

NO PROTEST RECEIVED  
Release copies to District

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

Date [REDACTED]

Surname [REDACTED]

Date: OCT 05 2009

Contact Person: [REDACTED]

ID Number: [REDACTED]

Telephone Number: [REDACTED]

Dear Applicant:

This letter responds to your application for recognition of exemption as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated pursuant to the nonprofit corporation statutes of the State of [REDACTED] on [REDACTED]. Your articles indicate that you will operate exclusively for charitable purposes, and further state you intend to engage in various real estate activities for the benefit of low and moderate income home buyers. Your incorporator is [REDACTED].

In response to Part II, Question 1 of your application for recognition of exemption, you submitted a description of proposed activities which states your primary activity will be your "... (D)own payment assistance program, which is modeled after the program operated by (another named organization), a California nonprofit corporation..." Later in this statement of proposed activities you describe your proposed down payment assistance program with the following statements:

"Under [REDACTED] downpayment (sic) assistance program, [REDACTED] will make a charitable grant or gift to a qualified homebuyer of up to 5% of the final sales price of the house."

"The gift funds are to be applied toward the downpayment (sic)...and toward the payment of closing costs."

"There are no 'strings' attached to the gift, other than the requirement that it be used for the purchase of the house that has been approved by [REDACTED]."

Also in your statement of proposed activities, you state the criteria that a home buyer must meet to qualify for down payment assistance from you as follows:

"1. The buyer must meet eligibility requirements for an FHA mortgage;

2. The buyer must have successfully completed a home ownership counseling course that is either offered by [REDACTED] or approved by [REDACTED].

3. The buyer must pay a minimum of one percent (1%) of the final sale price from the buyer's own funds;

4. The buyer must have received a commitment from a lender of buyer's choice to finance any part of the sale price that will not be paid at closing;

5. The buyer must agree to use the house as his principal residence following the purchase;

6. The seller must have agreed to pay [REDACTED] a fee of up to 6% of the final sale price for [REDACTED]'s services, including home buyer identification; prequalification (sic) of the buyer, provision of home inspection services and cost to administer the DAP program. This fee is payable only if the buyer closes the purchase of the house. The amount of this fee may be changed by a vote of [REDACTED]'s Board of Directors; who shall review it at least semi-annually;

7. The seller must have agreed to make any repairs to the house that are required by [REDACTED] or by the buyer's lender.

"The gift which [REDACTED] will make to a qualified buyer... will come from funds [REDACTED] will have received from grants, charitable contributions and fees for services received from other home sellers. The fees paid by a seller for the sale of a particular house will not be used to pay the downpayment (sic) assistance provided to the buyer of that house."

Your statement of proposed activities also describes home buyer education courses which you will provide at no charge to home buyers, and indicates you expect to provide support to other housing organizations and mentions Habitat for Humanity as the initial beneficiary of this activity. Your statement also describes services you will provide to home sellers as follows:

"To be sure that prospective homebuyers hear about its program, [REDACTED] will market its program to both homebuyers and sellers, including builders of new homes. While [REDACTED] will not charge a fee to a homebuyer for its services, [REDACTED] will charge a fee to a home seller for using the [REDACTED] program to sell a house. The fee will be up to 6% of the final sale price of the house.

"The fee charged to the Seller will compensate [REDACTED] for its cost to market its program, provide downpayment (sic) assistance to buyers, prequalify (sic) buyers, operate homebuyer education classes, conduct housing inspections and identify eligible buyers to prospective sellers. The fee paid by a seller in connection with the sale of a house will not be used to pay the downpayment (sic) assistance provided to the buyer of that house.

"The fees paid by home sellers will be the primary source of funds for [REDACTED]. These funds will be placed into [REDACTED]'s general fund and will be used to provide downpayment (sic) assistance and to operate its program. In addition to the fees paid by home sellers, [REDACTED] hopes to receive funds from contributions and grants; however, no fund raising program has been developed and there are presently no plans to solicit funds."

Finally, your statement of proposed activities includes a discussion of how your down payment assistance program lessens a burden of government. You state "Action Item Number 36 of the National Home Ownership Strategy states that historically, the federal government, acting through HUD, has been the most prominent provider of [downpayment] (sic) subsidies..." By using its own funds to provide downpayment (sic) assistance, [redacted] will lessen the amount of funds that the federal government must pay in subsidies."

In another attachment to your original application, you list [redacted] and [redacted] as members of your board of directors. You also list [redacted] as President and Treasurer, and [redacted] as Secretary of the corporation. Your statement indicates that directors will receive no compensation for serving on the board. You state, however, that "... (C)ompensation to be paid to the President/Treasurer will be \$ [redacted] per annum (sic) and for the Secretary the compensation will be \$ [redacted] and this compensation "... is in addition to any compensation these persons may earn for their duties as employees of the Corporation."

Your application was accompanied by proposed budgets for a partial year of operations in [redacted] and for the years [redacted] and [redacted]. For the partial year [redacted] your budget reflects revenues from service fees in the amount of \$ [redacted], officers' compensation of \$ [redacted] and Administrative Salaries and Wages of \$ [redacted]. For the year [redacted], you project income from service fees of \$ [redacted], compensation of officers in the amount of \$ [redacted] and Administrative Salaries and wages of \$ [redacted]. For the year [redacted], your project receipts from service fees of \$ [redacted], compensation of Officers in the amount of \$ [redacted] and administrative salaries and wages of \$ [redacted].

Based upon your proposed sources of support, you claim status as an organization described in Section 509(a)(2) of the Code.

By letter dated [redacted] we asked you, among other things, to explain how compensation of officers is determined. Our letter stated that the receipt of fees from services to home sellers is not furthering a charitable purpose and asked whether you would submit a resolution that you would not charge a 6% fee to home sellers in order to pursue your charitable purposes. Among the responses to this letter was a resolution of your board which created a compensation committee consisting of your board member [redacted] and two other individuals not named as board members. Among the provisions of the resolution was a requirement that the committee be guided by the requirement of section 4958 of the Code. As regards the fee charged, you provided the following information:

"We believe that this fee does further [redacted]'s charitable purpose because it is being paid to [redacted] so that it can identify, educate and assist low and moderate income homebuyers in finding a well-built house. This is a charitable service because it will increase the number of potential low and moderate income homebuyers and it also insures that there are a sufficient quantity of well built homes for these persons to buy."

Based upon your above responses, by letter dated [redacted] we asked you to supply additional information about your fees, about your sources of income other than fees, about the qualifications and duties of your compensated officers, about whether homebuyers you assist are members of a charitable class by reason of being low income, and other details about your proposed operations. Responding to the request for information about sources of income other than fees, you responded [redacted] has patterned itself after other organizations that provide assistance to home buyers and which have been granted a tax exemption... it appeared to [redacted] that these organizations obtain their downpayment (sic) assistance (funds) from fees they charge to home sellers." The response goes on to propose that you will conduct a

[REDACTED]

fund raising campaign. As regards the qualifications of compensated officers, your response stated "Since [REDACTED] has been involved in real estate development. A business which he owns bought vacant real estate... subdivides it so it can be sold as empty lots to persons who wish to build homes." Your response also stated "[REDACTED] has worked for the past seven years with [REDACTED] in the real estate development business..."

Based upon the information you provided to our letter of [REDACTED] and other statements made in conjunction with your application, you were asked in a letter dated [REDACTED] to supply detailed information about the operation of federal government housing programs which you claim to support, about other organizations upon which you stated serve as models for your operations, and other similar information. The response submitted by your attorney on your behalf states "We have reviewed your request and believe that all the information you need to make your determination has been provided to you. We ask you to review the information... already provided and ...render a decision whether [REDACTED] is entitled to... tax exemption..."

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

Section 1.501(c)(3)-1(a)(1) of the Income Tax 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 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) of the Code. 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 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.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) of the Code if it operates a trade or business that is in furtherance of its exempt purposes but not if it is operated for the primary purpose of carrying on an unrelated trade or business as defined in section 513.

Section 513 of the Code defines unrelated trade or business as any trade or business the conduct of which is not substantially related, aside from the need of income or funds or the use it makes of the profits derived from such business, to the exercise or performance of an organizations purpose or function which constitutes the basis for its exemption under section 501.

Section 509(a)(2) of the Code defines a private foundation as any organization described in section 501(c)(3), other than one which normally receives more than one-third of its support in each taxable year from any combination of gifts, grants, contributions, or membership fees, and gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in an activity which is

[REDACTED]

not an unrelated trade or business, and not normally more than one-third of its support from a combination of gross investment income and the excess of the amount of the unrelated business taxable income over the amount of tax imposed by section 511 of the Code.

Revenue Ruling 70-585, 1970-2 C.B. 115 provides advice 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 85-2, 1985-1 C.B. 178 considers whether an organization providing legal advice and training to volunteer guardians *ad litem* for abused children qualified under section 501(c)(3) of the Code. The ruling states that a determination whether an organization is lessening the burdens of government requires consideration of whether the organization's activities are activities that a governmental unit considers to be its burden, and whether such activities actually lessen such governmental burden. To determine whether an activity is a burden of government requires an objective manifestation by the government it considers such activity its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government. The interrelationship between the organization and the government may provide evidence that the government considers the organization's activities to be its burden.

Revenue Ruling 61-170, 1961-1 C.B. 112, holds 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.

Revenue Ruling 76-206, 1976-1 C.B. 154 described an organization formed for the purpose of promoting the broadcasting of classical music in a particular community. The organization accomplished its purpose by engaging in a variety of activities designed to stimulate public interest in the classical music programs of a for-profit station. These activities included soliciting sponsors, soliciting subscriptions to the station's program guide, and distributing pamphlets and bumper stickers encouraging people to listen to the station. The organization's board of directors represented the community at large and did not include any representatives of the for-profit radio station. The ruling concluded that the organization's activities enabled the radio station to increase its total revenues and therefore benefited the for-profit radio station in more than an incidental way. Therefore, the organization was serving a private rather than a public interest and did not qualify for exemption.

[REDACTED]

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 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.

In Harding Hospital, Inc. v. United States, 505 F.2d 1068 (1974), the court held 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 (4<sup>th</sup> 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 (1978), 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 which 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."

Similarly, the Court concluded in American Campaign Academy v. Commissioner, 92 T.C. 1053, that the petitioner was operated for the benefit of private interests and consequently not entitled to exemption. The organization was incorporated by the General Counsel of the National Republican Congressional Committee. Funding for the school's activities had been provided exclusively by the National Republican Congressional Trust, an organization that collected political contributions approved by the Federal Election Commission.

As its primary activity, the organization operated a school to train individuals for careers as political campaign professionals. A campaign professional worked for a candidate and typically occupied such strategic campaign positions as communications director, finance director, or campaign manager. To the "best" that the organization could determine, these graduates served on campaigns of candidates who were predominantly affiliated with the Republican party. No specific example of a graduate working for a

Democratic Senatorial or Congressional candidate was offered. The Court concluded that the organization's activities benefited Republican Party entities and candidates more than incidentally.

Based upon the above statement of facts and applicable law, we conclude you are not described in section 501(c)(3) of the Code and that you are also not described in either section 509(a)(1) or Section 509(a)(2) of the Code. We reach our conclusion for a number of reasons discussed below.

First, you indicate an important part of your operation, and your primary source of income, will be the performance of services to persons attempting to market their homes in exchange for a fee comprised of a percentage of the final sales price. 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 persons, 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 persons of low and moderate income 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 moderate income persons would not be deemed charitable. You have not explained how benefits you propose to provide to moderate 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.

Thirdly, although you indicate your activities relieve the burdens of government, you have not supplied information requested to demonstrate that the activities you conduct are of the type that have been assumed by a government agency as its burden. As noted in the Revenue Ruling 85-2, *supra*, there must be an objective manifestation that the government considers an activity to be its burden. The mere fact that a governmental agency has a policy or program to promote a certain outcome does not mean that the government has assumed the burden of engaging in that activity.

Finally, you indicate you intend to pay substantial compensation to your officers, one of whom is your incorporator, for services as officers which is in addition to other compensation they may earn as your employees. While an organization may pay reasonable compensation for services rendered to it, it appears that one of the purposes for your incorporation was to provide employment opportunities for particular individuals. Providing benefits to private persons not members of a charitable class is not a charitable activity and you are therefore not operated exclusively for charitable purposes.

In addition to not being described in section 501(c)(3) of the Code, we have also determined that you will not qualify as an organization described in either section 509(a)(1) or section 509(a)(2) of the Code. This results from the nature of your income which will be derived from the performance of services to home owners seeking to sell their homes. Such services do not further a charitable purpose and are of the type normally engaged in as a trade of business on a for-profit basis. This income would therefore not be deemed qualified support for purposes of section 509. You would therefore be a private foundation if you were described in section 501(c)(3).

Because 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.

[REDACTED]

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 7426(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).

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

[REDACTED]  
Internal Revenue Service  
Attn: T:EO:RA:T:2 Room 6539  
1111 Constitution Ave, N.W.  
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,

*Joseph Chasin*

Joseph Chasin  
Acting Manager, Exempt Organizations  
Technical Group 2

cc: [REDACTED]

	INITIATOR	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER	REVIEWER
OFFICE CODE	[REDACTED]	[REDACTED]					
SURNAME	[REDACTED]	[REDACTED]					
INITIALS/DATE	[REDACTED]	[REDACTED]					