

Articles

February 4, 2013

IRS Examinations of Nonprofit Housing Counseling Agencies

Related Topic Area(s): Tax and Employee Benefits

This is a pivotal time for nonprofit providers of housing counseling and related services. The Internal Revenue Service ("IRS") has begun to focus on the activities of nonprofit, tax-exempt housing counseling agencies and other organizations engaging in mortgage foreclosure services to determine whether they are operated in furtherance of an exempt purpose, and whether they are complying with the requirements of Section 501(q) of the Internal Revenue Code. Tax-exempt housing counseling agencies need to be aware that they are under the scrutiny of the IRS and must start preparing now to protect their tax-exempt status.

On January 28, 2013, the IRS Director of Exempt Organizations ("EO") released the [IRS Exempt Organizations FY 2012 Annual Report & FY 2013 Workplan](#). The Workplan sets forth the IRS focus areas for 2013, including the IRS's continued focus "on organizations that offer or propose to offer foreclosure assistance activities." According to the Workplan, "as mortgage foreclosures have risen over the past several years, EO has seen an increase in the number of organizations that claim to help individuals facing foreclosure. However, the activities of many of these organizations closely resemble those that EO looked at several years ago — noncompliant organizations that claimed to offer credit counseling support."

Consistent with the Workplan, in recent weeks, the IRS has assembled a working group that is comprised of many of the same individuals who oversaw the credit counseling compliance project between 2004 and 2012. Additionally, the IRS has already identified 280 organizations which will be subject to an IRS compliance review and, where appropriate, an IRS examination. With the IRS beginning its review of the tax-exempt mortgage foreclosure industry, it is important to recognize the impact that the completed credit counseling compliance project had on the credit counseling industry, which, according to IRS officials, resulted in the revocation or proposed revocation of approximately 80% of the industry, as measured by revenue.

There is already evidence of the substantial impact that can be expected from the IRS review of the tax-exempt mortgage foreclosure assistance industry. In 2012, EO reviewed approximately 115 exemption applications from new organizations planning to offer mortgage foreclosure assistance programs. In follow-up letters, EO asked these organizations to show specifically how their proposed activities would meet Section 501(c)(3) requirements. After conducting its review, the IRS determined that only about one-third of the applicants met the requirements for tax-exempt status and were approved.

According to the Workplan, the reasons that EO proposed or finalized denial of recognition of exemption included:

- An insufficient amount of charitable activities;
- Activities that were commercial in nature;
- Financial benefits were provided to related businesses; and
- Activities that appeared to take advantage of homeowners.

As the IRS mortgage foreclosure assistance project has already commenced, it is imperative that tax-exempt organizations that provide mortgage foreclosure assistance begin their preparations for the possibility that they are one of the 280 organization's already selected for an IRS compliance review.

Suggested efforts to prepare for compliance reviews include:

- A review of the organization's activities to ensure that the organization is operating in a manner that is consistent with its tax-exempt mission;
- A review of the organization's governance policies and practices to ensure that all governance decisions are made in a manner that protects the interests of the organization;
- A review of all applicable exemption requirements, restrictions and prohibitions, including those of the more recent Section 501(q), to ensure compliance with all legal requirements necessary for

AUTHORS

Jonathan L. Pompan
Matthew T. Journey
George E. Constantine
Jeffrey S. Tenenbaum

RELATED PRACTICES

Tax-Exempt Organizations

RELATED INDUSTRIES

Credit Counseling and Debt Services
Nonprofit Organizations and Associations

ARCHIVES

2013 2009 2005
2012 2008 2004
2011 2007 2003
2010 2006

continued recognition of tax-exempt status;

- A review of all recent IRS Forms 990, Return of Organization Exempt from Income Tax, for accuracy and completeness; and
 - A review of the organization's counseling manual and counselor training program to ensure that the counselors are sufficiently trained to provide all appropriate educational financial counseling and solutions to the individuals that the organization serves.
-

For more information, visit www.Venable.com/ccds.

For an index of articles and presentations on this and related topics, see www.Venable.com/ccds/publications and www.Venable.com/nonprofits/publications.