



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200622055**
Release Date: 06/2/06
Date: March 7, 2006

UIL: 501.00-00

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:
1120

Tax Years:
All

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.

Because 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. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

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, 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.

Information letter

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,

Debra Cowen

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

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: January 23, 2006

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL: 501.00-00

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.

You were incorporated on . Your purposes, as represented in your Articles of Incorporation, are as follows: "(a) This corporation is organized exclusively for charitable, religious or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code (b) To support, create and administer programs that advance the awareness of the use of financial tools and resources for improving the quality of life in the United States of disenfranchised individuals (c) To support individuals and institutions and organizations that seek or provide training and learning in financial resource management and business development (d) To fund and operate multi-media public policy forums (e) To conduct information seminars and job fairs."

In a letter dated March 1, 2005, you described the purpose of your organization in the following manner: "The function of the entity is to provide financial literacy knowledge, business organization knowledge and general fiscal management knowledge." Moreover, in your handout titled "Knowledge Is Power," you stated that your purposes and activities include working "with local organizations and businesses to create classes and seminars which teach those with little or no knowledge of the financial system how to "muddle through." You further stated that your "charge is educating people about their financial rights and responsibilities, and teaching life skills and techniques to empower them in their daily lives. We believe understanding the system enables people to negotiate effectively, so they won't be taken advantage of in areas that have a significant impact on their quality of life now and in the future." An analysis of the information you have provided indicates that your primary activity will be the

promotion and marketing of financial services and products to individuals and businesses. You will promote and market these services and products through seminars and consultation directed mainly to unrelated nonprofit organizations.

Your founding members are also your current directors. Your board of directors is comprised of your founding members who are expert in a variety of areas related to financial planning and consulting. In Section 5 of your Bylaws you have provided that "The founding board of directors of this entity shall be permanent." In Section 1 of the Bylaws you have stated the following: "The corporation shall have a minimum of two (2) and a total of nine (9) directors, and collectively they shall be known as the Board of Directors." Therefore, because you will only permit a maximum of nine directors, these individuals will always be a majority.

Your seminars and consulting services will be conducted exclusively by your founding board members. One is a licensed realtor and loan officer specializing in investment property. One is a mortgage broker with a for-profit company. One is a stockbroker employed with a for-profit securities firm. One is an attorney specializing in business planning and taxation. And lastly, one is a financial planner and insurance agent registered to market life, health, property and casualty insurance.

In our letter dated March 8, 2005, we requested that you provide "a schedule of when and where you will carry out your financial education classes, for the next six months." In your letter dated April 28, 2005, you responded that you did not "have a schedule of when and where the classes will be carried out for the next six months." You described the subject matter you plan to cover, however, as follows: "(a) Renting information, the renting process, transitions to homeownership; (b) Credit-does it really matter, credit information, the credit process, the collection process; (c) Financial/planning insurance: Life insurance, Renters insurance, Personal property and casualty insurance, Purchasing power of just one dollar, Basic investment tools: stocks, bonds mutual funds; (d) How to own your own business: Business strategies, Entrepreneurship v. salary, Small business laws; (e) Investing for the future: Investment accounts, Investment vehicles, Explanation of risk, What is liquidity; (f) Owning a home instead of renting: Inflation, Banking, Interest and exchange rates, Becoming a homeowner."

In your April 28, 2005 letter, you also submitted a Brochure you plan to distribute that describes your services for "local organizations and businesses" and how you will go about providing these services. The Brochure states the following: "We meet with the decision maker in your organization, perform "Needs Assessment," and then submit a proposal on how [our] expertise will benefit your employees or members. We do not want to reinvent what you do; we want to partner with you." The Brochure also states: "Our consultants design a customized program to satisfy your specific goals, whether it's home ownership or improving one's credit. Together we decide on the topics and format in order to meet your timeframe and budget. Attendees at these seminars also leave with personal contacts they will be able to trust including a *realtor, mortgage banker, investment professional and an attorney.*" [italics added] The names, business locations and contact information of your five founding members are listed in the Brochure.

You also submitted a copy of your Presentation that contained an outline of the topics covered in the "Wealth Creation Seminar" held on . The introduction page of the material listed your founding board members as the sole speakers during the seminar. Topics

offered in the program included investing, planning, credit, real estate, and business. Page "B" of the materials contains language evidencing your intent to operate a financial planning and consulting business. It states the following: "When you attend this seminar, you will be taking the first step in changing your life. You will have access to the combined knowledge and resources of mentors who will motivate and inspire you as they share their unique experiences and struggles and give you the power to put your financial house in order. P.S. Seating will be limited, so arrive early to register." On page "B" you also make the following statement: "Create your own wealth from what you have. Learn how the system works. Understand that knowledge really is power. Navigate the world of finance, credit, investments and homeownership, and even learn how you can own your own business."

In your "Wealth Creation Seminar" materials, page 4, you set out "Steps To Achieving Financial Security." There you make the following statements on how to choose a "Financial Planning Team" and "Develop Your Plan": "In our complex, ever-changing world, expert help is needed. Trained professionals such as your attorney, CPA, IRS enrolled agent, life insurance agent, securities broker, and financial planner are generally members of your team. With the help of your team, the second step can be taken: the development of a systemic, integrated plan for dealing with each of these issues. This is called developing a financial plan." The issues mentioned by you were cash management, risk management, estate planning, retirement, and accumulation goals.

You also submitted PowerPoint materials that spelled out what your consortium of financial planners/consultants expect to provide to any interested organization or business. On page 9 of the material, you stated the following: "You can offer your organization or group access to a consortium of business professionals for virtually nothing. You can structure the education training or seminars to be as basic or intricate as you wish. [We] will enhance the value of virtually any program." In that PowerPoint you also provided a copy of a Contact/Mentor list that you plan to distribute to potential clients during your presentations. The Contact/Mentor list prominently displays the name and address of each of your founding board members along with contact information for the for-profit business/company with which each of them is affiliated.

Your efforts to market your consulting services is further reflected in your letter dated September 28, 2004, requesting expedited processing of your exemption application. There you made the following statement: "The consortium has contacted several nonprofit entities who are willing to provide funding to have the consortium put on its charitable presentations. However, it has been made clear that funding will not be given if the consortium does not have 501(c)(3) status."

You have stated that you will not charge individual participants for the seminars unless someone wants to "contribute." However, you indicate that business sponsors will be expected to pay the costs of the seminars. You have also represented, in a letter dated April 28, 2005, that at present you have "no schedule of compensation set for any of the presenters in the organization. If funds sufficient to provide compensation are obtained, then the compensation will be based upon the number of hours involved with a presentation expended by the particular participants. There are no contracts to be used at this time." In a letter dated August 16, 2004, you stated that it is contemplated that your founding members will be compensated based upon "negotiated" contracts. It appears your founding members are operating as independent contractors in providing consulting services through you.

In your Form 1023 Application, you indicate that you do not currently have a fundraising program in operation. You have not indicated that you charge or receive any fees or compensation from the attendees of the "Wealth Creation Seminar." It is clear that you intend to be supported through fees for consulting services sold to non-profit and for-profit organizations that will sponsor these seminars for their employees.

Section 501(c)(3) of the Internal Revenue Code exempts from federal income tax corporations organized and operated exclusively for charitable, educational, and other exempt purposes, provided that no part of the 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(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

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

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

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

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns the burden of proof to an applicant organization to show that it serves a public rather than a private interest and specifically that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

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

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

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

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. The Court found that the trade association had an "underlying commercial motive" that distinguished its educational program from that carried out by a university.

In American Institute for Economic Research v. United States, 302 F. 2d 934 (Ct. Cl. 1962), the Court considered an organization that provided analyses of securities and industries and of the economic climate in general. It sold subscriptions to various periodicals and services providing advice for purchases of individual securities. The court noted that education is a broad concept, and assumed *arguendo* that the organization had an educational purpose. However, the totality of the organization's activities, which included the sale of many publications as well as the sale of advice for a fee to individuals, were indicative of a business. Therefore, the court held that the organization had a significant non-exempt commercial purpose that was not incidental to the educational purpose, and was not entitled to be regarded as exempt.

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 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.

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. The organization has the burden of providing sufficient documentation or other substantive information regarding its activities and operations, which would establish entitlement to tax-exempt status. Information that is vague or nonspecific is not sufficient to meet the requirements under section 501(c)(3). Tully v. Commissioner, T.C. Memo, 1999-216.

Based on the information and documentation you provided, we find that you do not meet the organizational requirements necessary to show that you are organized exclusively for charitable and educational purposes. Moreover, you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3) of the Code. There is no evidence that your primary purpose is to provide financial education to individuals or to the general public, in that you do not have a tailored educational program with a structured educational methodology in place. Our analysis of the facts in your case, indicate that you are primarily operated for the substantial non-exempt purpose of selling financial planning and consulting services to nonprofit entities. You also are operated to further the private financial interests of your five founding board members in their private business and professional capacities. In addition, you have not shown that your income would not inure to your consultant/directors.

Your Articles of Incorporation, state purposes that are not inherently charitable. Purposes such as providing financial tools and resources for improving the quality of life for disenfranchised individuals, operating public policy forums, conducting information seminars and job fairs, and providing training and learning in financial resource management and business development may be achieved in a commercial manner as well as in a charitable manner. Therefore, you fail to meet the organizational test as required under section 501(c)(3).

Information that you provided shows that you are involved in a joint venture with your founding directors to promote and sell financial planning and consulting services to unrelated for-profit and nonprofit entities. You have provided no evidence that the services to be offered to these organizations would be any different than those offered by an ordinary for-profit financial planning business. Moreover, you have provided no evidence that these services

would be provided exclusively to related exempt organizations or to unrelated exempt organizations at below your cost . This is a substantial non-exempt purpose that defeats exemption under section 501(c)(3).

You also have provided more than ample documentation and representations that your founding member/consultants, acting as independent contractors, will be engaged in the non-exempt activity of selling financial planning and consulting services to individuals and businesses. These individuals are providing the same or similar services in their own private professional and/or for-profit financial services businesses. Your statement that you will not charge for the seminars "unless someone wants to contribute," does not alter the fact that your consultants have some expectation of compensation for the financial planning and consulting services they provide. In your Brochure that describes the services to be offered to "local organizations and businesses," it was clearly explained that these businesses would be benefiting from professional commercial services: "Attendees at these seminars also leave with personal contacts they will be able to trust including a realtor, mortgage banker, investment professional and attorney." Individuals purchasing these types of services from "professionals" would likely expect to pay a fee in return for the service. You have provided no evidence that your services would be provided free to a "charitable" class."

Conducting "Wealth Creation" seminars in the manner you describe clearly serves to further the private financial interests of your founding member/consultants. The seminars are a form of advertising and your founding member/consultants expect to collect fees from attendees that will seek out the advertised financial planning and consulting services. 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. (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 purposes, but rather benefited the private interests of the for-profit owners). Your founding members' hope is that an individual's "successful" experience with your organization will translate into potential business for their private practice and/or for-profit business. Because of the substantial private benefit to your founders, we cannot conclude that you serve public rather than private purposes.

In addition, you have not established that your income will not inure to the benefit of your founding members. There is a great likelihood of inurement to these individuals in that they comprise your Board of Directors and have exclusive and total control of your operations. They serve as your officers and employees. Each also has an interest in a for-profit business that sells similar financial and other services/products. These same individuals have a vote on compensation and fee arrangements that may involve themselves, their affiliated companies, employers, and private businesses. This situation gives rise to an inherent conflict of interests that would potentially, adversely impact your financial well-being.

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 have failed to provide a schedule of compensation to be paid to your employees; failed to provide a schedule of when and where any financial education classes would be conducted; and failed to provide copies of any of the "negotiated" contracts to be used in your operations.

The vague and nonspecific information and documentation you provided does not meet the burden of showing that your activities and operations are such that you are entitled to recognition of exemption under section 501(c)(3). See Tully, supra.

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 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

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see 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 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 this address:

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:1)
Danny Smith, Room M34
1111 Constitution Ave, N.W.
Washington, DC 20224

You may also 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