TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Contact Number:
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Employer Identification Number:

LEGEND

B =
C =
D =
E =
F =
G =.
H =
X =
Y =

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 to:

> develop and disseminate educational materials to the public that will enhance financial literacy, increase personal and financial well-being, and promote the effective management of individual and family finances…provide counseling and

> instruction to financially distressed individuals and families in order to help them resolve their financial difficulties and manage their personal finances in a more effective manner.

In your application for exempt status, you stated that you would focus on:

> consumer groups considered to be particularly vulnerable to the impact of money problems…moderate income individuals whose exposure to financial advising might be otherwise limited…as well as individuals with chronic money troubles…[and] adolescents, college students, retirees, and newly married couples.

Although your initial application stated that you planned to conduct budget planning and had developed forms, training guides and other materials, you declared your decision to drop this activity in correspondence of August 23, 2004. You further described your change of focus in correspondence of September 14, 2004 in which you estimated the amounts of time that your employees would spend on various activities and the amounts of revenue you would earn from different sources, but generally said that your plans and financial statement would not change very much.

Your involvement with debt resolution services has changed, but not disappeared. You said:

> While our organization *will not offer* any debt resolution strategies, in terms of "selling" and/or charging a fee for a particular service or approach specifically intended to resolve debt, we expect to continue to educate the public about debt resolution strategies, in general…we may recommend a particular debt resolution approach to a client based upon our assessment of that client's circumstances and needs. However, we do not have any plans to recommend any specific company's program nor will we expect to receive any fees (i.e. commissions) for coaching clients toward the goal of resolving debt.

All of your current clients have been referred by C and its affiliates. (Correspondence of October 25, 2004) You have not received any fee-paying clients through your website. You have not used your public seminars as marketing opportunities, and have not contracted with any clients who have attended one of your seminars. However, your goal for the future is to attract one-third of your clientele through public speaking, the website, and through dissemination of educational materials.

Your largest expense is compensation of your staff. All of your labor expenses equal approximately $. The only other significant expense is "occupancy" estimated at $ in your first year of operation and $ in the subsequent year. You are located at the same address as your landlord. Apparently, your occupancy expense is high because it includes almost all non-labor costs of business. According to the lease that you submitted, the rent covers all utilities including electricity, telephone and internet connectivity, and lease of office furnishings and equipment including computers and their operating systems and software,

server and network connections, copier and facsimile machines and telephone system. Your lease for space and equipment from C was executed on September 15, , to commence October 1, .

In addition to the lease for space, equipment, and services, you have another contract with C executed on September 16 . You agreed to provide financial coaching services to clients referred for such coaching by C, and C agreed to pay a "monthly fee for said financial coaching services" at the rate of "$ per client listed in the C database to be calculated on the last day of each month with total monthly fees paid…to be a minimum of $." The next paragraph states that C will not hold you responsible

> for any and all actual outcomes of aforementioned financial coaching services, including but not limited to client satisfaction measures, educational gains, and effective behavioral changes provided said financial coaching services are delivered in good faith according to a manner set forth by the policies and procedures determined by The Center's staff.

C describes itself as a debt consolidation business on its website. (See attached). It appears to market both to individual consumers and to mortgage professionals.

According to the list that you have provided, your employees have conducted eight seminars for the public on topics related to finance and personal behavior. You have also described your individual educational program or coaching as a 10-session curriculum that includes assessment of attitudes and habits regarding money, basic explanations of budgeting, credit, insurance and retirement planning, investing in stocks, bonds, money markets and IRA's, communication, and relapse prevention. (Response to 1/28/2004) It provides a psychological context for the client's money problems, and assigns homework between sessions with the coach. Some supplemental materials are available on your website.

While you no longer intend to sell debt resolution strategies, your coaches will discuss them, and recommend a particular approach based upon your assessment of a client's circumstances. (Correspondence of September 14, 2004, Answer 4.) Your employees will elicit information from clients to determine the most appropriate strategy. The coaches will ask for identification and contact information, creditor information, secured and unsecured debt, and a very detailed description of monthly expenses and income. On another form that your employees use, clients are asked such questions as:

- how many of your credit cards are over their limit,
- have you taken cash advances from one card to pay another,
- is life without credit cards unthinkable,
- how many do you feel you need,
- how would you rate your stress level apart from financial issues,
- does the thought of receiving creditor phone calls make you uncomfortable,
- are you looking to make a large purchase in the next 3-5 years,
- would getting out of debt quicker and for less money be worth possibly blemishing your credit rating

You included a "Client Profile" that recommends different debt reduction strategies depending upon their customers answers to the above questions. Three debt resolution strategies are described:

- Debt Counseling will be recommended to clients who can repay monthly obligations without restructuring or intervention with creditors. It consists of education and counseling on the most effective ways to pay off debts and maintain a household budget.
- Debt Management Plans will be recommended to those who need concessions from creditors on interest rates, fees, and monthly charges.
- Debt Settlement Plans will be recommended to clients who have no ability to repay full principal, as an alternative to bankruptcy. The settlements reached with creditors reduce actual amount owed, but also has a negative impact on credit ratings.

In addition:

- Bankruptcy Education provides information about bankruptcy for clients to pursue for themselves.
- Education and coaching will be offered to the above clients.

You represent that you do not provide services "in conjunction with any other entities" and do not anticipate referring clients to another entity for services to complete debt payment programs. (Response to 1/28/2004, answer 6w) On the other hand, you stated that C is both the landlord from whom you lease both space and operational systems, and also a "client" to whom you provide financial coaching services in exchange for a fee. (Response to 1/28/2004, answer 6i) F provides to C some "operational services such as processing and client education." You provide the client education that F contracts with C to provide. In addition, a number of other companies use your educational services for their clients through their partnership with F. (Correspondence of October 25, 2004, Answer 1.) F states in the marketing materials that you attached to your Correspondence of October 25, 2004) that its clients receive financial and behavioral coaching and education through its "affiliation with the non-profit company H," which is another name that you use. In fact, you are a key part of the F's "customer retention plan."

Further, you stated that none of your board members "has been an officer, director, or employee of a credit counseling, credit repair agency, or organization issuing credit cards." (Response to 1/28/2004, answer 6s) Specifically, you stated that your organization has no board members, directors, officer, or employees in common with C. (Response to 1/28/2004, answer 7b) However, you also provided a resume for X that says that he was employed by C as Director of its Financial Coaching Program from 2001-2003.

As alluded to above, you are part of a network of for-profit corporations. All of them appear to be owned and controlled by Y. C was incorporated in in . It negotiates settlements of debt through single or periodic payments and markets its services to mortgage brokers, retailers, and others who find that existing debt may prevent a potential customer from making a purchase. D was incorporated in in by Y. It "offers a different debt resolution brand" and "uses C infrastructure to service their clients."

(Correspondence of , Answer 11.) Evidently, E is not an independent entity, but "an internet brand of C," according to the same correspondence. F was also incorporated as a for-profit in in . It "provides marketing and other operational services to debt resolution businesses such as processing." (Correspondence of October 25, 2004, Answer 1) F contracted with C to provide services such as H. The final member of the family is G, incorporated as a for-profit in in . F promises that participants can use the money management and bill paying services of its "affiliate G." The address G listed with the Department of State, Division of Corporations is the same address listed for Y in the Articles of Incorporation for F and for D.

1. Law

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 the net earnings inure 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.

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, holding the funds in a trust account and disbursing 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 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. Proc. 90-27, 1990-1 C.B.514 contains the standards for issuing an advance ruling of exempt status. It requires that proposed operations be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section.

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. 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 also 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 many publications that provide 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.

The court in est of Hawaii v. Commissioner, 71 T.C. 1067(1979) found that an organization formed to educate people in Hawaii in the theory and practice of "est" was a part of a "franchise system which is operated for private benefit," and therefore may not be recognized as exempt under section 501(c)(3) of the Code. The applicant for exempt status was not formally controlled by the same individuals controlling the for-profit organization owning the license to the est body of knowledge, publications, methods, etc. However, the for-profit exerted "considerable control" over the applicant's activities by setting pricing, the number and frequency of different kinds of seminars and training, and providing the trainers and management personnel who are responsible to it in addition to setting price for the training. The court found that the fact that the applicant's rights were dependent upon its tax-exempt status showed the likelihood that the for-profit corporations were trading on that status. The question for the court was not whether the payments made to the for-profit were excessive, but whether it benefited substantially from the operation of the applicant. The court determined that there was a substantial private benefit because the applicant "was simply the instrument to subsidize the for-profit corporations and not *vice versa* and had no life independent of those corporations."

In P.L.L. Scholarship v. Commissioner, 82 T.C. 196 (1984), an organization operated bingo at a bar for the avowed purpose of raising money for scholarships. The board included the bar owners, the bar's accountant, also a director of the bar, as well as two players. The board was self-perpetuating. The court reasoned that, because the bar owners controlled the organization and appointed the organization's directors, the activities of the organization could be used to the advantage of the bar owners. The organization claimed that it was independent because there was separate accounting and no payments were going to the bar. The court was not persuaded.

> A realistic look at the operations of these two entities, however, shows that the activities of the taxpayer and the Pastime Lounge were so interrelated as to be functionally inseparable. Separate accountings of receipts and disbursements do not change that fact.

The court went on to conclude that, because the record did not show that the organization was operated for exempt purposes, but rather indicates that it benefited private interests, exemption was properly denied.

In Church By Mail, Inc. v. Commissioner, T.C. Memo 1984-349, *aff'd* 765 F. 2d 1387 (9th Cir. 1985) the tax court found that a church was operated with a substantial purpose of providing a market for an advertising and mailing company owned by the same people who controlled the church. The church argued that the contracts between the two were reasonable, but the Court of Appeals pointed out that "the critical inquiry is not whether particular contractual payments to a related for-profit organization are reasonable or excessive, but instead whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church."

In addition to furthering a substantial non-exempt purpose, the court found that a portion of the organization's net earnings inured to the benefit of a private shareholder or individual as defined by sections 1.501(c)(3)-1(c)(2) and 1.501(a)-1(c) of the regulations. The organization provided a source of credit (i.e. loans) to companies in which the private shareholder was either employed by or owned. The fact that the loans were made showed that the companies controlled by the private shareholder had a "source of loan credit" in the organization.

In American Campaign Academy, 92 T.C. 1053 (May 16, 1989), the court found that a school for campaign workers was operated for the benefit of the private interest of the Republican party and candidates even though the organizations were formally separate, and no portion of the applicant's net earnings inured to private shareholders or individuals. The court enumerated many indirect connections of funding and directors, and found that all of the students worked for Republican candidates or organizations, thus conferring a substantial purpose that could not be considered incidental to its educational purpose.

In International Postgraduate Medical Foundation v. Commissioner, T.C. Memo 1989-36, the court found an organization that ran tours aimed at doctors and their families was operated to benefit the private interests of both an individual who controlled the organization and a for-profit travel agency (H&C Tours) that handled all of its tour arrangements.

The organization used the H&C Tours exclusively for all travel arrangements. There was no evidence that the organization solicited competitive bids from any travel agency for travel arrangements for its tours other than H&C Tours. The organization physically located its office within the offices of H&C Tours, which provided it secretarial, clerical, and administrative personnel for a fee equal to H&C Tours' costs. The organization spent 90 percent of its revenue on travel brochures prepared to solicit customers for tours arranged by the travel agency. The brochures emphasized the sightseeing and recreational component of the tours, but did not describe the medical curriculum for the seminars and symposia that was the basis for exemption. Educational activities occurred on less than one-half of the days on a typical tour.

The court found that a substantial purpose of the organization's operations was to increase the income of H&C Tours. The president of H&C Tours controlled the organization and exercised that control for the benefit of H&C Tours and himself. Moreover, the administrative record supported the finding that the organization was formed to obtain customers for H&C Tours.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court concluded that the Foundation was operated with a substantial non-exempt purpose. It based this conclusion on the manner in which the organization managed a conference center. "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." Thus, the court looked at the business methods of the organization as a method of inferring whether its purpose was to serve the public or whether there was a substantial non-exempt purpose of operating a business for profit. See section 1.501(c)(3)-1(e), Income Tax Regulations.

In FTC v. Gill, 265 F.3d 944 (9th Cir. 2001), aff'g 183 F. Supp. 2d 1171 (2001), the 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.

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 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).

16 C.F.R. section 310.4(b)(1)(iii)(B); 47 C.F.R. section 64.1200(c)(2) prohibits businesses 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 ("FTC"). Nonprofit organizations are not subject to this rule. This registry was created by rules promulgated by the FTC and the Federal Communications Commission.

Discussion

You do not meet the operational test for exempt status under section 501(c)(3) of the Internal Revenue Code because you have failed to establish that you are operated exclusively for charitable or educational purposes. The regulations define "exclusively" as engaging primarily in activities that accomplish one or more of the exempt purposes specified in Section 501(c)(3) of the Code. See Section 1.501(c)(3)-1(c)(1) of the regulations. Performing activities exclusively for the benefit of the poor furthers a charitable purpose. Counseling the poor about economics and personal finance can achieve an exempt purpose. See Rev. Rul. 69-441, *supra.* However, you admit that you do not limit your services to the poor or underprivileged through a financial test or income limit. You describe many categories of consumers to whom you intend to market your services: moderate income individuals with little exposure to financial advice, adolescents, college students, retirees, and newly married couples. The fees that you charge are substantial, not the subsidized, below-cost fees often offered to a charitable class. Therefore, you do not operate to further a charitable purpose in the sense of providing relief to the poor or distressed.

Education is recognized as an exempt purpose by Section 501(c)(3) and defined by the regulations as the instruction or training of the individual for the purpose of improving or developing his capabilities or the instruction of the public on subjects useful to the individual and beneficial to the community. Section 1.501(c)(3-1(d)(3). You have presented and are equipped to present seminars on a variety of financial topics to community groups. Your employees appear to be qualified to prepare and present such material. Your website also contains some useful information on financial topics. However, your activities provide substantial secondary benefits to the network of for-profit companies with which you are connected.

Only an insubstantial portion of the activity of an exempt organization may further a non-exempt purpose. As the Supreme Court held in Better Business Bureau of Washington D.C., Inc. v. United States, *supra*, 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. Even if we agreed that you were organized and operated for an exempt purpose, the fact that you also have a substantial non-exempt purpose would make you ineligible for exempt status. Specifically, the court in Better Business Bureau held that if education is conducted for a non-exempt purpose, the organization will not be recognized as exempt.

When an organization has an additional commercial purpose, it must demonstrate that the commercial purpose is not primary, but merely "incidental to the exempt purpose." American Institute for Economic Research, *supra.* In that case, the court assumed that the organization's publication of materials concerning economic issues and individual securities was an educational activity. However, the organization had an additional, significant commercial purpose. The court found evidence that the organization charged fees for the materials that

earned profit, that its methods were commercial ones, and that it was engaged in a service commonly associated with a commercial enterprise. It concluded that the business purpose was primary and not incidental to an educational purpose, and therefore the organization was not entitled to be regarded as exempt. American Institute for Economic Research, *supra.* The private benefit need not be payment of net earnings. American Campaign Academy, *supra.* "Secondary benefits which advance a substantial purpose cannot be construed as incidental to the organization's exempt educational purpose," according to the court in American Campaign Academy.

Following the analysis of the court in American Institute for Economic Research, we concede for argument that some of your activities would fall within the definition of education. However, your educational purpose is subordinate to your purpose of benefiting the network of for-profit companies with which you are affiliated.

One measure of the relative importance of different purposes is the amount of time spent on them. You reported that you have only conducted eight public seminars over five months. Clearly public education is not consuming a significant portion of your staff time. It is your responsibility to demonstrate to the satisfaction of the service by sufficient detail in describing activities, sources of receipts and the nature of expenditures. Rev. Proc. 90-27, *supra.*

Another measure of different purposes is the amount of income that they generate. Your agreement with C, discussed in more detail below, will convey to you the entire amount of revenue that you estimated for your first year: $. The amount of revenue that you estimated for your second year is exactly a six per cent increase. There is no evidence in the file that you expect to receive charitable contributions from disinterested persons in amounts that would constitute public support. Nor do you appear to have a reasonable expectation of attracting clients other than those referred by C. You said that you have not gained any clients either from your website or your seminars, and that the website is not "the avenue through which we expect to receive many fee-for-service clients" and that the seminars "are meant to be educational experiences in and of themselves and have not been emphasized as marketing opportunities."

Other terms of your agreement with C indicate its control over your organization and the limitations of your educational role. In the agreement, you undertook to provide financial coaching services to clients referred by C. You are given responsibility for the methods, content and delivery systems. However, the financial arrangements of the agreement contradict its stated purpose of increasing the financial literacy of the public. C pays you $5.00 per month for each client listed in its database, calculated on the last day of the month. Neither the agreement, nor any other material in the file, clarifies whether these are people who have already contracted with C, or whether they are leads. In either case, C is not obligated to pay you for each client you coach, or according to the difficulty, time involved or the outcome of the coaching. Clearly, $5.00 would not compensate for a detailed discussion with a client. In fact, the agreement specifically releases you from any accountability for the outcomes of the financial coaching. Your compensation is linked not to the work that you do, but to the number of clients in the database of C on the last day of the month.

The agreement guarantees a minimum monthly fee of $. This is an additional indication that your compensation is not tied to educational work that you do. You will receive $ every month regardless of how many clients you coach. The sum of $ per month for 12 months equals an annual total of $. This is exactly the amount that you estimated would be your total revenue for the first year of operation. Receiving all of your projected revenue from one source, contradicts your claim that you will provide financial coaching for the general public.

You provide several benefits to C. You can do things that C is prohibited from doing by the Credit Repair Organizations Act, and FTC v. Gill, *supra.* You may charge a fee in advance of delivering services, which for-profit entities may not do. In addition to calls to describe and recommend debt reduction plans, you can perform a very useful screening of potential customers. Your intake questionnaires contain questions that will assign clients to the type of reduction plan that will be most likely to appeal to their financial profile and attitudes about debt. This is a time consuming process, but one that is likely to result in much higher than usual sales. You solicit information about income, expenses, amount of debt, how important credit rating is to the caller, how soon the person wants to use the credit rating to make a major purchase, and whether the person is willing to deal directly with creditors. C has a product designed for every profile. The screening that you perform improves the chances of selling one of them to most customers.

It appears that you perform other commercial roles for C. While you state that the only contract you have is with C, you also state that you provide educational services to the clients of other companies through their "partnership with F and their indirect affiliation with C."

The counseling that you provide may also increase the amount of time that customers remain committed to a debt reduction plan. C and F use this argument in their marketing materials.

The two agreements that you executed with C suggest that they were not arm's length documents negotiated between independent organizations. Within weeks of your incorporation, you had signed both a lease and an "agreement" with a for-profit company for whom your president had worked only months before. The agreement is short and lacking in details that are generally negotiated and spelled out between business partners. There is no evidence in the record that you investigated other possible business partners, much less conducted due diligence about your business partner.

You are leasing from C, at its location, an office suite that is fully furnished and equipped. The lease includes not only desks and chairs, copier and facsimile, but computers and telephones. In addition, the operating systems and software, server and network connections for the computers are all part of the package. Evidently, you have no furniture or equipment of your own. Even more unusual, you do not have your own computers and software: the means by which business is conducted. Leasing everything from one source makes you vulnerable at the least. That your rent is exactly 10 % of the amount that C pays you each month gives the appearance that they are connected.

Exempt organizations may not be operated for the benefit of private interests. It is your burden to prove that you are not operated for the benefit of private interests such as designated individuals or the creator or his family. Section 1.501(c)(3)-1(d)(1)(ii), *supra*. Your relationship with C and its affiliates provide significant benefits to them. You have failed to establish that you are an independent entity and not operated to provide substantial benefits to C, Inc. You have contracted entirely with C, you obtain all of your revenue and all of your customers from it together with all of the equipment and systems necessary to your business. You signed these contracts within weeks of incorporation, without any evidence of competition for the agreements. Both the lease and the Agreement terminate on September 30, 2006. Further, your president had been an employee of C until very recently.

In a case of an organization that ran a bingo game at a bar for the purpose of raising money for scholarships, the court found that the activities of the two organizations were so intertwined as to be "functionally inseparable." In addition, it found that the applicant was operated for the purpose of increasing the income of the bar. P.L.L. Scholarship, *supra.* Like P.L.L. Scholarship , you are not an independent organization, but one operated for the benefit of C.

Nor does it matter whether your contracts with C are reasonable or excessive. It is settled law that the question is not whether payments were excessive, but whether the affiliated for-profit benefits from the operation of the applicant. est of Hawaii, Church By Mail, and International Postgraduate Medical Foundation *supra.* Furthermore, like the organization in est of Hawaii, you are part of a "system which is operated for private benefit and [your] affiliation with this system taints [you] with a substantial commercial purpose."

You have not established that you will operate exclusively, or even predominately, for exempt purposes and not for the benefit of private parties.

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

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

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

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

the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

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

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

Internal Revenue Service
TE/GE (SE:T:EO:RA:T:1)

1111 Constitution Ave, N.W., PE-
Washington, D.C. 20224

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

Sincerely,

Debra Kawecki
Manager, Exempt Organizations
Technical Group 1

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