

**Internal Revenue Service
Director, Exempt Organizations**

**Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201**

Date: **OCT 02 2001**

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120 since you are a corporation. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If you do not protest this proposed determination 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 Internal Revenue 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 Claims Court, 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 the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely,



Director, Exempt Organizations

Enclosures: Publication 892
Form 6018
Enclosure I

ENCLOSURE I

You were incorporated pursuant to the nonprofit corporation statutes of [REDACTED] on [REDACTED]. Your articles state that you will operate exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c) (3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Your Articles of Incorporation state that the officers of your organization are [REDACTED] President, [REDACTED] Vice President, and [REDACTED] Secretary and Treasurer.

In response to Part II, Question 1 of your application for recognition of exemption, you submitted a description of proposed activities with the following:

"[REDACTED] is an organization whose main purpose is to identify, aid in and educate the general public about home ownership opportunities in their communities. [REDACTED] activities will be to provide housing information to the general public, property sellers, first time homebuyers, as well as down payment assistance to low to moderate income families and first time homebuyers wishing to purchase a home. This will be done by making realtors, lenders, property sellers, and potential homebuyer(s) aware of [REDACTED] programs to aid in the sale and purchase of residential homes in the community. The down payment assistance will be provided in the form of a grant or gift to qualified homebuyer(s) with no repayment required; to be used in conjunction with mortgage financing. [REDACTED] will give gifts in an effort to increase home ownership and affordability for those unable to save down payment money, but would otherwise qualify for financing. Through these activities, [REDACTED] hopes to lessen the burden of home ownership and educate buyers and sellers alike to programs which would make buying and selling their home(s) easier, thus furthering [REDACTED] exempt cause."

In response to Part II, Question 3 of your application for recognition of exemption, you state the following:

"[REDACTED] Down Payment Assistance Program will provide homebuyers with homebuying education and down payment assistance in the form of a gift for the purchase of a home. The seller of the property is also required to participate in the Program and make a contribution to [REDACTED] in return for aiding in the identification, prequalifying, and education of the prospective homebuyer and the general public. This contribution will be used to replenish the assistance fund as well as maintain the organization."

The attachment submitted as a supplement to your response to Part II, question 3 states the following:

**"DOES YOUR FHA BORROWER NEED DOWN PAYMENT MONEY?
Down Payment Assistance Program Has the Money They Need!**

Who we are:

is a non-profit, charitable organization that will give your FHA buyer the needed down payment in the form of a gift. No repayment is required! Our gift combined with your FHA loan equals nothing down for your borrower!

What we do:

- We only require a seller contribution of %!
- That's only % over the gift amount requested!
- We will pay you, the Lender, a fee of \$ for processing the gift application.
- We will complete the entire process in as little as 24 hours!
- We will help you close more loans!

The proposed budgets submitted with your application for exemption indicated that your organization anticipated receiving total revenue of \$ in gifts, grants and contributions for and . You indicated that your anticipated expenses for and would be \$ for fundraising and \$ in contributions, gifts, grants and similar amounts paid.

In response to our letter dated you submitted revised budgets which reflect \$ in gifts, grants and contributions and \$ in contributions, gifts, grants and similar amounts paid.

Our letter dated requested a detailed description of the source of your organization's gift funds. We also requested a description of potential recipients of your down payment assistance and if your organization placed restrictions or limitations on who may apply or whom your organization will consider as possible grantees.

Your reply dated stated, " will accept gift fund applications from all who wish to use our program, regardless of income or prior homeownership. does require that borrowers be approved for a mortgage loan, as our funds will be used in conjunction with mortgage financing."

Your reply also stated, "...one does not have to be a first time homebuyer to be approved to use our program. All those who wish to use our program and apply with will be approved to receive our gift funds. It is not intention to approve only certain first time homebuyers who apply to use our program; we will approve all those who apply, provided they are approved for mortgage financing and that the seller of the property that they are buying agrees to participate in our program. We do not impose additional underwriting criteria on the borrower because we wish to

lessen the burden of homeownership. [REDACTED] believes that if the lender has approved the buyer that there would be no reason to impose more restrictions, due to the scrutiny that most lenders apply to their underwriting policy and procedure."

Section 501(a) of the Internal Revenue Code of 1986 provides for the exemption from federal income tax for organizations described in Section 501(c)(3). Such organizations are recognized if they are organized and operated exclusively for religious, charitable, and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, 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(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which 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(d)(2) of the Income Tax Regulations defines the term "charitable" as including the relief of the poor and distressed or of the underprivileged, and the promotion of social welfare by organizations designed to lessen neighborhood tensions, to eliminate prejudice and discrimination, or to combat community deterioration. The term "charitable" also includes the lessening of the burdens of Government.

Revenue Ruling 70-585, 1970-2 C.B. 115 provides advice as to whether nonprofit organizations created to provide housing for low or moderate income families under federal and State programs qualify for exemption from federal income tax as charitable organizations described in section 501(c)(3) of the Code. In situation 1 in that ruling, an organization was held to be exempt under section 501(c)(3) where it limited its housing activities to low income families. The organization in that situation obtained operating funds from federal loans and contributions from the general public, and used volunteer help for some of its housing activities. Conversely, in situation 4 of that ruling, an organization operated to assist families with moderate income erect and occupy affordable homes did not qualify since its activities were not designed to provide relief to the poor or to carry out any other charitable purpose within the meaning of section 501(c)(3). The organization in situation 4 was financed by federal and State programs and contributions from the general public.

Revenue Ruling 61-170, 1961-1 C.B. 112, held that an association composed of professional private duty nurses and practical nurses which supported and operated a nurses' registry primarily to afford greater employment opportunities for its members was not entitled to exemption under section 501(c)(3) of the Code. Although the public received some benefit from the organization's activities, the primary benefit of these activities was to the organization's members.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 179, the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

In United States v. Wells Fargo Bank, 485 U.S. 351, 108 S. Ct. 1179, 99 L. Ed. 2d 368 (1990) the Supreme Court held that an organization must prove unambiguously that it qualifies for a tax exemption.

Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In Old Dominion Box Co. v. United States, 477 F.2d 344 (4th Cir. 1973) cert. Denied 413 U.S. 910 (1973) the court held that operating for the benefit of private parties constitutes a substantial non-exempt purpose.

In Christian Stewardship Assistance, Inc. v. Commissioner, 70 T.C. 1037, the organization's sole purpose was to assist religious, educational and/or other nonprofit organizations in the application of Christian stewardship principles. In furtherance of these purposes, the organization was engaged in financial counseling by providing a financial planning service to wealthy individuals whose net worth exceeded one-half million dollars. These financial planning services were also performed for the directors and major officers of the Christian organizations. The organization prepared a financial plan for a contributor that took into account his personal goals and the applicable tax savings. The financial plan was developed to permit increased current or deferred donations by rearranging the *inter vivos* or testamentary disposition of the individuals' assets to family members. The rearrangement also resulted in a reduction of Federal income and estate taxes.

The Court concluded that the organization failed the operational test because the financial advice to contributors was a nonexempt purpose that was greater than the exempt purpose:

"The activity of the organization consists of advice on income and estate tax planning to reduce the individual's liability for taxes to a minimum. Regardless of how this advice is characterized, it is advice that assists wealthy individuals in reducing their tax burden. This is the primary effect of the advice given. This serves the private interests of individuals rather than a broad public interest."

Based upon the above statement of facts and applicable law, we conclude you are not described in section 501(c)(3) of the Code. We reach our conclusion for the reasons discussed below.

[REDACTED]

First, you indicate an important part of your operation, and the majority of your income will be from property sellers who participate in your program. When a homebuyer uses funds from your organization the property seller must agree to make a contribution to your organization. There is no information from which it can be concluded that the services you describe will further or advance any charitable purpose. It appears the described services provide a convenience and a benefit to homeowners who are not members of a charitable class of persons. Because services you describe further no exempt purpose, and because they result in benefits to private person, you do not meet the operational test of section 501(c)(3) of the Code which requires that you operate exclusively for charitable purposes.

Secondly, you indicate another important part of your operations will be providing financial benefits to individuals to assist them in acquiring a home. While the providing of assistance to low income, or needy individuals to enable them to acquire housing would otherwise be considered a charitable activity, providing these benefits to anyone who qualifies for a loan would not be deemed charitable. You have not explained how benefits you propose to provide to individuals other than low income persons furthers a charitable purpose and you have therefore not described activities that are exclusively charitable in compliance with the requirements of section 501(c)(3) of the Code