



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:

FAX Number:

Employer Identification Number:

Legend:

A =  
B =  
C =

M =  
N =

State =  
Date =

Y =  
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 provide that you are organized exclusively for charitable, religious, literary, educational, cultural and scientific purposes, and to engage directly or indirectly in such activities as will qualify M for tax exemption under section 501(c)(3) of the Code. Your Articles further state that the nature of the activities to be conducted include to: (1) provide homebuyers with gift funds for their down payment in relation to purchasing a personal residence and (2)

facilitate community revitalization by providing affordable "work force" housing and housing assistance to individuals or families in need by redeveloping neighborhoods through the support of other community based organizations.

Your Form 1023 Application provides that your activities will consist primarily of providing qualified homebuyers with funds for their down payment in purchasing a home. It further explains that your activities are intended to assist members of the community to obtain benefits of private home ownership by providing the required down payment to qualified homebuyers who might not otherwise have such a down payment. You state in your letter of February 20, 2003, that there are no income or asset limitations that a buyer must meet in order to qualify for down payment funds, and that the only requirement is that the buyer needs to qualify for an FHA mortgage. Your Form 1023 Application declares that your charitable objective is intended to partially alleviate the burden of government and to assist citizens in becoming productive members of society by assuming the responsibilities and obtaining the benefits associated with home ownership.

You indicated in the application that your directors are A, B, and C. The application shows that these individuals also serve as your sole officers, and that they will receive compensation as such, as allowed under your bylaws. Your letter of February 20, 2003, explains that B and C are husband and wife, and A is the son of C. You indicate in your Form 1023 that all 3 have extensive experience in the home mortgage finance area. You explain further in your letter of February 20, 2003 (cover letter of Feb. 26, 2006) that A owns a residential mortgage company and B owns a land development and property management company.

You have contracted for services to be provided by N, a State limited liability company. N is 100 percent owned by A. Under the terms of the down payment management agreement between you and N, a copy of which was provided with your application, N will provide the following services: (1) office space/office equipment; (2) sales and marketing force for which N will be responsible (i.e., to pay compensation and provide training, marketing, and sales materials); (3) prepare and provide all documentation to mortgage companies, real estate agents, brokers and homebuilders, to facilitate sale and financing in conjunction with the down payment program; and (4) serve as intermediary on your behalf in arranging for HUD, FHA and other qualified financing in conjunction with the down payment program. The terms of the agreement is for 2 years, renewable on the same conditions at the end of the initial term, for a monthly fee equal to 75 percent of the difference between gross gifts, grants, and contributions received and all gifts, grants, contributions, and similar items paid by you. You indicated in your letter of August 7, 2003, that N will initially work exclusively for you, therefore, 100 percent of N's income will come from you. You share office space and a mailing address with N pursuant to the management agreement.

Your Form 1023 states that you plan to raise funds primarily from home sellers agreeing to participate in your down payment program. If a Seller participates in the program and a qualified buyer identified by you purchases the Seller's residence, the Seller will agree to pay you a fee ranging from \$400 to \$1,000 based upon the magnitude of the sales price for the Seller's personal residence. You provide an example:

If the sales price is \$150y, the fee would be \$750 based upon the following chart:

<u>Gross Sales Price</u>	<u>Fee</u>
0 - \$75y	\$400 - \$650
\$75y - \$175y	\$750
\$175y - up	\$850 - \$1z

You state in your letter of February 20, 2003, that in addition to paying a service fee, the home seller will agree to reimburse you for the amount of the down payment funds used by the buyer.

You describe a typical down payment transaction in your letter of February 20 2003, and August 7, 2003, as follows: The buyer and seller agree to a sales price with the assistance of their respective sales agents. The contract of sale and purchase is then prepared and signed by all parties to the transaction. The home buyer obtains an FHA/HUD loan for the contract sales price after the appraisal confirms the sales price. At the time of the closing, you wire the down payment funds to the title company. The title company prepares the final HUD settlement statement crediting the buyer for the amount of the approved down payment assistance and debiting the seller for the same amount of the approved down payment assistance and the service fee.

Your grant application, included in your August 7, 2003 letter, asks for target closing date; buyer information, including purchase price, grant amount needed, fee amount, and total seller contribution, which includes grant amount plus the fee; mortgage/lender information; closing/title information; and agent information.

The purchase contract addendum, included in your August 7, 2003 letter, provides that the contract is contingent upon the buyer receiving a certain amount in gift funds from M. It further provides that gift funds have been provided exclusively by M and not from any person or entity with any interest in the sale of the subject property. It provides that buyer requires no repayment of gift. It states that the seller agrees to participate in M's gift fund program, and agrees to pay M a service fee amount, plus an amount equal to that of the gift received by the buyer from M. It provides that the terms of the agreement are incorporated into the purchase and sales agreement, and requires the signature of the buyer and seller.

You state in your Form 1023 that you will provide free marketing materials, training, and support to mortgage professionals to educate them regarding the program. You explain in your letter of February 20, 2003 that under the terms of the management agreement with N, it will actually be N that will present seminars and educational material regarding the down payment assistance program to realtors, mortgage brokers and bankers. N will also provide participation forms and instructions to the realtors, mortgage brokers, and bankers.

You will not require any home education program by homebuyers, as so stated in your letter of February 20, 2003. Further, you do not do anything to ensure that the home to which you provide down payment assistance is safe, decent and affordable to the homebuyer.

However, you will encourage a buyer to obtain an appraisal of the property and to have the home inspected by a certified and licensed home inspector. You explain in your letter of February 20, 2003, that the Lender will provide each buyer with an FHA publication advising the buyer to get a home inspection. However, your letter of August 7, 2003, provides an inconsistent statement that you will co-sponsor educational home buying seminars for realtors, mortgage brokers, bankers and homebuyers.

Your Form 1023 indicates that you will obtain funds needed to make the down payment gifts by (i) obligating participating home sellers to contribute a service fee and/or a portion of their sales price to you, (ii) soliciting contributions from the general public; and (iii) soliciting contributions from governmental agencies and/or other charities. You anticipate that home sellers will represent 98 percent of your revenues, the general public will provide 1 percent of your revenues, and others, including governmental agencies and other charities, will represent another 1 percent of your revenue. You anticipate start-up funding from third-party lenders making one or more line of credit facilities available to you.

The financial data that you included with your Form 1023 shows that you anticipate receiving approximately \$31 $\underline{z}$  in gross receipts from services during your first 3 years of operation. You anticipate making "gifts" of approximately \$28 $\underline{z}$  during that same period. You anticipate approximately \$2.3 $\underline{z}$  to be paid as management fees during this period.

The manner in which you 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.

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(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(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 certain partisan political party entities and that most of the organization's graduates worked in campaigns for the partisan political party candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting partisan political party 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 political party 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 methods (e.g. advertising) and the extent to which the organization receives charitable donations."

In Church of Eternal Life and Liberty, Inc. v. Commissioner, 86 T.C. 916, 926 (1986), the court stated that while the payment of reasonable salaries does not constitute prohibited inurement, the payment of excessive salaries does.

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 a 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.

Rev. Rul. 85-1, 1985-2 C.B. 177, discusses whether an organization that provides funds to a county's law enforcement agencies to police illegal narcotic traffic lessens the burdens of government. The ruling holds that an activity is a burden of government only if there is objective manifestation by a governmental unit that it considers such activities to be its burden. The ruling also holds that little weight should be given to statements of government officials that merely praise or express approval of an organization and its activities. Rather, the government must formally recognize the organization and its functions as relieving its burdens. The ruling sets out relevant factors in determining whether the governmental unit has made the necessary objective manifestation, including:

- a. A statute specifically creates the organization and clearly defines the organization's structure and purposes.
- b. The activity is an integral part of a larger governmental program, or is acted jointly with a governmental unit.
- c. The governmental unit controls the activities of the organization, such as appointing all the board members.
- d. The organization pays governmental expenses.
- e. Regular government funding of the organization's activities through grants or general obligation bonds backed with the full faith and credit of the governmental unit (as opposed to general revenue bond financing).
- f. The governmental unit is not prohibited from performing the particular activity.

Rev. Rul. 85-2, 1985-2 C.B. 178, holds that an organization is lessening the burdens of government if it engages in activities that a governmental unit considers to be its burden and such activities actually lessen such governmental burden. An organization must demonstrate through all the relevant facts and circumstances that a governmental unit considers the organization to be acting on its behalf, thereby freeing up the government assets that would otherwise have been devoted to the particular activity.

Analysis:

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 or of the underprivileged. 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 that qualifies for an FHA or HUD loan, without any income limitations. 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. 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. 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. See Rev. Rul. 70-585, Situation 4. Your program is available to anyone who is able to qualify for an FHA mortgage from any lender in any State in the United States. 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.

Furthermore, you do not engage in any activity to ensure that the house will be habitable or that the buyer will be able to afford to maintain the house over time. Instead, you rely solely on information provided by FHA, and on the mortgage lender, insurance agency, home inspector or other third party to conduct such review. You do not provide oversight or conduct any educational program or other activity to ensure that buyers are purchasing properties that are safe, decent, sanitary, and affordable.

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 as a business that provides services to home sellers for which you charge a market rate fee. For example, your literature and website explain how the seller and agent will benefit from your program as sellers are able to sell their homes at the full list 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., 283 F. Supp. 2d 58 (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. Almost all of your revenue comes 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. 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 were changed to be directed to exclusively low-income individuals, 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 gift funds are only provided if a seller has paid a service fee and made a contribution to you equal to the amount of the gift provided by you to the buyer. In fact, these transactions are not contributions because they will not "proceed from detached and disinterested generosity." Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Any 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 effect, these payments have a circular character to them. 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 "contributions" are appropriately characterized as fees received in exchange for the sale of a service. Your information indicates that your 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. That you receive a payment from the home seller corresponding to the amount of the down payment assistance in every transaction 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.

You also proffer that by encouraging home ownership, your program furthers the charitable purpose of lessening the burdens of government. Rev. Rul. 85-1, supra, holds that an activity is a burden of government only if there is an objective manifestation by a governmental unit that it considers such activities to be its burden and the government formally recognizes the organization and its functions as being a governmental burden. You have not provided any facts, documentation, or otherwise that indicates that your down payment assistance program is a burden of the government or that a governmental unit formally recognizes your activities as an integral part of a larger governmental program. Also see Rev. Rul. 85-2, supra.

Moreover, you have not established that your net earnings will not inure to the benefit of private shareholders or individuals. You indicate that salaries will be paid to some of your officers. However, you have not explained in sufficient detail what services these officers will perform in return for the compensation and how those services further exempt purposes within the meaning of section 501(c)(3). You have not established that these compensation levels are reasonable. You also state that you will use the services of a marketing company owned, directly or indirectly, by your President/director. However, you have not established that the fee paid will be reasonable or the process in which this particular company was chosen. You have not established that the "compensation" and marketing fees will be anything other than a distribution of your net earnings to these individuals.

Conclusion:

Based on the facts and information submitted, you are not operated exclusively for exempt purposes. You have not established that your activities exclusively serve a charitable class or any other purpose defined in section 501(c)(3). Your proposed operations further a substantial nonexempt business purpose and will further the private interests of home sellers and other private parties. In addition, you have not established that your net earnings will not inure to the benefit of private shareholders or individuals. 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.

If you do intend to protest this determination, please send your protest statement, Form 2848 and any supporting documents to this address:

Internal Revenue Service  
TE/GE  
SE:T:EO:RA:T:2  
Attn: Mary Jo Salins, Room PE-3P3  
1111 Constitution Ave, N.W.  
Washington, DC 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**

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