



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200602036**  
Release Date: 1/13/06  
SE:T:EO:RA:T:1  
UIL: 501.00-00

Date: 10/19/2005

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 under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s):

You are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code because you do not engage primarily in activities that accomplish an exempt purpose and more than an insubstantial part of your activities are in furtherance of a non-exempt purpose. In addition, you have not established that you operated primarily for public purposes rather than private purposes or that your income does not inure to insiders.

You did not answer all of the questions about your operations in our letter to you dated May 2, 2005, which we repeated in another letter to you dated May 9, 2005. We originally had scheduled your conference of right for May 11, 2005. At your request, we rescheduled the conference for May 25, 2005. On May 21, 2005, you declined your right to a conference. You thus have failed to establish that you meet the requirements for exemption under section 501(c)(3).

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.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91<sup>st</sup> day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations  
Rulings & Agreements

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



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Date: 02/03/05

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

B=

M=

Dear

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) 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 basis for our conclusion is set forth below.

The Internal Revenue Code provides for the exemption from federal income tax of entities organized and operated for charitable, educational, scientific, religious, and certain other purposes. Relieving the poor and distressed is considered a charitable purpose. Instruction and training for the purpose of improving or developing an individual's capabilities, or educating the public on subjects useful to the individual and beneficial to the community are also considered charitable or educational activities. Thus, an organization that limits credit counseling and debt-management services to low-income customers or, as its primary activity, provides education to the public on how to manage personal finances may qualify for exemption under section 501(c)(3).

To qualify under section 501(c)(3), an organization cannot have a non-exempt purpose that is more than insubstantial. Selling and administering debt management plans (DMPs), as the attached IRS Chief Counsel Advice Memorandum (CCA 200431023, 2004 IRS CCA Lexis 22) points out, is not inherently a charitable or educational activity, and is often conducted as a commercial activity. A payment plan will not be considered a substantial nonexempt purpose if it is an incidental adjunct to a credit counseling organization's (CCO) primary activities of public education and individual counseling. However, if it is a substantial purpose of an organization, rather than an incidental activity, it will be a bar to exemption under section 501(c)(3) of the

Code. The Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), 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.

Section 501(c)(3) organizations must also meet other requirements. Chief among these requirements are that the organization must not distribute net earnings to insiders (the prohibition against inurement) and it must operate for the benefit of public rather than private interests (the prohibition against private benefit). An organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator and his family, shareholders of the organization, for-profit affiliates, or persons controlled directly or indirectly by such private interests. A finding that a CCO merely provides intake for a related or unrelated for-profit service provider (providing private benefit or resulting in inurement to the for-profit entity) will result in denial of exempt status.

You were incorporated on August 12, 2003. Information provided by you indicates that the primary activity in furtherance of your purposes is the sale of debt management plans (DMPs) to the general public. The information also reveals that your operation will be located in the same building where, B, your president and board member operates his for-profit financial services business, M.

Our analysis of the information you submitted shows that while you are organized for charitable purposes you do not satisfy the operational requirements to be recognized as exempt under section 501(c)(3). You have 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 commercial business. Your operation also serves to promote and enhance the private financial interests of M, B's for-profit financial services business.

You have provided no evidence that the services offered by M are different from the services offered by this organization. It is possible that at least some of the clients' seeking help through this organization would also have an interest in purchasing the services offered in M's private business practice. At the very least, some individuals and/or families who recover financially will be drawn to the ready availability of the for-profit financial services conveniently located and offered by B through M. We cannot conclude that this arrangement does not serve to further the private financial interests of B.

That you are operating in the manner of a commercial business is reflected in the fact that your revenue will be derived, primarily, from fees received from clients enrolled in DMPs and fair share payments received from creditors. You will advertise the availability of your services over the Internet, in newspapers, periodicals, radio and perhaps public service television. These methods of advertising are the kind used by ordinary for-profit businesses. You have no fundraising program in operation.

You have failed to provide any evidence that your DMP is an incidental adjunct to a substantial and substantive program of public education and individual counseling. In fact, you

have provided no materials that would indicate you have a substantive on-going educational program directed to the individuals and families you serve in your DMP. The limited materials you submitted were prepared primarily for use by the intake counselor in his efforts to enroll and sell DMPs to potential clients. You have provided no evidence that you have conducted "credit counseling" seminars and/or workshops directed to the general community. Moreover, you have not provided substantial evidence that you restrict your debt management services to low-income customers. If you do have "low-income limits" for participation in your debt management program, you have provided no evidence of the specific guidelines that participants are required to meet. You have provided no advertising materials stating that your services are restricted to low-income individuals and/or families. In fact, information provided by you indicates that your services are available to the general public without regard to individual or family income. That you may allow so-called "low-income" individuals and/or families to make "voluntary payments" or not pay at all, does not change our view that these payments are in fact a fee charged for services rendered by you.

You have represented that at present, you do not compensate officers or directors for services rendered to or on behalf of your organization. However, you have stated that when you are financially able, you plan to pay these individuals compensation amounting to 15% of gross revenue received by the organization. You have provided no basis for how you determined this compensation arrangement or evidence that the compensation would be commensurate in scope with these individuals' duties and responsibilities. Thus, you have failed to establish that the compensation for these officers and directors would not result in prohibited inurement under section 501(c)(3).

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

Contributions to you are not deductible under section 170 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

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