



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **200631026**
Release Date: **8/4/06**
Date: May 9, 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.

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.

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

Information letter

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

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



tion letter

- 3 -

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

Date: May 9, 2006

Co

Identification Number:

Contact Number:

UIL: 501.00-00

Employer Identification Number:

Legend:

B=
C=
D=
E=
L=
M=

Dear :

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 in the _____ Your letter from the Department of Assessments and Taxation, Charter Division, indicates that you are _____ted as a "non-stock ordinary business." Your stated purposes, as represented in your Form 1023 Application, are as follows: "(i) the settling of debt for individuals who are being sued and or harassed by creditors, (ii) the negotiating of payment arrangements for individuals burdened by debts exceeding their ability to pay, (iii) the providing of counseling for debtors and creditors that may prevent loss of wages by garnishments and in some cases loss of employment, that would otherwise increase the public burden, (iv) the providing of education to individuals suffering financial hardship caused by debt, and finally (v) the enabling of individuals through education the ability to recover from debt by responsible budgeting and proper handling of credit."

Information you provided indicates that your primary activity in furtherance of your purposes

consists of the sale of debt settlement and debt negotiation services to the general public. You provide these services on behalf of individuals who owe money to creditors, and the creditors have initiated legal actions to collect the money owed them.

Your current staff consists of B, C, D and E. In your Form 1023 Application, you indicated that B, C and D are the sole members of your Board of Directors. You have represented that B's salary is \$_____ and that C and D are receiving a salary of \$_____ each. You have not indicated the _____ of salary paid to E. You represented that B _____ completed a credit counselor course that granted him a "Certificate of Completion." You provided no evidence that the other staff members have completed such a course. You also represented, in "Exhibit-8", that B is a "U.S. Government Certified Credit Counselor." You have not submitted any substantiation for this claim. You further stated, in your letter dated _____ that C, D and E are each responsible for marketing, customer service, and ne _____

Your sole source of revenue is an up-front \$ _____ fee charged to individuals who purchase your services. In your letter dated _____ you made the following statement regarding your fee: "The fee of \$ _____ the experience of and input of B. It is based in part on a percentage of _____ s experiencing financial hardship that are willing and have the ability to pay a nominal fee for help. In B's experience with for-profit organizations, a similar level of work is performed for amounts exceeding \$ _____. To the Applicant's knowledge and belief, there are very few, if any, commerci _____ ses that render the kind of charitable and educational services Applicant proposes to provide free of charge to the public."

Information you provided, in your le _____, _____ attached as Exhibit -5 indicated that if clients do not pay the \$ _____ t your representation. In that letter, you stated the following: "You ind _____ that you cannot afford to make payments at this time due to lack of employment. Be advised that a judgment is good for several years depending on the state in which you live. Please retain this letter so that when you return to work you may call us for help in resolving this matter prior to the creditor filing for a wage attachment."

You indicated, in your letter dated _____, _____ that once you get consent, usually with a telephone call, you send the clie _____ ms: "The first items are a Welcome Letter (attached-Exhibits 2, 2-A) requesting documentation of indebtedness and a brief narrative of 'How it Works.' This includes notices from the court stating that a creditor or creditors are suing the client. The next item is a Limited Power of Attorney (attached-Exhibit 3) that the client signs and returns conveying authority to Applicant to contact the creditor or creditors on the client's behalf. The final item is a financial statement (attached-Exhibit 4) that is required by most attorneys representing creditors assessing the clients financial hardship." The Limited Power of Attorney states that you have the authorization to represent the client, with respect to the following matters: "The preparation and execution of correspondence to, and receipt of correspondence from, creditors and anyone holding or having an interest in debt obligations of mine (ours) or relating in any way to such credit/obligations. The Negotiation, settlement and clarification of any amount owed by me (us) to any creditors. To represent me (us) as attorney-in-fact with regard to any matter within the scope of the services set forth in the agreement entered into on this date between me (us) and L including and limited to negotiations. For no other matter."

You stated that, during your telephone conversation with clients, you make inquiry as to _____

his/her employment or retirement status, and whether they are "disabled or on assistance." You further stated that you ask the following: "Whether or not there are other creditors seeking judgment against them. If it is determined that the respondent will pay the fee for service, then the cost of service is stated as \$ _____ and arrangements are made to have payment sent by money order or taken over the person with a check-draft. Applicant then instructs the client to have no further contact or conversations with the creditor, to relax and allow the process to work on their behalf."

After the client returns the previously mentioned items, you stated that "an evaluation is performed based on the level of debt and the client's ability to pay and a proposal is drafted and forwarded (by fax and U.S. Postal Service) to the creditors representative attorney. If a response is not obtained within ten (10) days, a follow-up phone call is made to the respective attorney to ascertain whether or not the proposal is satisfactory or if adjustments are necessary. If and when the representing attorney agrees to settle the debt for the proposed sum or payment plan, the client is forwarded an agreement for signature."

You advertise the availability of your services to the general public through "direct mail" letters sent to potential clients. In your letter dated _____ you stated the following with regard to the purchase of leads: "The list of potential clients is obtained from public records. L employs the services of M. In your letter dated _____ you indicated that, "there are approximately 1000 individual letters per day that _____ also made the following statement: "During the course of any given week, L receives about 500 telephone calls from individuals being sued by a creditor. On average 50 people per week pay a small fee to negotiate or settle the debt in question." Moreover, in your letter dated _____, you made the following statement regarding potential clients: "Multitudes of _____ to us with credit card debt that started in the _____ to _____ range that has inflated to the _____ range because _____ a _____ on costs." You further stated the individuals you target your services to: "Other groups of individuals are those who have revolving credit or installment agreements that have been charged off. Hospitals collecting for services; landlords suing for back rents or damages that exceeded security deposit; lease and sales companies suing for repossessions of automobiles and equipment; and employers suing current and former employees are all types of individuals utilizing Applicant's services."

You have provided copies of two volumes containing 8 exhibits of information to be used in the conduct of your operations. The information covered in volume one, exhibits 1-5, included a statement of revenue and expenses, the names of fee based clients, monthly sample of client contacts, initial contact documents, and "educational" materials. The "educational" materials consist of a page on "Building Your Savings", a page on "Choosing a Credit Card", a page on "Consolidation Loans", 2 pages on "Consume Credit Law", a page on "Consumer's Resource Handbook", a page on "Credit Bureaus and Credit Reports", a page on "Credit Rejection", a page on "Credit Repair and Credit Clinics, a page on "Dealing with Creditors", 8 pages on "Definition of Terms When Buying a Home", a page on "Establishing and Reestablishing Credit", 4 pages on "Fair Credit Reporting", a page on "Mortgage Foreclosure", a page on "Negotiating With Creditors", 2 pages on "Tax Time-Get Organized!", 4 pages on "Techniques for Successful Budgeting", a page on "Tips to Prevent Credit Card Fraud", a page on "Top Ten Purchase Mistakes", and 4 pages on "When the Income Decreases, But the Bills Don't." You have provided no evidence that these materials have been shared and discussed with clients. We note that you have a "no contact" policy with clients after they pay for the settlement.

The information covered in volume two, exhibits 6-8, included "Counselor Reference Material obtained from Certified Credit Counselor Course", "Certified Credit Counselor Course Materials Certificate of Completion", and "Settlement Agreements from Plaintiff's Attorney." You also submitted a textbook titled "Credit When Credit Is Due." Though the author of the textbook was identified, you did not indicate who authored the "educational" materials contained in volume one. You did not indicate how, when or where your "educational" materials would be used. Nor did you explain the requirements and procedure for receiving a "Certificate Completion" in your "Credit Counselor Course."

In your letter dated _____, you made the following statement regarding information you provide to clients: "_____ t calls from people stating they have a large accumulation of debt and little money to pay their creditors. They want to file bankruptcy, but don't understand the process or where to start. We give these people general information about the bankruptcy procedure, and offer instruction in finding an attorney who will advise and represent them at the lowest fee possible. This allows them to get their bankruptcy handled quickly, saving them time and money, as well as months of stress and complication with future lawsuits." You provided no information regarding which attorneys they are referred to. You also made the following statement in regards to your "educational" efforts: "Since we deal exclusively with consumers being sued by creditors, the overwhelming educational aspect of our business deals with the entry of a judgment. What a judgment is, how the procedure works, how it can be resolved, and the ramifications of apathy are what we convey to the consumer." The letter attached as exhibits, a copy of a "direct mail" letter, which is clearly designed to aggressively sell your services to potential clients, a copy of a refund check sent to a client, and a copy of Maryland's Debt Management licensing law. Your sample "direct mail" letter, which you attached as "Exhibit-1", contains the following language: "CALL IMMEDIATELY. TIME IS CRITICAL TO STOP THIS BEFORE THE COURT GRANTS A JUDGMENT!!!" You also stated the following: "Call and talk to one of our professionals now while there is still time and time is money, Yours...WE CAN HELP: STOP LAW SUITS, STOP WAGE ATTACHMENTS, STOP CREDITOR HARASSMENT."

Your statement of revenue and expenses for _____ through _____ shows that _____ program service fees totaling \$ _____ ages and _____ ng \$ _____ and excess revenue over expenses of \$ _____ Your total revenue amounted to _____, and your total expenses were \$ _____. In your letter dated _____ you indicated that the cost of your "direct mail" letter operation "represents ap _____ of the annual budget." You further represented that "the cost of purchasing the client names, addresses and relevant information represents approximately 4.9% of the yearly budget." You have no fundraising program in operation. Moreover, you have not shown any expenditures for charitable and/or educational programs.

Section 501(c)(3) of the Code exempts from federal income tax corporations organize and operated exclusively for charitable, educational, and other 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 exempt as an organization described in section 501(c)(3), and 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 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 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)(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 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. 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.

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 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.

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 is organized and operated 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.

Our analysis of the information you submitted does not allow us to conclude that you 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 education program with a structured educational methodology in place. In fact, the administrative record demonstrates that you operate for the substantial non-exempt purpose of selling debt settlement and debt negotiation services to the general public. Another non-exempt purpose appears to be your operation to avoid regulation under the CROA. In addition, you have not shown that your income will not inure to the benefit of the members of your board of directors.

The fact that you are organized under the General Corporation law of the state of Maryland, as an ordinary non-stock business, rather than under the nonprofit law, is clear evidence that you do not meet the organizational requirements necessary to show that you are organized exclusively for charitable and educational purposes, within the meaning of section 501(c)(3). Additionally, even if you were organized under a nonprofit statute, your purposes, as stated in your Form 1023 Application, include activities that are not in furtherance of exempt purposes, as required under section 1.501(c)(3)-1(b)(1)(i) of the regulations. Negotiating and settling debt disputes are not inherently charitable or educational purposes. These are purposes that may be achieved only in a commercial manner. These same activities are often performed by both for-profit financial planning companies and bankruptcy attorneys. Therefore, you have not established that you are organized exclusively for exempt purposes within the meaning of section 501(c)(3).

That you are operating in the manner of a commercial business is reflected in the fact that the debt settlement and debt negotiation services you offer are sold to anyone who is willing to purchase your services. No court or IRS ruling has indicated that the sale of debt settlement and debt negotiation services is a charitable activity. Since the sale of debt settlement and debt negotiation services to the general public is your primary purpose and is substantial in nature, we cannot conclude that you are operating for charitable purposes. Moreover, there is no evidence that your activities are restricted to the benefit of the poor.

You also have not provided any evidence that the fees you charge clients are below your cost or any less than would be paid by individuals serviced by a for-profit debt settlement and debt negotiation 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. You provided no evidence that your clients ever receive free services, or services according to their ability to pay. Merely placing or receiving a phone call from a potential client would not be construed as providing a "free" service. To be considered "free" these services would have to be the same services received by a client who pays the \$, That you provided a refund to an individual client is not evidence that you are not g as a for -profit business. You even stated, in the letter to a client attached as "Exhibit- 5", that the client who was unemployed should call "when you return to work." Moreover, it would appear that your fee bears no relation to the costs of providing your service, and is a purely profit-making tool. You have provided no economic rationale for the amount you charge for your services other than you charge what the market will bear. You have provided no financial studies or other information that would justify this particular fee. You did, however, state that the fee is based on B's "experience with for-profit organizations" that provide "a similar level of work." It is also

noteworthy that your completed financial statement for [redacted] showed that you had a significant amount of excess revenue from [redacted] of a “successful” for-profit business.

through [redacted], [redacted] expenses, which is indicative

Unlike most charitable organizations, you receive no support from contributions from the general public, government or private foundation grants, or assistance from the United Way. In fact, you have no 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 revenues from operation of your debt settlement and debt negotiation services are used for any purpose other than to cover operating expenses. Like any ordinary commercial business, your expenditures are used 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 fact, your actual and proposed budgets for [redacted] and [redacted], show no revenue used for charitable and/or educational programs. In [redacted] id 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 was in furtherance of a non-exempt commercial purpose. Thus, the totality of the facts and circumstances show that you are operated for the substantial non-exempt business purpose of selling debt settlement and debt negotiation services to the general public.

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. You have failed to provide any evidence that your debt settlement and debt negotiation program is an incidental adjunct to a substantial and substantive program of public education and individual counseling. Any discussion with clients does not appear to include any educational material or counseling component. As you stated in your letter dated [redacted], [redacted] the “educational” materials you submitted are specifically tailored to the “business” of assisting a client in dealing with the “entry of a judgment.” That is, “What a judgment is, how the procedure works, how it can be resolved, and the ramifications of apathy are what we convey to the consumer.” These materials are clearly used to sell your product. Additionally, you failed to explain where, when and how the “educational” materials-provided in volume one would be used in the context of a structured, substantive educational program. Thus, you have failed to establish that your primary focus is not the “sale” of your debt settlement and debt negotiation services, rather than the provision of substantial education to your clients.

Moreover, you have provided no evidence that your interaction with clients will not 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. Your interaction with clients appears to be designed purely to expedite the “sale” of debt settlement and debt negotiation services to potential clients. In fact, your letter of representation tells them not to contact you further.

Furthermore, of your employees, only B has been granted a "Certificate of Completion" in a credit counselor course. We further note that B's use of the title "U.S. Government Certified Credit Counselor" has no basis in fact, and can be considered misleading in an apparent attempt to lend additional credence to B's credentials that is not deserved. There is no evidence that B has ever been "certified" by federal government as "credit counselor."

It is apparent that the vast majority of all your employee time is spent in selling debt settlement and debt negotiation services. The language used in your "direct mail" letter, and other documents, is clearly intended to aggressively convince potential clients that it would be to their financial benefit to enroll in your debt settlement and debt negotiation services program. Furthermore, the amount of time and revenue, you dedicate to sending out your "direct mail" letters is convincing evidence that your primary focus is on garnering business, and not public education or meaningful personal counseling. The budget that you included with your application shows no separately budgeted item for educational activities. You have not provided specific, detailed information as to the amount of time a counselor spends in credit education versus the amount of time spent in persuading clients to purchase your debt settlement and debt negotiation services. Lastly, the job responsibilities held by C, D and E include marketing, customer service, and negotiation. These job descriptions are of the kind that would be commonly associated with an ordinary for-profit business, including one providing debt settlement and debt negotiation services.

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 repair 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 settlement and debt nego ram requires that prospective clients pay "up-front" fees. In your letter dated you make clear that in the initial telephone conversation with a poten diately ask questions that are intended to determine if a client "will pay the fee for service," before your services are commenced. You also indicate that the fee is \$, and "arrangements are made to have payment sent by money order or taken over th phone with a check -draft." Based on the information you have submitted, it appears that you are seeking exemption as a 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. The fact that your organization may not be defined as a "credit repair" organization under the laws of your state does not mean that it is not considered a "credit repair" organization under the CROA.

You also have not established that there will be no inurement of income accruing to the benefit of B, C or D. There seems to be great likelihood of inurement to these individuals in that they all serve on the Board of Directors as members and employees, and have a vote on compensation arrangements, leasing arrangements, and other financial matters that would affect their personal and business financial interests. 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 failed to indicate the amount of salary to be paid to E. You failed to provide evidence that staff members other than B have completed a credit counseling course. Aside from the Limited Power of Attorney, you failed to provide a copy of other agreements you may have with clients. You failed to provide substantive evidence that your fee is any less than would be charged by a for-profit company. You failed to provide "credible" evidence that you have provided free services to any clients. You failed to explain the requirements and procedures for receiving a "Certificate of Completion" in the credit counseling course. You failed to provide a copy of any contract(s) involved in the purchase of leads. You failed to provide information on the attorneys you use when making referrals in bankruptcy matters. You failed to describe when, where and how the educational materials would be used in an educational program with a structured educational methodology. You failed to provide specific, detailed information on the amount of time and revenue to be spent in persuading clients to purchase debt settlement and debt negotiation services versus the amount of time and revenue spent on counseling and education. 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 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:

SE:T:EO:RA:T:1

Washington,

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