



DEPARTMENT OF THE TREASURY

**Internal Revenue Service
TE/GE EO Examinations
1100 Commerce Street
Dallas, TX 75424**

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

December 5, 2007

Number: **200809039**
Release Date: 2/29/2008

UIL: 501.03-01

Legend

ORG = Organization name XX = Date Address = address

ORG

Address

Identification Number:

Contact Telephone Number:

In Reply Refer to: TE/GE Review Staff

EIN:

CERTIFIED MAIL – RETURN RECEIPT

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: March 4, 20XX

Dear :

This is a Final Adverse Determination Letter as to your exempt status under section 501(c) (3) of the Internal Revenue Code. Your exemption from Federal income tax under section 501(c) (3) of the code is hereby revoked effective January 1, 20XX.

Our adverse determination was made for the following reasons:

A substantial part of your activities consists of providing down payment assistance to home buyers. To finance the assistance you rely on home sellers and other real-estate related businesses that stand to benefit from these down payment assistance transactions. Your receipt of a payment from the home seller corresponds to the amount of the down payment assistance provided in substantially all of your down payment assistance transactions. The manner in which you operate demonstrates you are operated primarily to further your insiders' business interests. Therefore, you are operated for a substantial nonexempt purpose. In addition, you operations further the private interests of the persons that finance your activities. Accordingly, you are not operated exclusively for exempt purposes described in section 501(c) (3).

You failed to meet the requirements of IRC section 501(c) (3) and Treas. Reg. section 1.501(c) (3) -1(d) in that you failed to establish that you were operated exclusively for an exempt

purpose. Rather, you were operated for the benefit of private interests and a part of your net earnings inured to the benefit of outsiders, your founder and board members...

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all years thereafter. You have appropriately provided Forms 1120 for December 31, 20XX through 20XX.

Processing of income tax returns and assessment of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination in court, you must initiate a suit for declaratory judgment in the United States Tax Court, the United States Claim Court or the District Court of the United States for the District of Columbia before the 91st day after the date this determination was mailed to you. Contact the clerk of the appropriate court for the rules for initiating suits for declaratory judgment.

You also have the right to contact the office of the Taxpayer Advocate. However, you should first contact the person whose name and telephone number are shown above since this person can access your tax information and can help you get answers.

You can call 1-877-777-4778 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by or writing to: Internal Revenue Service, Taxpayer Advocates Office.

Taxpayer Advocate assistance cannot be used as a substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determinations, nor extend the time fixed by law that you have to file a petition in the United States Tax Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

We will notify the appropriate State Officials of this action, as required by section 6104(c) of the Internal Revenue Code.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Marsha A. Ramirez
Director, EO Examinations



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY

Internal Revenue Service
MS:4957:DAL:KT
1100 Commerce Street
Dallas, TX 75242

July 2, 2007

ORG
Address

Taxpayer Identification Number:

Form:
990

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Certified Mail - Return Receipt Requested

Dear :

We have enclosed a copy of our report of examination explaining why we believe revocation of your exempt status under section 501(c)(3) of the Internal Revenue Code (Code) is necessary.

If you accept our findings, take no further action. We will issue a final revocation letter.

If you do not agree with our proposed revocation, you must submit to us a written request for Appeals Office consideration within 30 days from the date of this letter to protest our decision. Your protest should include a statement of the facts, the applicable law, and arguments in support of your position.

An Appeals officer will review your case. The Appeals office is independent of the Director, EO Examinations. The Appeals Office resolves most disputes informally and promptly. The enclosed Publication 3498, *The Examination Process*, and Publication 892, *Exempt Organizations Appeal Procedures for Unagreed Issues*, explain how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

You may also request that we refer this matter for technical advice as explained in Publication 892. If we issue a determination letter to you based on technical advice, no further administrative appeal is available to you within the IRS regarding the issue that was the subject of the technical advice.

If we do not hear from you within 30 days from the date of this letter, we will process your case based on the recommendations shown in the report of examination. If you do not protest this proposed determination within 30 days from the date of this letter, the IRS will consider it to be a failure to exhaust your available administrative remedies. Section 7428(b)(2) of the Code provides, in part: "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted its administrative remedies within the Internal Revenue Service." We will then issue a final revocation letter. We will also notify the appropriate state officials of the revocation in accordance with section 6104(c) of the Code.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Marsha A. Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12

Legend

ORG = Organization name XX = Date XYZ = State motto = motto

ISSUE:

Whether ORG operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3) during 20XX.

FACTS:

Overview

ORG (ORG) is a XYZ not-for-profit corporation chartered on May 8, 20XX. The Articles of Incorporation were amended on July 10, 20XX.

ORG applied for recognition as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code (IRC) on Form 1023, *Application for Recognition of Tax-Exempt Status*, on May 5, 20XX. Based on the information that ORG provided in its application for exemption and on the assumption that ORG would operate in the manner represented in its application, ORG was recognized, as of July 22, 20XX, as a tax-exempt organization as described in section 501(c)(3). Letter 1045 granting an advanced ruling of foundation status classification of 509(a)(2) was issued July 22, 20XX. The advance ruling period ended December 31, 20XX.

Application for Recognition of Tax-Exempt Status

On its Form 1023, ORG stated its purpose as follows:

To provide charitable motto to home purchasers that lack the necessary funds to make a down payment, but otherwise quality for a mortgage. The majority of the recipients of the motto will be first time home purchasers that qualify for a HUD mortgage.

Regarding sources of financial support, the application stated the following:

The organization will initially receive a \$ loan from its president/direct. Ongoing future sources of financial support will be derived from fees received by mortgage companies.

Federal Returns

ORG filed Forms 990 for the calendar years ended 20XX through 20XX. ORG also filed Form 1099-MISC.

According to the Form 990 that ORG filed for 20XX, revenues received in 20XX consisted of indirect public contributions amounting to \$. Payments to mortgage companies for down payments were \$.

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In 20XX and 20XX, ORG's only reported activity was that of operating its motto (motto) program as described in more detail below.

On Part III of its Form 990 for 20XX, ORG states that "during 20XX, ORG provides charitable motto to approximately home buyers."

In 20XX and 20XX, ORG reported that it received \$ and \$, respectively, in gross revenue from amounts paid to it by sellers participating in ORG's motto program. ORG reported the seller's payments as indirect public donations. ORG also reported that it distributed \$ and \$ respectively, in motto to homebuyers for use as down payments and/or to pay for closing costs in 20XX and 20XX. ORG's Form 990, Part IV, line 73 shows that as of December 31, 20XX, ORG had total net assets of \$.

Operation of ORG's Motto Program (motto)

ORG, through its website, flyers, advertising, and other methods, promotes its motto program to builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, buyers, and sellers. Many of the participants in ORG's motto utilize Federal Housing Administration (FHA) financing for their home purchase. To qualify for a federally insured mortgage, a buyer must make a down payment in a specified minimum amount, generally equal to % of the purchase price. To qualify under applicable Department of Housing and Urban Development (HUD) rules, such a buyer may receive gifts to use for the down payment only from a relative, employer, labor union, charitable organization, close friend, governmental agency, or public entity.

The ORG explains how the motto program works as follows:

1. Homebuyer obtains approval for a home loan allowing gift funds from a charitable organization.
2. Seller/Builder completes a Participating Home Agreement. This decision may be made at anytime by the Seller/Builder. ORG welcomes the enrollment of properties into the program. Homebuyer chooses a Participating Home and enters into a contract with Seller/Builder. The Buyer completes the Gift Letter and Gift Funds Request forms at this time. The Lender or Realtor normally assists the Homebuyer with the completion of these forms.
3. The Lender ensures that the Buyer and Seller have properly completed the Gift Letter, Participating Home agreement and Gift Funds Request and faxes the forms to the ORG.
4. ORG reviews the forms for completeness and upon approval will countersign and fax the Gift Letter to Lender.
5. ORG wires Gift Funds to Closing Office.

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6. Closing Office wires the Seller contribution to ORG within 2 days of successful closing of the loan and faxes a copy of the HUD-1 Settlement Statement to ORG. The Closing Agent agrees to, and the Home Buyer authorizes the Closing Agent, to return Gift Funds to ORG if the sale of the property for which the gift funds were advanced has not closed within four days of the specified date of closing.

In addition, ORG charges the seller a fee for each property sold. Seller contributes in the amount of gift funds plus \$. The majority of gifts will be not more than % or \$ of the sales price of the home.

Through ORG's motto program, buyers receive a "gift" of the funds that they use for the down payment.

A house buyer was eligible to participate in ORG's motto program only if the buyer purchased a house from a seller that agreed to ORG's contractual terms. ORG and sellers entered into agreements that required sellers to pay ORG an amount equal to the down payment "gift" that the buyer received under ORG's motto program. ORG claimed that the seller's "contribution" was "not used to provide motto" directly to the buyer, but "the gift funds provide to the Buyer are obtained from pre-existing ORG funds." In addition to requiring the seller to pay an amount equal the amount of the "gift" provided to the house buyer, ORG required sellers to pay ORG a "\$ contribution" "for general and administrative purposes and to further its efforts to market its down payment gift program, educate the general public about affordable housing opportunities and to provide down payment and/or closing cost assistance to other qualified buyers."

In essence, these transactions result in a circular flow of the money. ORG wires gift funds (down payment) "directly to the Settlement Office designated account on or before the closing date." Then "the seller contribution in the amount of gift funds plus \$ will be delivered to ORG by wire or overnight mail."

ORG does not have any income limitations for its motto program and did not screen applicants for motto based on income. The records provided by ORG did not include data on the buyers' incomes and gave no indication that ORG screened on such data. Rather, ORG's motto program provided "gifts" to any homebuyers who qualified for a loan. On the , ORG stated that "there are no income limits imposed by ORG."

ORG's promotional material and advertising make it clear that "anyone is eligible to participate in the program and it is not limited to first-time homebuyers. The homebuyers automatically qualify for motto if they qualify for eligible loans, such as FHA, will be owner-occupants of the properties being purchased and the homes being purchased are enrolled in the ORG program." "An eligible loan" is "any loan program provided by a lender that allows a charitable organization to provide the homebuyer with gift funds for down payment and/or closing costs purposes."

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“Any home may enter into the ORG Gift Program. All that is required is that the seller executes a Participating Home Agreement form agreeing to the seller’s responsibilities to participate in the program. The seller agrees to make a contribution only when and if their home is sold to a participant in the ORG Gift Program.”

In its contract with each seller, ORG labeled the seller’s payment to ORG as both a “gift” and a “contribution.” These contracts obligate the seller, in consideration for participating in ORG’s program, to pay ORG an amount equal to the amount of the motto received by the buyer. The Participating Home Agreement contract, which was required to be signed by each participating seller, states: “Seller agrees to make a total contribution to ORG in the amount of _____. This total contribution includes the gift funds for down payment in the amount of _____ (down payment) plus a separate contribution of \$. Contributions are made through escrow upon the Closing of the above referenced ORG Participating Home. This Participating Home Agreement shall serve as Demand upon the close of escrow.”

ORG clearly stated that “ORG and any of its authorized agents do not evaluate or warrant the condition of the property or the value of the property and have made no representations, either expressed or implied, as to property condition or value. It is the sole responsibility of the Homebuyer to determine the property condition and value. The property being purchased must meet Lender loan requirements. All Lenders required repairs, if any, must be completed in accordance with applicable guidelines and as agreed to between the seller and buyer.”

The parties to the _____ real estate transactions, including sellers, buyers, real estate agents, builders, and lenders, benefited more than incidentally from ORG’s operations. The promotional material of ORG quoted below clearly demonstrates this benefit.

Lenders

- Increases the number of people who can qualify for a home
- Increases your marketing opportunities
- Brings additional buyers to the marketplace
- Increases your ORIGINATIONS and FUNDINGS!!

Real Estate Agents

- Increases the number of people who can qualify for a home
- Increases your marketing opportunities
- Brings additional buyers to the marketplace
- Increases your SALES and LISTINGS!!

Builder/Seller

- Increases the number of people who can qualify for YOUR home
- Increases your exposure
- Decreases your marketing time
- Maximizes your net proceeds

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LAW AND ANALYSIS:

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

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). An organization must not engage in substantial activities that fail to further an exempt purpose. In Better Business Bureau of Washington, D.C. v. United States, 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."

Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii) 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.

Treasury Regulation section 1.501(c)(3)-1(d)(2) defines the term "charitable" for section 501(c)(3) purposes 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 advancement of education. Id.

Treasury Regulation section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" for section 501(c)(3) purposes relates to the instruction of the public on subjects useful to the individual and beneficial to the community.

Treasury Regulation section 1.501(c)(3)-1(e) 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) if the trade or business furthers an exempt purpose, and if the organization's primary purpose does not consist of carrying on an unrelated trade or business.

In Easter House v. United States, 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir. 1988), the U.S. Court of Federal Claims considered whether an organization that provided prenatal care and other health-related services to pregnant women, including delivery room assistance, and placed children with adoptive parents qualified for exemption under section 501(c)(3). 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

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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. In addition, although the organization provided health care to indigent pregnant women, it only did so when a family willing to adopt a woman's child sponsored the care financially. 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) because it also served private interests more than incidentally. The court found that the organization was created and funded by persons affiliated with entities of a particular political party and that most of the organization's graduates worked in campaigns for the party's candidates. Consequently, the court concluded that the organization conducted its educational activities with the objective of benefiting the party's 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 Treasury Regulation section 1.501(c)(3)-1(d)(1)(ii). The court concluded by stating that even if the political party's 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." American Campaign Academy, 92 T.C. at 1077.

In Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), the court held that an organization that marketed handicrafts made by disadvantaged artisans through museums and other non-profit organizations and shops operated for exclusively charitable purposes within the meaning of section 501(c)(3). 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 collected by the Bureau of Indian Affairs or other government agencies. The organization marketed only handicrafts it purchased in bulk from communities of craftsmen. The organization did not market the kind of products produced by studio craftsmen, nor did it market the handicrafts of artisans who were not disadvantaged. The court concluded that the overall purpose of the organization's activity was to benefit disadvantaged communities. The organization's commercial activity was not an end in itself but the means through which the organization pursued its charitable goals. The method the organization 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 described in section 501(c)(3).

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In *Airlie Foundation v. Commissioner*, 283 F. Supp. 2d 58 (D. D.C., 20XX), the court relied on the commerciality doctrine in applying the operational test. Because of the commercial manner in which the organization conducted its activities, the court found that it was operated for a nonexempt commercial purpose, rather than for a tax-exempt purpose. As the court stated:

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.

See also, *Living Faith Inc. v. Commissioner*, 950 F.2d 365 (7th Cir. 1991) (holding that a religious organization which ran restaurants and health food stores in furtherance of its health ministry did not qualify for tax-exempt status because it was operated for substantial commercial purposes and not for exclusively exempt purposes).

Revenue Ruling 67-138, 1967-1 C.B. 129, held that helping low-income persons obtain adequate and affordable housing is a "charitable" activity because it relieves the poor and distressed or underprivileged. In Revenue Ruling 67-138, the organization carried on several activities directed to assisting low-income families obtain improved housing, including (1) conducting a training course on various aspects of homebuilding and homeownership, (2) coordinating and supervising joint construction projects, (3) purchasing building sites for resale at cost, and (4) lending aid in obtaining home construction loans.

Revenue Ruling 70-585, 1970-2 C.B. 115, discussed four situations of organizations providing housing and whether each qualified as charitable within the meaning of section 501(c)(3).

Situation 1 described 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 provided financial aid to low-income families who were eligible for loans under a Federal housing program but did not have the necessary down payment. The organization made rehabilitated homes available to families who could not qualify for any type of mortgage. 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 held that by providing homes for low-income families who otherwise could not afford them, the organization relieved the poor and distressed.

Situation 2 described 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 was made available to members of minority groups who were unable to obtain adequate housing because of local discrimination. The housing units were 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 held that the organization was engaged in charitable activities within the meaning of section 501(c)(3).

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Situation 3 described 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 generally was old and badly deteriorated. The organization developed an overall plan for the rehabilitation of the area, sponsored a renewal project, and involved residents in the area renewal plan. The organization also purchased an apartment building 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 held that the organization was described in section 501(c)(3) because its purposes and activities combated community deterioration.

Situation 4 described 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 revenue ruling held that the organization failed to qualify for exemption under section 501(c)(3) because the organization's program was not designed to provide relief to the poor or further any other charitable purpose within the meaning of section 501(c)(3) and the regulations.

Revenue Ruling 20XX-27, 20XX-21 C.B. 915, in part discusses whether motto organizations described in 3 situations operate exclusively for charitable purposes. Those described in Situations 1 and 2 are relevant to this discussion. The organization described in Situation 1 helps low-income families to purchase decent and safe homes in the metropolitan area in which it is located. Individuals are eligible to participate if they have the employment history and financial history to qualify for a mortgage with the exception that they do not have the funds necessary for down payments.

The organization in Situation 1 offers financial seminars, conducts educational activities to prepare the individuals for home ownership, and requires a home inspection report before providing funds for motto. To fund the program, the organization conducts broad based fundraising that attracts gifts, grants, and contributions from the general public. Further, the organization has policies in place to ensure that the grant making staff does not know the identity or contributor status of the home seller or other parties who may benefit from the sale and does not accept contributions contingent on the sale of particular properties.

Because the organization described in Situation 1 relieves the poor and distressed, requires a home inspection to ensure the house is habitable, conducts educational seminars, had a broad based funding program, and has policies to ensure that the organization is not beholden to particular donors, the Service held that the organization is operated exclusively for charitable purposes and qualifies for exemption from federal taxation as an organization described in section 501(c)(3).

The organization described in Situation 2 is similar to the organization described in Situation 1 except that (1) its staff knows the identity of the party selling the home and may know the identity of the parties involved in the sale; (2) the organization receives a payment from the seller (the amount of which bears a direct correlation to the amount of motto provided) in substantially all the cases in which the organization provides assistance to the home buyers;

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and (3) most of its financial support comes from home sellers and related businesses that may benefit from the sale of homes to buyers who receive assistance from the organization.

Because the organization described in Situation 2 provides motto amounts that directly correlate to the amounts provided by home sellers and relies primarily on payments from home sellers and real estate related businesses that stand to benefit from the transactions to finance the program, the Service held that the organization described in Situation 2 is not operated exclusively for exempt purposes and does not qualify for exemption from federal income tax as an organization described in section 501(c)(3).

Effective date of revocation

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. §1.501(a)-1(a)(2); Rev. Proc. 20XX-4, §14.01 (cross-referencing §13.01 et seq.), 20XX-1 C.B. 123. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 90-27, §13.02, 1990-1 C.B. 514.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. § 1.501(a)-1(a)(2). Revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01 (cross-referencing § 13.01 et seq.).

Although ORG documents state that the down payment "gift" to a buyer comes from preexisting ORG funds rather than from the seller's "contribution" in the transaction, ORG does not solicit outside public contributions or have any other source of funds other than "contributions" from sellers and related fees. Because the amount of the "contribution" is always equal to the amount of the motto provided to the buyer plus the service fee, in fact, the actual source of the motto is the seller's "contribution."

Government's Position:

ORG does not qualify as an organization described in section 501(c)(3) because it operates a program that (1) does not exclusively serve an exempt purpose described in section 501(c)(3), and (2) provides substantial private benefit to persons who do not belong to a charitable class. Moreover, the organization did not operate in accordance with its representations on Form 1023.

Charitable purposes include relief of the poor and distressed. See Treas. Reg. § 1.501(c)(3)-1(d)(2). ORG's motto program does not operate in a manner that establishes that its primary purpose is to address the needs of low-income people by enabling low-income individuals and families to obtain decent, safe housing. See Rev. Rul. 70-585, Situation 1 and Rev. Rul. 20XX-

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27, 20XX-21 C.B. 915. The motto program did not serve exclusively low-income persons. ORG did not screen applicants for motto based on income. Instead, the program is open to anyone, without any income limitations, who otherwise qualified for these loans.

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.

The manner in which ORG operated its motto program shows that the private benefit to the participating home sellers, homebuyers, real estate professionals, and other individuals related to the real estate transactions ORG facilitated was the intended outcome of ORG's operations. ORG's motto procedures are designed to channel funds in a circular manner from the sellers to the buyers. To finance its motto activities, ORG relies exclusively on sellers and other real-estate related businesses that stand to benefit from the transactions it facilitates. ORG secures an agreement from the seller stipulating to this arrangement prior to the closing. No motto transactions take place unless ORG is assured the amount of the down payment plus the fee is or will be paid by the seller after closing.

In order to qualify for exemption under IRC 501(c)(3), an organization must be both organized and operated to achieve a purpose which is described under that Code section. ORG's motto program is not operated in accordance with the Internal Revenue Code and Regulations which govern qualification for tax exemption under section 501(c)(3) of the Code. ORG provides motto, purportedly in the form of a gift, to individuals and families for the purchase of a home. ORG offers its motto to interested buyers regardless of the buyers' income level or need. ORG's motto activities do not target neighborhoods in need of rehabilitations or other relief such as lessening neighborhood tensions or eliminating prejudice and discrimination. ORG operates in the manner that is substantially similar in all respects to the organization described in Situation 2 of Rev. Rul. 20XX-27. ORG has not operated exclusively for exempt purposes, and, accordingly, is not entitled to exemption under § 501(c)(3).

ORG operates in a manner indistinguishable from a commercial enterprise. ORG's primary activity is brokering transactions to facilitate the selling of homes. ORG's brokering services are marketed to homebuyers, sellers, realtors, lenders, home builders, and title companies regardless of the buyers' income level or need and regardless of the condition of the community in which the home is located. Alliances are built with the realtors, lenders, home builders, and title companies to assure future business for the mutual benefit of the participants. ORG does not engage in any educational activities, counseling or any other activities that further charitable purposes. Because ORG's primary activity is not conducted in a manner designed to further section 501(c)(3) purposes, ORG is not operated exclusively for exempt purposes within the meaning of section 501(c)(3).

Taxpayer's Position:

The organization agreed with the revocation. The organization signed Form 6018 and filed Forms 1120 for years ending December 31, 20XX, 20XX, 20XX, 20XX, and 20XX

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX12

Legend

ORG = Organization name XX = Date XYZ = State motto = motto

Conclusion:

Based upon the information noted above, it is proposed that the exempt status of the organization be revoked effective January 1, 20XX. Form 1120, U.S. Corporation Income Tax Return, should be obtained for the year ended December 31, 20XX, and for future tax years.