



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

Number: **200643007**  
Release Date: 10/27/06  
Date: August 2, 2006

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00

Dear , :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

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.

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, 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



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

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Date: March 17, 2006

UIL: 501.03-00

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend:

M =

State =

Date =

Z =

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.

Facts:

You, M, are a State Nonprofit Corporation formed on Date. Your Articles of Incorporation state that your purpose shall be to (1) act and operate exclusively as a charitable organization consistent with the provisions of section 501(c)(3) of the Code; (2) organize and provide conferences, seminars, symposiums, and publications (free or at cost) to the general public concerning the availability of affordable housing and the benefits of private homeownership versus alternative public housing; (3) promote homeownership by assisting low and median income families with the acquisition of affordable and low-cost housing through programs sponsored by the U.S. Department of Housing and Urban Development and other non-governmental organizations; (4) through programs sponsored by the U.S. Small Business Administration, the U.S. Department of Commerce, local government agencies, and non-governmental organizations and entities, promote entrepreneurship among women and/or minorities by providing grants, gifts, and/or low-interest loans to women and/or minority-owned

enterprises whose primary function is a community development-related enterprise; and to provide written and oral testimony and evidence to the public and before legislative and administrative committees and commissions regarding affordable and low-median income housing and economic and community development in disadvantaged areas.

Your Form 1023 Application provides that you will be engaged in the following activities: (1) financial assistance to individuals and families for acquisition of affordable and low cost housing; (2) financial assistance to individuals and entities, particularly women and minority-affiliated, for community and economic development activities, and (3) sponsorship of various activities which will educate the public about the benefits of homeownership versus public housing.

Your letters of December 17, 2002, and October 14, 2003, indicate that the proposed business assistance program for women and minority groups and educational activities have not yet been established, but are future projects that will take place solely based on availability of funds. Your only activity at first will be to provide financial assistance for down payment and closing costs for needy individuals and families. The assistance will be rendered in the form of a gift with no expectation of repayments.

You state that anyone is eligible to apply for the down payment gift program, however, marketing activities will be primarily directed at female heads of households and Latinos. Bilingual marketing materials that explain the program will initially be distributed to churches, real estate agents, mortgage bankers and brokers, and Latino markets.

You state that you assist persons who have qualified for a federally-guaranteed loan which generally imposes limits on amounts of loan or value of property that may be the subject of a loan, which should ensure that grant recipients are primarily low income individuals. In addition, your down payment housing program is designed to assist persons who have traditionally been disadvantaged when purchasing homes, and material will be distributed through organizations that have contact with Latinos and female heads of households, as well as organizations that work with low income families and individuals.

Your letters of December 17, 2002, and October 14, 2003, describe a typical down payment assistance transaction as including the following steps:

1. A homebuyer decides to purchase a home. The buyer applies and qualifies for a federally-guaranteed loan. Buyer realizes that he/she will not have sufficient liquid assets to pay down payment and/or closing costs, so buyer only has the following options: (a) looking at lower-priced homes; (b) obtaining funds from a friend or relative; or (c) seeking down payment assistance.
2. The buyer learns about your down payment housing program through advertising material. The buyer his/her search on houses that advertise participation in your program or identifies a house and asks the seller to become a participant in your program.
3. Seller decides to put home on market. Seller learns about your down payment housing program from advertising materials or from the buyer.

4. Once terms of the purchase is agreed upon, the buyer submits the Gift Funds Request Form to you. Your representatives review the application to determine whether buyer meets the selection criteria. Selection criteria is as follows: (a) the buyer qualifies for a federally-guaranteed loan and needs assistance to pay the down payment and/or closing costs; (b) buyer has steady employment and reasonable credit; (c) the purchased residence is the buyer's principal place of residence and the buyer plans to occupy the house for at least one year; and (d) the seller agrees to be a participating home sponsored by the down payment assistance program.
5. If funds are available and the buyer meets the criteria, buyer is awarded a grant between 3 - 6 percent of the purchase price as determined by you. Buyer is notified of the award by receiving a Gift Letter.
6. Buyer signs the Gift Letter. The Gift Letter contains: (a) acknowledgement of intended use of the funds, (b) acknowledgment of the fact that the funds are not a loan, but are a gift with no expectation of repayment, and a statement of acknowledge that funds are provided by M and not by any party to purchase transaction. By signing the letter, Buyer also agrees that if the Buyer is unable to close on the loan within 7 days after the down payment gift funds are received by the escrow or closing agent, the escrow or closing agent must return, without recourse, the gift funds to M.
7. Seller signs the Participating Home Agreement. The Agreement states that the Seller agrees to make a contribution to M, a section 501(c)(3) organization, based on final sales contract price of the home and to pay a servicing fee to M of \$750 for resale of the home and \$500 for a builder. The Agreement further states that the total amount paid to M by the Seller represents a contribution to M's down payment home program of between 1 - 6 percent of final sales contract price plus the processing fee. The Participating Home Agreement commits the Seller to pay only if the Buyer of the house receives a down payment gift. The Agreement states that if the Buyer does not close on the loan within 7 days after M deposits the gift funds in escrow or to the closing agent, the escrow officer or closing agent is authorized to return the gift funds to M.
8. On or before the closing date, the grant amount is wired to the Buyer's escrow account. The grant is shown on the settlement statement as a gift to the Buyer and is applied by the closing agent to reduce amount Buyer is required to bring to the closing.
9. After the transaction is closed and settlement completed, Seller makes agreed contribution to you.

You state in your letter of December 17, 2002 that contributions are made by the sellers of houses that are participating homes in the down payment gift program. The seller makes a donation after closing equal to the amount of the gift provided to the homebuyer. These donations are used to fund gifts for future homebuyers.

You further explain in your letter of October 14, 2003, that proceeds from the seller are deposited after the closing and are used to assist funding for future gifts to grantees. The contribution amount of a specific percentage of between 1 - 6 percent of sales price selected by the seller at the time the seller agreed to participate in the program is neither increased nor decreased based on amount buyer receives. The seller's contribution is not refundable. The

purpose of the contribution is to ensure that funds will be available to help other buyers in the future. If a person who buys a participating home does not receive a grant from you, your funds are not depleted and therefore no contribution is required.

Your letter of October 14, 2003, states that the \$750/\$500 processing fee is intended to offset your operating expenses so that the full amount of the contribution will be available to make future grants to buyers. The amount of the fee was determined based on fees charged by similarly situated down payment assistance programs, estimated operating expenses, and expected number of participating homes. Sellers must always pay the fee. You further indicated that the down payment assistance funds are generated primarily from sellers' contributions, but additional funding may possibly come from contributions from persons who are not participating sellers, fees remaining after payment of operating expenses, and investment income.

A sample flyer included with your December 17, 2002, letter that will be distributed outlines how your down payment assistance program works for potential buyers and potential sellers of participating homes. The flyer publicizes that if a homebuyer qualifies for a VA or FHA loan, the buyer automatically qualifies for a down payment gift from N, your down payment assistance program of up to 6 percent of the final sales contract price. The flyer advertises that N offers a big advantage to the seller because homes which offer the program sell faster and with little or no negotiation, so the seller can make more money more quickly. The flyer demonstrates how the seller can achieve a higher contract sales price under an N transaction as opposed to a normal real estate transaction:

	Without the Program	With the Program
Contract Sales Price	95z	100z
Closing Costs	6.65z	7z
Real Estate Commission	2.85z	3z
N Service Fee		750
Net to Seller	85.5z	89.25z

In your letter of October 14, 2003, you state that the amount of down payment assistance grant funds provided to a particular buyer is determined based on the following factors: (a) number of requests for assistance received; (b) amount of available funds; (c) estimate of funds it will receive in the near future; (d) estimate of funds it can expect to receive from sellers enrolled at time of request; (e) apparent need of buyer. You stated that in most cases you will not approve a grant that exceeds the amount the seller has agreed to contribute. However, directors have sole discretion to determine the amount of the grant. Awards are made from your available funds at hand. As a result, seller's contribution is used to replenish funds following close of the transaction. If you were to award a buyer more than you expected to receive from the seller of the participating home, you would have less available funds for future grants. If you do award a buyer less than you expect to receive from the participating seller, you will use the excess funds to provide awards to other buyers. You state that no part of the contribution is returned to the seller.

Your letter of October 14, 2003, provides that you are not responsible for preventing defaults in the homes. Instead, you presume that the lender establishes origination procedures to prevent high levels of default and so rely on the lender to determine whether the buyer's

income is sufficient to meet expected payments and whether agreed sales price bears a reasonable relation to the value of the home. You specifically describe your role and sole activity as providing a grant to assist the buyer in purchasing a home the buyer has selected, not to intervene in the buyer's choice of housing or to protect the lender or government guarantor. You further state that the buyer and realtor have the opportunity to inspect the home prior to making the offer and to the closing, so you leave it to them to select a house that is safe, decent, sanitary, and affordable. You also do not conduct or require any homeownership education.

In your letter of February 13, 2003, you represent that you operate in a manner similar to several specified organizations. The manner in which you and these organizations operate is referred to as "seller-funded downpayment assistance" in the Final Report: An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations, commissioned by Office of Housing, United States Department of Housing and Urban Development, HUD Contract No.: C-OPC-22550/M0001 (March 1, 2005). The report concludes that seller-funded downpayment assistance for mortgage downpayments has led to underwriting problems that require immediate attention. Furthermore, the report concludes that the effective costs of homeownership are increased even more by the processing fees charged by the seller-funded downpayment assistance providers which get passed through to borrowers in higher property prices. A copy of the report is enclosed with this determination letter.

#### Applicable Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of corporations organized and operated exclusively for charitable or educational purposes, provided no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in section 501(c)(3) of the Code. An organization must not engage in substantial activities that fail to further an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. To meet this requirement it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations defines the term "charitable" as used in section 501(c)(3) of the Code as including the relief of the poor and distressed or of the underprivileged. The term "charitable" also includes the advancement of education.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides, in part, that the term "educational" as used in section 501(c)(3) of the Code relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section

501(c)(3) of the Code if the trade or business furthers an exempt purpose, and provided the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the court held that an organization that operated a school to train individuals for careers as political campaign professionals, but that could not establish that it operated on a nonpartisan basis, did not exclusively serve purposes described in section 501(c)(3) of the Code because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with partisan party entities and that most of the organization's graduates worked in campaigns for partisan candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting partisan candidates and entities. Although the candidates and entities benefited were not organization "insiders," the court stated that the conferral of benefits on disinterested persons who are not members of a charitable class may cause an organization to serve a private interest within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations. The court concluded by stating that even if the partisan candidates and entities did "comprise a charitable class, [the organization] would bear the burden of proving that its activities benefited members of the class in a non-select manner."

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops be operated for exclusively charitable purposes within the meaning of section 501(c)(3) of the Code. The organization, in cooperation with national craft agencies, selected the handicrafts it would market from craft cooperatives in communities identified as disadvantaged based on objective evidence the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from

these communities of craftsmen. It did not select individual craftsmen based on the needs of the purchasers. The court concluded that the overall purpose of the activity was to benefit disadvantaged communities. The method it used to achieve its purpose did not cause it to serve primarily private interests because the disadvantaged artisans directly benefited by the activity constituted a charitable class and the organization showed no selectivity with regard to benefiting specific artisans. Therefore, the court held that the organization operated exclusively for exempt purposes.

In *Airlie Foundation v. Commissioner*, 283 F.Supp.2d 58 (D.D.C., 2003), the court relied on the “commerciality” doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax-exempt purpose. “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 materials (e.g., advertising) and the extent to which the organization receives charitable donations.”

Rev. Rul. 67-138, 1967-1 C.B. 129, holds that helping low income persons obtain adequate and affordable housing is “charitable” because it relieves the poor and distressed or underprivileged. The organization carried on several activities directed to assisting low-income families obtain improved housing, including (1) coordinating and supervising joint construction projects, (2) purchasing building sites for resale at cost, and (3) lending aid in obtaining home construction loans.

Rev. Rul. 70-585, 1970-2 C.B. 115, discusses four examples of organizations providing housing and whether each qualified as charitable within the meaning of section 501(c)(3) of the Code. Situation 1 describes an organization formed to construct new homes and renovate existing homes for sale to low-income families who could not obtain financing through conventional channels. The organization also provides financial aid to eligible families who do not have the necessary down payment. When possible, the organization recovered the cost of the homes through very small periodic payments, but its operating funds were obtained from federal loans and contributions from the general public. The revenue ruling holds that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

Situation 2 describes an organization formed to ameliorate the housing needs of minority groups by building housing units for sale to persons of low and moderate income on an open-occupancy basis. The housing is made available to members of minority groups who are unable to obtain adequate housing because of local discrimination. The housing units are located to help reduce racial and ethnic imbalances in the community. As the activities were designed to eliminate prejudice and discrimination and to lessen neighborhood tensions, the revenue ruling holds that the organization was engaged in charitable activities within the meaning of section 501(c)(3) of the Code.

Situation 3 describes an organization formed to formulate plans for the renewal and rehabilitation of a particular area in a city as a residential community. The median income level in the area was lower than in other sections of the city and the housing in the area was generally old and badly deteriorated. The organization developed an overall plan for the

rehabilitation of the area; it sponsored a renewal project; and involved residents in the area renewal plan. The organization also purchased apartment buildings that it rehabilitated and rented at cost to low and moderate income families with a preference given to residents of the area. The revenue ruling holds that the organization is described in section 501(c)(3) of the Code because its purposes and activities combated community deterioration.

Situation 4 describes an organization formed to alleviate a shortage of housing for moderate-income families in a particular community. The organization planned to build housing to be rented at cost to moderate-income families. The Service held that the organization failed to qualify for exemption under section 501(c)(3) of the Code because the organization's program did not provide relief to the poor or further any other charitable purpose within the meaning of section 501(c)(3) and the regulations.

Rev. Rul. 72-147, 1972-1 C.B. 147, holds that an organization that provided housing to low income families did not qualify for exemption under section 501(c)(3) of the Code because it gave preference to employees of business operated by the individual who also controlled the organization. Although providing housing for low income families furthers charitable purposes, doing so in a manner that gives preference to employees of the founder's business primarily serves the private interest of the founder rather than a public interest.

#### Rationale and Conclusion:

Based on the information you provided in your application and supporting documentation, we conclude that you are not operated for exempt purposes under section 501(c)(3) of the Code. An organization cannot be recognized as exempt under section 501(c)(3) unless it shows that it is both organized and operated exclusively for charitable, education, or other exempt purposes. Among other things, the application and supporting documentation must demonstrate conclusively that the organization meets the operational test of section 1.501(c)(3)-1(c) of the regulations. Your information indicates that your primary purpose is to operate a down payment assistance program that does not exclusively serve a purpose described in section 501(c)(3).

Charitable purposes include relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. However, you do not conduct your down payment assistance program in a manner that establishes that your primary purpose is to address the needs of low-income grantees by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1.

Your down payment assistance program does not serve exclusively low-income persons. Instead, your program is open to anyone without any income limitations who qualifies for an FHA or VA mortgage. You have not demonstrated that your down payment assistance program exclusively serves any other exempt purpose such as combating community deterioration and lessening racial tensions. For example, you have not shown that your program is designed to attract a mixed-income group of homeowners to a specifically defined geographical area that has a history of racial problems. Further, although you state you seek to serve a class of persons traditionally underserved, you have not provided any statistics or government programs to show that persons you serve are indeed underprivileged or discriminated against. See Rev. Rul. 70-585, Situations 2 and 3. Your information indicates that you do not limit your assistance to certain geographic areas or target those areas experiencing deterioration or racial tensions.

Arranging the purchase of homes in a broadly defined metropolitan area does not combat community deterioration within the meaning of section 501(c)(3) of the Code. See Rev. Rul. 70-585, Situation 4.

You do not primarily consider those applications for assistance for homes that meet your particular standards for habitability. You do not engage in any substantive review to ensure that the buyer will be able to afford to maintain the house over time. Instead, you rely solely on the mortgage lender, insurance agency, home inspector or other third party to conduct these reviews. You do not provide oversight or conduct any other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable. You do not conduct or require the completion of an education program or other educational literature. This distinguishes your situation from that described in Rev. Rul. 67-138.

Only an insubstantial portion of the activity of an exempt organization may further a nonexempt 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. You conduct your operations in a manner that is consistent with a commercial firm seeking to maximize sales of services, rather than in a manner that would be consistent with a charitable or educational organization seeking to serve a charitable class or the public at large. The manner in which you operate your down payment assistance program indicates that you facilitate the sales of homes in a manner that is indistinguishable from an ordinary trade or business. You operate a business that provides services to home sellers for which you charge a market rate fee. For example, your information and literature explains how the seller will benefit from your program as sellers will decrease sales time, increase the buying pool and overall achieve the maximum sales price for their home by not having to reduce the sales price. This type of approach helps to demonstrate that your primary purpose consists of maximizing the fees you derive from facilitating sales of real property. In this respect you are similar to an organization which was denied exemption because it operated a conference center for a commercial purpose. See Airlie Foundation, Inc. v. U.S., 92 A.F.T.R.2d (RIA) 6206 (D.D.C. 2003). Likewise, operating a trade or business of facilitating home sales is not an inherently charitable activity. Thus, a substantial part of your activities further a nonexempt purpose.

Another indication of your substantial nonexempt purpose is your lack of public support. You are not supported by contributions from the general public, government, or private foundation grants. You anticipate that almost all of your revenue will come from the sellers' you serve. That your primary activity is to promote and to further your private business interests is reflected in the financing structure of your down payment assistance program - that your primary source of support is from sellers' fees and contributions. In this respect you are similar to the organization described in Easter House, *supra*, which derived most of its support from fees it charged for its adoption services. In this case, the court stated that the substantial fees were not incidental to the organization's exempt purpose because they were designed to make a profit. Facilitating home sales, like running an adoption service, is not an inherently charitable activity, and receiving support primarily from fees charged to home sellers is indicative of your commercial purpose.

Even if your program is directed to exclusively low-income individuals or underserved persons, your reliance entirely on home sellers or other real-estate related businesses that

stand to benefit from the transactions to finance your down payment assistance activities demonstrates that you are operated for the purpose of benefiting private parties.

Your grant making procedures indicate that seller gift funds are only provided if a seller has paid a processing fee or has made a contribution to you. In fact, while you call the funds you will receive from the sellers “voluntary contributions,” these transactions are not contributions because they will not “proceed from detached and disinterested generosity.” Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Your characterization of these transactions as contributions ignores the business realities surrounding the payments. The sellers will make the payments to you and indirectly to the homebuyer to facilitate the sale of their homes. In fact, the documents you provided state or lead home sellers to believe that these payments are deductible as charitable contributions and may contribute to tax avoidance. Upon the closing of the sale, the sellers “contribution” to you is returned to seller as part of the proceeds the seller receives from the sale of the home.

These “voluntary contributions” are more appropriately characterized as fees received in exchange for the sale of a service. Your information indicates that your grant making staff is able to take into account whether there is a home seller willing to make a payment to cover the down payment assistance an applicant has requested. The fact that the payment requested from the home seller is the exact amount traditionally needed to qualify for a loan, that you will anticipate receiving a payment from the home seller corresponding to the amount of a down payment assistance in most transactions, and that seller payments are contingent on the sale of a particular property indicates that the benefit to the home seller is not a mere accident but rather an intended outcome of your operations. In this respect, you are like Easter House, supra, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman’s child sponsored the care financially. Similar to American Campaign Academy, supra, you are structured and operated to directly benefit the home sellers who pay for your services. Therefore, a substantial part of your activities serve a private rather than a public interest.

Finally, you have not taken any steps to ensure that “voluntary contributions” paid by the sellers (that we have re-characterized as payments to facilitate the sales of their homes) are not added to the overall costs of the home purchase. Irregardless of the federal guarantor requirements, this aspect of your program would increase the cost to a buyer of a home in two ways: first, it increases the sales price, and second, it increases any associated fees that are based on the sales price (such as realtor fees, stamp taxes, etc.) In effect, you are offering a program to sellers that cost them very little by permitting them to recover their payments to you through an increase in the sales price. This is even advertised in your flyer. By passing these costs to the buyers, you are making it harder for them to afford the costs of a home. This aspect of your program overly serves the private interests of the sellers by helping them to sell their homes to the detriment of low income buyers whose charitable interests you claim to be serving. In this respect, you are serving the private rather than public interests as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. Your proposed operations further a substantial nonexempt business purpose and will further the private interests of home sellers and other private parties. Therefore, you are not described in section 501(c)(3) of the Code.

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 file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to protest as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree 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 all of the administrative remedies available to it within the IRS. If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE Exempt Organizations  
SE:T:EO:RA:T:2  
Attn : Mary Jo Salins  
1111 Constitution Ave, N.W., PE-3P3  
Washington, D.C. 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

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(s)

*An Examination of Downpayment Gift Programs Administered by Non-Profit Organizations*  
HUD Contract No. C-OPC-22550/M0001 (March 1, 2005)