year. You have provided no proof that your credit counselors receive any form of training, have experience in the credit industry, or are in fact certified by a private certification agency that you have failed to identify. You have not established that you have and will meet with clients on a regular, systematic basis to provide substantive counseling in credit and financial matters.

Most importantly, you have not provided a detailed description of the educational program to be provided to clients who purchase debt management plans and debt settlement services from you. You failed to indicate the amount of salary your directors or others would receive as employees above and beyond compensation for their service on the board. You failed to provide a copy of a lease agreement or provide details of efforts to find a location (outside of a private home) for your operations. You provided no proof, such as demographic studies, that your services are directed primarily to individuals and families from low-income groups. Lastly, you failed to provide a detailed description of how your fundraising program would operate, including an explanation of efforts made to date to raise money for the conduct of any anticipated “educational” and “charitable” programs.

Based on our analysis of the information you submitted, we have concluded that your failure to submit conformed Articles of Incorporation showing that you are organized for educational and charitable purposes within the meaning of section 501(c)(3) of the Code, does not allow you to satisfy the organizational requirements to be recognized as exempt under 501(c)(3). Moreover, you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. You failed to establish that you are or will be operated for either a charitable or educational purpose. In fact, the administrative record demonstrates that you operate for the substantial non-exempt purpose of operating a business.

While you have not submitted sufficient information to support a favorable ruling, you have submitted sufficient information for us to conclude that the activities you plan to engage in will not meet the requirements of the operational test for the reasons explained below.

You state in your Form 1023 Application and your website that your purpose is as follows: “The program offer (sic) individuals a plan for paying off their (liabilities) by consolidating their unsecured debts into one low monthly payment.” On the website you stated the following: “Our focus is to evaluate your financial situation, to assist in creating a spending plan, and to negotiate the terms of your debts with your creditors.” Providing individual counseling to clients on credit matters may be educational or, if provided in a charitable manner, may be charitable within the meaning of section 501(c)(3). See, e.g., Rev. Rul. 78-99, 1978-1 C.B. 152 (individual

and group counseling for widows based upon their ability to pay is an educational activity). However, you have not submitted sufficient documentation for us to determine that the counseling you do is either charitable or educational in the sense recognized by law.

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

You do not restrict your activities to the benefit of the poor. The debt management plans and debt settlement services you offer are sold to anyone who has unsecured debt and is willing to purchase your services. You even state that you are "an organization available to consumers nationwide who are experiencing financial hardship." No court or IRS ruling has indicated that the sale of debt management plans and debt settlement services is a charitable activity. Since the sale of these services to the general public appears to be one of your substantial purposes, we cannot conclude that you are operating for charitable purposes.

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

The information you submitted provides no basis for us to conclude that you offer either education to the public on subjects useful to the individual and beneficial to the community or training to the individual. In your letter to us dated March 1, 2004, you described what is said to a client when he or she contacts you regarding your debt management plan program or debt settlement services. Among other things, you stated that credit counselors would ask the potential clients "what type of bills they would like help with before they educate them on budget planning." The discussion with clients does not include any educational material or counseling component. Your primary focus appears to be the "sale" of debt management plans and/or debt settlement services, rather than the provision of substantial education to your clients.

You have not submitted any evidence of plans for future educational activity, and have neither hired competent employees to teach, nor budgeted to provide it. Your board of directors has no experience in educational methods, and there is no evidence that it plans to acquire any expertise. You submitted a copy of information you provide to potential clients, which is limited in scope to the "potential" benefits of enrolling in your programs. Moreover, you have not

provided samples of materials that would be used in the training of your credit counselors and the education of individuals and families who would seek to purchase your services.

Your use of the language “Financial consultants” and “Receive a free consultation” implies that your interactions with clients will be of short duration. There is no evidence that you plan to provide a series of sessions with in-depth education directed to the particular needs of the client or to dedicate the time necessary to address the financial problems faced by the client. This consultation format appears to be designed, purely, to expedite the “sale” of debt management plans and debt settlement services to potential clients.

You have not provided information that is clear as to the amount of time an employee would spend in credit education versus the amount of time to be spent in persuading clients to purchase your credit repair or consultation services. In your March 1, 2004 letter, you stated that your employees “spend 100% of time educating a client about the appropriate use of credit and 100% of the time talking about debt management planning.” This response obviously does not directly answer the question asked, and is therefore not useful in determining what, if any, substantive education occurs in your employees’ meetings with clients. Moreover, your failure to provide proposed budgets does not allow us to determine what, if any, revenues you would specifically dedicate to counseling and/or educational activities.

Your activities are completely different from those found to be providing community education and individual training by the court in Consumer Credit Counseling Service of Alabama, Inc. v. United States, supra. Unlike those organizations, you submitted no evidence that you provide general education for the community.

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

Also, in contrast to the organization in Consumer Credit Counseling Service of Alabama, you have not demonstrated the individual training content of your “counseling” sessions with your clients. In that case, counselors spent additional time in individual counseling concerning budgeting and the appropriate use of consumer credit to “debt-distressed” individuals and families. The professional counselors used only 12 percent of their time for debt management programs. The script you provide your employees’ is entirely aimed at selling debt management plans and/or debt settlement services. The script makes no direct or indirect reference to debt management counseling classes, counseling sessions, workshops, or any other substantive educational activities to be provided by you.

In addition, one of the hallmarks of a charitable organization is that it serves the public interest. See section 1.501(c)(3)-1(d)(1)(ii) of the regulations. However, the terms of the agreement(s) with your clients make it clear that you are not operating for their benefit. In your service agreement, you have exclusive discretion to increase a client’s monthly payment to creditors by not more than thirty dollars without his/her consent, if the amount of debt owed to creditors is greater than reported. Moreover, the first month’s payment to creditors is delayed

because, under the agreement, you must first receive your “Payment Design Fee” before payments to creditors are started. This potential additional monthly payment amount and missing a month’s payment to creditors would clearly serve to impose an additional financial hardship on an individual or family who is already “strapped” with debt problems.

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

> The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid.

The organization in the revenue ruling assisted the debtor by using all of the debtor’s funds to pay off creditors. In contrast, you put your clients in worse financial shape than they started by signing them to contracts that would result in greater financial hardship if they miss payments to you and charging very high fees for debt management plans and debt settlement services.

Moreover, there is no evidence that your employees are otherwise trained or qualified to provide any meaningful counseling for debt-distressed individuals. You have indicated that you will only require that your employees be high school graduates. You will also require that they be certified by a private certification agency, which you have not identified. You even stated that you would require that these individuals have experience in the financial industry, though you have offered no evidence that your counselors have any such expertise. You have offered no proof that specialized training or qualification in counseling debt-distressed individuals is necessary to conduct your credit services activity.

An analysis of the information provided shows that you are operated primarily for the nonexempt purpose of operating a for-profit business. All of your revenue is currently derived from fees charged to clients for the purchase of debt management plans and debt settlement services.

You have not provided any evidence that the fees to be charged to clients are any less than would be paid by individuals serviced by a for-profit credit repair and counseling company. In Airlie Foundation v. Commissioner, supra, one of the factors considered in assessing commerciality was the extent and degree of below cost services provided. Even though you have stated that you provide full service to “any client who will not or cannot pay the required fee”, you provided no evidence that your clients ever receive free services, or services according to their ability to pay.

Unlike the agencies in Consumer Credit Counseling Services of Alabama, you have not provided budget or other information that would indicate that you would receive any support from contributions from the general public, government or private foundation grants, or assistance from the United Way. Moreover, you have not presented any evidence of a fundraising program to solicit such contributions. By comparison, for-profit business enterprises are supported by fees paid by those who receive services. While charitable institutions often do provide services to individuals, the cost is generally subsidized by contributors who do not receive anything in return. In B.S.W. Group, Inc. v. Commissioner, supra, the court cited lack of

solicitation and sole support from fees as negative factors for exemption. See also, Easter House v. United States, supra.

You have not shown that revenue from operation of your debt management plan program and debt settlement services would be used for any purpose other than to cover operating expenses. Like any ordinary commercial business, your expenditures are almost exclusively to pay salaries and other expenses. You have not provided any information to indicate that you plan to dedicate significant revenue to activities involving educational and/or charitable programs. In having a paid staff with no volunteer help, and having no direct expenditures for charitable and educational purposes, you are similar to the organization described in Easter House v. United States, supra, where the court determined that the organization was not exempt because its conduct of adoption services activity was in furtherance of a non-exempt commercial purpose.

All of your revenue is being used predominately to operate and expand your business. You are similar to the organization described in Easter House v. United States, supra. That organization failed to make significant direct expenditures for charitable and educational purposes. Like Easter House v. United States, you function by means of a paid staff with no volunteer help. An exclusively paid staff is characteristic of a commercial corporation, rather than a charitable nonprofit organization. Moreover, you are unlike the agency held to be exempt in Consumer Credit Counseling Services of Alabama, which obtained its clients through referrals from employers, union leaders, and clergymen.

Although you have not provided proposed budgets showing anticipated, specific expenditures for advertising, like many commercial businesses, you indicate that you will place advertisements on the Internet, in newspaper ads, and on local radio stations. You also indicated that about 25% of your resources would be dedicated to advertising expenses. Therefore, you will promote and attempt to sell your services in ways that are typical for any for-profit business. We note your use of “sales” pitch language such as: “Our mission is to help you become debt free…quickly and painlessly” or “ Its as Easy as 1…2…3!” This language is clearly “puffery” of the sort used by many for-profit debt consolidation organizations and others.

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

The information you provided can only be interpreted as evidence that you charge an advance fee, a practice forbidden to for-profit organizations under the CROA. Your debt management services program requires that prospective clients pay “up-front” fees. You have not provided credible evidence that any clients have received a waiver. Based on the information you have submitted, it appears that you are seeking exemption as an exempt charitable organization because your activities would not otherwise be permitted a commercial for-profit corporation. In this regard, you are similar to the organization described in FTC v. Gill,

supra, in that one of your purposes appears to be evading regulation under the CROA.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this subsection, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests. In addition to operating for substantial non-exempt purposes, you also benefit the private interests of a select few.

You provide substantial private benefit to credit card companies in a manner similar to the organization in Credit Counseling Centers v. S. Portland. Fair share is commonly defined as "that amount the organization receives from the creditors for each payment remitted to them." In the absence of any charitable or meaningful educational activities you are operating as a collection agency for these companies. The "fair share" paid by the credit card companies would undoubtedly result in significant savings over the possible costs of not recovering any of the unpaid debt owed them. Thus, these companies clearly realize substantial financial benefits through their business relationship with you. We note that your contract with clients' provides that if they drop out of the DMP, they are still obligated to pay their debts to the credit card companies. This illustrates the close business relationship you have with these companies.

You have not shown that you have a governing board that would be considered as representative of a broad cross-section of the community. Your current board apparently consists of only two individuals. Your governing board is unlike the Board of Directors described in Rev. Rul. 69-441, supra, that was comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

Finally, your director, C, has no apparent prior work experience or educational background in nonprofit "credit counseling." You stated that C has a Masters degree in history, and would be responsible for managing and overseeing the counselors. Likewise, the other director, D, has no apparent prior work experience or educational background that would be expected of someone involved in providing "counseling" to individuals and families in debt. You have stated that D has a Bachelors degree in business management, and would be responsible for supervising the processing department and to manage quality control.

Based on our analysis of your actual and proposed activities and, in light of the applicable law, we have determined that you are not operated for exempt purposes. Rather, you are, primarily, operated for the non-exempt purpose of furthering your business interests, and those of credit card companies through the marketing and sale of DMPs to the general public. Any activities involving "authentic" credit counseling provided to a genuine charitable class, along with the provision of credit education to the general public, would be purely incidental to your predominant non-exempt purpose of operating and carrying-on an ordinary for-profit "credit counseling" business.

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 judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

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

In the event this ruling becomes final, it will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you decide to protest this ruling, your protest statement should be sent to the address shown below. If it is convenient, you may fax your reply using the fax number shown below. If you fax your reply, please contact the person identified in the heading of this letter by telephone to confirm that your fax was received.

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:4)

1111 Constitution Ave, N.W.
Washington, D.C. 20224
Fax: (202) 283-8937

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.

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
Notice 437

Copy of Website