



DEPARTMENT OF THE TREASURY

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

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

July 21, 2008

Release Number: **200844030**
Release Date: 10/31/08
Legend
ORG = Organization name

XX = Date Address = address

ORG
ADDRESS

Person to Contact:
Identification Number
Contact Telephone Number:
In Reply Refer to: TE/GE Review Staff
EIN

UIL: 501.03-01

LAST DATE FOR FILING A PETITION
WITH THE TAX COURT: October 19, 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 November 13, 19XX.

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.

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 and ask for Taxpayer Advocate assistance. Or you can contact the Taxpayer Advocate from the site where the tax deficiency was determined by calling 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

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG (ORG)		Year/Period Ended 20XX09, 20XX09

LEGEND

ORG = Organization name XX = Date XYZ = State City = city
 Address = address President = president ADMIN-1 = 1st administrator
 ADMIN-2 = 2nd administrator ADMIN-3 = 3rd administrator ADMIN-4 = 4th administrator
 administrator ADMIN-5 = 5th administrator motto = motto CO-1 1st company
 company CO-2 = 2nd company

ISSUE

1. Whether ORG operated for a substantial non-exempt purpose rather than for exclusively charitable purposes within meaning of I.R.C. § 501(c)(3)?
2. Whether ORG promoted improper charitable contribution deductions under § 170, by issuing property sellers contribution statements for down payments?

Overview

ORG (ORG) is XYZ not-for-profit Corporation incorporated on January 10, 19XX. President, (President) is ORG's registered agent and president. ORG's address is Address, City, XYZ.

On June 12, 19XX ORG applied for recognition as a tax-exempt organization under I.R.C. § 501(c)(3) on Form 1023. On April 14, 19XX, 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 November 13, 19XX, as a tax-exempt organization as described in § 501(c)(3).

Since 19XX ORG has promoted and operated a down payment assistance (DPA) program for house buyers under which it provides funds to the buyers to use as their down payment or for closing costs and collects the same amount, plus an additional fee, from the house sellers. ORG also advised house sellers and others that sellers may claim charitable deductions on their federal income tax returns for the amounts they pay to ORG. As more fully described below, under ORG's program down payment assistance is provided for all types of housing loan programs, including federally insured mortgages to buyers, whether first time or not, and without any income or asset limitations.

Application for Recognition of Tax-Exempt Status

Form 1023 was filed by ORG with the IRS to apply for recognition of tax-exempt status under penalties of perjury on June 12, 19XX. On Form 1023 ORG stated that its purpose was to

provide down payment assistance program for low-income individuals and families to allow individuals who could not otherwise do so to own their own home. ORG stated, "ADMIN-1 is currently the administrator and home buyer of the organization. She is a licensed real estate broker and property consultant. ADMIN-1 looks for homes that have the ability to be purchased, repaired, and for under \$. This keeps the houses within the means of low-moderate income family

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according to standards set by the Department of Housing and Urban Development....”

Regarding income limits and financial need, the application stated that

[t]he down payment assistance will be provided only to individuals who have a financial need for such services, and who complete the educational requirements designed to increase the likelihood of permanent home ownership.

(emphasis supplied)

Regarding fundraising and contributions, ORG’s application for exemption stated:

ORG current- Bank Loans, will solicit private donations and generated revenues. .

ORG stated that no fundraising was planned.

Federal Returns

ORG filed Forms 990 late for the fiscal years ended September 30, 20XX, 20XX and 20XX; it was not required to file and did not file Forms 990-T. ORG also filed Forms 941, W-2, and 1099-MISC.

In September 30, 20XX, and September 30, 20XX, and ORG’s primary reported activity consisted of operating its DPA program as described in more detail below.

According to Part III of ORG’s September 30, 20XX Form 990 “[ORG] assists individuals in obtaining down payments for home purchases.

ORG states that its program allows home sellers to designate a portion of the fees they pay to ORG to be donated to other charitable organizations, (CO-1). For September 30, 20XX, ORG reported \$ as total gross receipts, which, included the final payment from the now defunct CO-1(CO-1)of \$. The remaining amounts were collected directly from sellers participating in ORG’s DPA program. ORG reported that it distributed \$ for the year ended September 30, 20XX. For the year ending September 30, 20XX, ORG has reported gross receipts as \$, and distributed \$ to individuals participating in the DPA program. For the year ending September 30, 20XX, ORG’s reported gross receipts as \$ with distributions to individuals participating in the DPA program of \$ \$

Operation of ORG’s Down Payment Assistance Program

When operations began and the first went up during January 20XX, it advertised, “The mission and purpose of our **Motto** is to **reduce the required down payment and/or closing costs** for all home buyers. The CO-1 (CO-1) is an IRS-approved 501(c)(3) nonprofit corporation whose mission is to support the HUD-approved nonprofit CO-1 housing provider ORG ORG

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(ORG) meets the for Federal Housing Administration (FHA) insured loans. FHA guidelines (HUD Handbook 4155.1) allow charitable organizations to provide gift funds as "borrower's funds" toward down payment and closing costs. Under our program, The ORG Program is not restrictive like many bond or CO-1 housing programs that rely on government granted money. Just a few of the advantages are:

- Flexibility - Gift Funds may be used for any or all of the following:
 - Down Payment ,Closing Costs, Prepays, Payoff Debts to Qualify
- \$ Maximum Gift - Not just 3% to 5%
- \$0 Down payment - NO cash investment is required by the borrower
- No Income Limitations ,No Asset Requirements
- No Underwriting - ORG does not underwrite or “Approve” the borrower
- Not Restricted to FHA loans. Conforming and Non-Conforming OK!
- No Geographic Restrictions
- Eligible Property Types – Existing (Resale) or New Construction
 - Single Family (1-4)Units ,Condominiums ,Townhouses
 - Manufactured/Modular Homes
- Funds are NOT restricted to First Time Home Buyers
- No Registration by Mortgage/Lender Company, Realtor, or Closing Office required
- Expedited Funding - ORG can fund within 24 hours of receipt of paperwork (same day if paperwork is received before 12:00 noon)
- Reduced Requirements - No Roof Certification, Homeowner’s Warranties, or Homebuyer Education needed
- Low Fee - 2.75%-7.75% of the Sales Price”

In April of 20XX the following changes were made to the
ORG PROGRAM DOWN PAYMENT ASSISTANCE

A down payment is the primary obstacle that thousands of Americans face everyday in becoming homeowners. The ORG PROGRAM provides down payment assistance making ownership possible for thousands of deserving families who may otherwise be unable to achieve the *American Dream of Owning a Home?*.

The ORG PROGRAM is operated by ORG, a non-profit organization recognized as taxed-exempt under the Internal Revenue Code Section 501(c)(3). Since inception in 19XX, ORG has been committed to providing CO-1 housing and promoting homeownership to all Working American Families. The ORG PROGRAM is allowed under HUD and Federal Housing Administration guidelines to gift 2% - 7% of the final sales contact price as the down payment to any homebuyer qualifying for an FHA insured loan, as outlined in HUD Handbook 4155.1 Rev 4, Section 2-10.

ORG, through its , and other methods, promotes its DPA program to builders, lenders, loan officers, mortgage brokers, real estate agents, title insurers, buyers, and sellers. Many of the participants in ORG’s DPA program utilize Federal Housing Administration (FHA) financing for

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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 3% of the purchase price. To qualify under applicable Department of Housing and Urban Development (HUD) rules, such a buyer may only receive gifts to use for the down payment from a relative, employer, labor union, charitable organization, close friend, governmental agency, or public entity. The seller cannot loan money to the buyer for the down payment.

Through the ORG defines programs to be,
“CO-1 Motto ORG, a 501(c)(3) not for profit organization, is committed to helping moderate income families - those who want to help themselves - to achieve the American Dream of home ownership.”

We believe that people at all income levels have a right to decent, safe, suitable and affordable housing, and it is our mission to bring that to them. We have positioned ourselves to offer a first time homebuyer the easiest and most effective way to move from renter to buyer.

Home Rehabilitation

ORG renovates existing homes and sells them at below market rates to qualified families. Working with a large group of lenders, ORG arranges financing which enables families to purchase a home, while keeping their housing budget at just 30 percent of their income. Prospective home buyers are assisted through each step of the home purchase, easing their transition to home ownership.

Home Buyer Assistance Program

Today, only 10 percent of renting families in the U.S. can afford to purchase a modestly-priced home, according to a recent study by the Census Bureau. Of the remaining pool of renters, 30 percent could afford the payments on their own home, but do not have the cash required for the initial down payment and closing costs. We address this problem with our Home Buyer Assistance Program which furnishes grants averaging \$ to qualified families. These grants are used for either down payment or closing costs, bring affordable homeownership within reach of working families.

New Construction

ORG is committed to building energy-efficient, affordable, quality housing in neighborhoods throughout the communities in which we are active. As with existing homes, buyers will receive assistance throughout the construction and purchase process.

We are focused on reversing the traditional hurdles which have hit those seeking to own their first home the hardest. Despite the growth in home ownership over the past decade, working families end up paying the highest percentage of their income towards housing. More often than not, their monthly housing expenses go to building equity for a landlord, rather than for themselves. The current high growth rate of the of XYZ has intensified that problem.

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We accept and encourage support from corporations, foundations, and individuals.

We are able to help the prospective home owner in several ways. We will help you to qualify for one or more of several programs that may allow you to own your home. We will then help you find a qualified, freshly-renovated home in the area you want to live, or possibly an affordable new home if you qualify. Contact us by submitting your name and email for more information.

ORG strongly believes in the following three principles:

1. Homeownership creates stability for both the family unit, and the neighborhood, thereby creating stability for our community as a whole.

Homeownership is about building communities. Homeowners take pride in their surroundings, often putting extra effort into their neighborhoods. Homeowners also tend to become more involved in community efforts, schools and neighborhood events.

2. Homeownership is a key component of community economic development.

Owning a home means accumulating wealth. It is the primary path to “Middle Class” status for many families. As home value increases, the homeowner’s investment value in that home grows. Homeowners also strengthen our economy through their purchase of homes and the related furniture and appliances that go with the new purchase. In addition, the value of a home is something that can help secure loans to finance a business, or a child’s education, and that value is often passed on to a new generation to help them find economic security.

The median wealth, or net worth, of low-income homeowners (non elderly) is twelve times greater than the median wealth of similar renters with the same incomes. Homeownership represents the best possible opportunity for wealth building and economic security for traditionally working class members of our community.

3. Homeownership has been shown to:

- a) Reduce crime
- b) Reduce teenage pregnancies
- c) Increase school retention & graduation
- d) Increase civic involvement & engagement
- e) Increase children’s future economic opportunity
- f) Increase overall life satisfaction “

Through the ORG states the mission as, “ ORG was created in January 19XX to promote home ownership and provide ownership opportunities for low and moderate income families in the communities of XYZ.

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We are an IRS designated 501(c)(3) Non-Profit corporation as well as a HUD approved affordable Housing Provider.

It is our belief that people at all income levels have a right to decent, safe, sanitary, and affordable housing, and it is our mission to promote this cause.

Support for affordable Housing for Working Families does not just help moderate income families. It also helps our entire community. By encouraging and assisting home ownership, we are building pride, confidence, stability, self-sufficiency, and a stronger sense of community.

ORG's focus has always been "Motto."

We are focused on lowering the traditional housing hurdles which impact working families the hardest. The people who are just getting by, end up paying the highest percentage of their income towards housing their families. More often than not, their monthly housing expenses go to building equity for a landlord, rather than for themselves.

ORG accomplishes its mission by constructing new housing, or rehabilitating existing housing stock. These homes are then sold below market value with favorable financing, to low or moderate income families. We work extensively with qualifying families and take them every step of the way in their transition from renter to homeowner.

Since our inception 5 years ago, we have completed over \$ Million in renovations, allowing us to improve neighborhoods while preserving existing housing. In early 20XX, we created a Down payment Assistance Program to provide down payment funds to homeowners, and have provided over \$ Million in Down payment Gifts (as of January 30, 20XX).

Our staff brings together over 50 years experience in the housing industry. This experience includes renovation and resale of low-income properties, as well as the construction of low-to-middle income starter homes, high-end single family homes, multi-unit developments, and multi-million dollar resorts. In short, our experience has prepared us for projects of any magnitude, and has given us a focused perspective for benefiting our community, one new homeowner at a time.

The driving force behind our organization has not changed since our beginnings. Along the way, we have retained experienced staff and established relationships with those who share our goals and philosophy. This has substantially increased the size of our team and the resources available to us. At this time, we are exploring ways that we can further expand our team and resources in order to have a positive impact on communities in addition to City, City, City, City, and City.

According to a recent US Census study, only 10% of renting families can afford to purchase a modestly priced home. 30% of the remaining renters could afford the payments on a modestly priced home but do not have the cash reserves for the down payment and closing costs.

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ORG is dedicated to helping moderate income families - those who help themselves... those who play by the rules... those who are working to get ahead but, without our assistance, face years of savings accumulation before they can afford the down payment on their first home. We created our Down payment Assistance Program specifically as a solution to this problem. Our number one priority is to turn renters into homeowners.”

The notes the following members of the team as follows:

President, Founder, Full Time Staff

After years in a corporate environment, President moved to City, XYZ and started his first business in 19XX. After moving to to allow his wife to further her education, he re-entered the corporate environment for years, and then started another business supplying services and labor to residential contractors.

After moving to XYZ and consulting investors on buying and rehabilitating residential units for occupancy by low income & Section 8 tenants, Mr. President traveled extensively for several years conducting adult education seminars nationwide before founding ORG in January of 19XX.

ADMIN-2, Executive Director, Full Time Staff

ADMIN-2 was born and raised in City, as was his mother before him. His grandfather became a minister here in 19XX. ADMIN-2 follows a family tradition of working for the benefit of the local community. He has a Bachelors of Science degree in Finance from the University of XYZ and a XYZ Residential Contractor's license. His work experience includes years of training, recruiting, and managing in Sales & Marketing for several organizations, including one of the fastest-growing privately-held companies in the US in 19XX. His construction experience is a great help to us when evaluating properties for purchase.

ADMIN-2 has both learned from, and taught, the rest of us. His Administration skills as well as his skills in the field have helped us reach our current levels of success.

ADMIN-3, Director

ADMIN-3 has been a Minister, volunteer, community leader and public speaker for years. He is currently Minister of CO-2 in City. He has served as a Director on over a half-dozen Boards for a variety of community service organizations.

ADMIN-3 also has extensive construction experience, and has successfully marketed and managed his own business for many years. His leadership, compassion, and experience in working with the less privileged members of our community have been invaluable.

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ADMIN-4, Director, Vice-President of Technology, Part-Time Staff

After receiving a degree in Engineering from University, ADMIN-4 worked in management for several years in his family's business in City, XYZ. He moved to XYZ in 19XX to pursue a career in computer technology. He first met Mr. President when they were both working with real estate investors nationwide on using computers to analyze real estate investments and manage investment property.

ADMIN-3 has owned and managed several small businesses and currently works as a computer and Internet consultant. He assists ORG with all aspects of computerization, publishing of public relations materials,

ADMIN-5, Director

ADMIN-5 joined in 19XX, working as a closing officer in the City market. In 19XX, he was promoted to account executive and transferred to the City office. ADMIN-5 moved steadily through the ranks, being promoted to Assistant Vice President and Manager of the office in 19XX. In March of 20XX, ADMIN-5 was named Vice President of and manager of both the City and City offices.

The ORG explains how the down payment assistance program works as follows.

1. Once a buyer has begun to look for a house, the real estate agent informs the client about the ORG program;
2. After the buyer has found a house to purchase and begins negotiations with the seller, the seller is informed about the program and the tax benefits of the program. The seller completes "The ORG Program Seller Participating Agreement" (Seller Agreement);
3. Once an agreed-upon price is reached, the amount of the down payment is calculated and this amount plus . % is requested from the seller to be donated as a gift. The buyer is receiving down payment called a gift from ORG. There is no change to the agreed-upon sales price;
4. Escrow is instructed to withdraw proceeds from the seller's closing statement, in the amount above, and categorize it as a contribution to CO-1 Thereafter funds are credited to ORG;
5. The down payment amount, less fees, is added to the buyer's closing escrow statement as a gift from ORG and is used as the buyer's down payment.

In addition, ORG charges the seller a fee for each property sold. This fee is generally % of the total sales price for individual sellers or a flat fee of \$ for builders.

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Through ORG's DPA program, buyers receive a "gift" of the funds that they use for the down payment. During the years under examination, the down payment "gifts" were generally between 1% and 10% of the property has stated sales price. A house buyer was eligible to participate in ORG's DPA 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 CO-1 currently defunct, an amount equal to the down payment "gift" that the buyer received under ORG's DPA program. ORG claimed that the seller's payment was not provided directly to the buyer, but instead it was used to "replenish" the pool of funds that was used to provide "gifts" to subsequent buyers. 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 an "administrative fee," typically equal to either % of the purchase price or a set amount (e.g., \$).

In essence, these transactions result in a circular flow of the money. The sellers make payments to CO-1. (CO-1) ORG provides the funds to the buyers, who use the funds to make the down payment necessary to purchase the seller's home.

Despite the representations in its application for exemption, ORG does not have any income limitations for its DPA program and did not screen applicants for down payment assistance 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 DPA program provided "gifts" to any homebuyers who qualified for a loan. As a result, for example, on October 31, 20XX ORG's DPA program provided \$ in down payment assistance for a home that a buyer purchased for \$. On November 20, 20XX, ORG's DPA program provided \$ in down payment assistance for a home a buyer purchased for \$. On December 2, 20XX ORG's DPA program provided down payment assistance of \$ for a home a buyer purchased for \$. In addition, on April 30, 20XX ORG's DPA program provided down payment assistance of \$ for another buyer's purchase of a home for \$.

ORG's promotional material and advertising make it clear that anyone who could qualify for some type of loan was eligible for ORG's down payment assistance program. For example, one piece of promotional literature states:

Mortgage Professionals

With the ORG PROGRAMsm, tap into the ability to help more American Families qualify for the purchase of a home. For most potential homebuyers, the largest obstacle of buying a home is the substantial sum of money required for a down payment and closing costs. Many of these potential homebuyers have good credit and can afford the monthly mortgage payments, yet are unable to save or put together enough money for their down payment and/or closing costs. You can assist more potential buyers to overcome this hurdle and achieve this important goal. Let the ORG PROGRAM help you qualify more buyers and increase your business.

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- Use Funds for Down payment and/or Closing Costs
- New or Resale Homes
- First Time or Repeat Home Purchase
- Qualify More Buyers
- Increase Business and Client Base
- Enhance Realtor/Builder Relationships
- Good with Any Mortgage Allowing Gift Funds from a Non-profit (Typically FHA)
- No Registration Required
- No Limit on Income or Assets
- No Restriction Geographically
- No Repayment of Gift Funds Required

The ORG PROGRAM assist homebuyers with gift funds of up to 7% of the contract sales price toward down payment and/or closing costs. Get started today helping more families become homeowners, click here for our easy processing.

Another one for Realtors promotes was to make better sales. That page states

Realtors

For many potential homebuyers, the largest obstacle of homeownership is the down payment and/or closing costs required by the buyer at closing. Many of these buyers have good credit and can afford the monthly mortgage payments yet are unable to save or put together enough money for the down payment and/or closing costs.

ORG PROGRAMsm will gift up to 7% or more of the contract price to all eligible homebuyers towards down payment and/or closing costs. The gift funds need not be repaid by the buyer.

Benefits for the Buyer:

- No Repayment of Gift Funds Required
- No Restriction Geographically
- Use Funds for Down payment and/or Closing Costs
- First Time or Repeat Home Purchase
- New or Resale Homes
- No Limit on Income or Assets

Enabling more families to be able to purchase a home vastly increases the pool of qualified potential homebuyers, which in turn will sell homes quicker. The key for a realtor to be successful in using the ORG PROGRAM is for the buyer's agent to explain the benefits to both the listing agent and the seller.

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Benefits for the Seller:

- Sell Your Home Faster
- Increase Your Pool of Qualified Buyers
- Enhance Your Marketability and Exposure
- Less Time on the Market = Better Profit Margins
- Save Money on Advertising and/or Carrying Cost
- Advertise "No Money Down"

Example Below:

(Using \$ as average home sales price)

TYPICAL HOME SALES TRANSACTION

DESCRIPTION	PERCENT	DOLLAR AMOUNT
List Price		\$
Sale Price (after negotiation)		\$
*Realtor commission	6% of Sale Price	\$
Seller Nets		\$

ORG PROGRAM TRANSACTION

DESCRIPTION	PERCENT	DOLLAR AMOUNT
List Price		\$
Sale Price (full price)	100%	\$
ORG Program (gift to buyer)	3% of Sale Price	\$
Seller Contribution	3.75% of Sale Price	\$
*Realtor commission	6% of Sale Price	\$
Seller Nets		\$

* Subtract from sales price

Note: In example above...

1. Gift to buyer is \$, (3%) of sales price.
2. Seller contribution is \$, (3.75%) of sale price.

The for builders and sellers promote the DMP as a way to sell the house faster and states

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The ORG PROGRAMsm can help you sell your home FAST! By providing down payment assistance, our program enables more families to qualify for purchasing a home. ORG PROGRAM will gift up to 7% or more of the contract price to all eligible homebuyers for their down payment and/or closing cost. Increase your pool of potential homebuyers and enroll your property TODAY!

Sellers and Buyers together win by participating with the ORG PROGRAM.

- Sell Your Home(s) Faster
- Increase Your Pool of Qualified Buyers
- Enhance Your Marketability and Exposure
- Less Time on the Market = Better Profit Margins
- Save Money on Advertising and/or Carrying Cost
- Advertise "No Money Down"

Allow us to help you by participating with the ORG PROGRAM! We look forward to providing you with excellent service.

In addition, ORG documents explicitly state that the down payment "gift" to a buyer comes from the seller, and used for replenishment of ORG funds from the seller's "contribution" in the transaction.

Buyers

All Working and Creditworthy Americans Deserve to Own Their Own Home. For many potential homebuyers, the largest obstacle in achieving homeownership is the down payment and/or closing cost required by the buyer at closing. Many of these buyers have good credit and can afford the monthly mortgage payments yet are unable to save or put together enough money for the down payment and/or closing cost.

ORG is a 6-year-old CO-1 housing charity. Amongst its missions is the promotion of CO-1 homeownership in communities across the nation. The ORG PROGRAMsm provides down payment assistance to all qualified FHA homebuyers. Gift funds range up to 7% or more of the contacted price, depending on the buyers needs. This enables the buyer to move into his or her own home with little or no money out of pocket.

For The Buyer:

- No Repayment of Gift Funds Required
- No Restriction Geographically
- Use Funds for Down payment and/or Closing Costs

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- First Time or Repeat Home Purchase
- New or Resale Homes
- No Limit on Income or Assets

ORG PROGRAM requires a seller contribution of the buyers' gift amount plus a processing fee at closing. The sellers' contribution is for replenishment of future homebuyer gift funds and community development.

Reserve Your Down payment Funds Today!

Click here to receive your ORG PROGRAM Gift Funds Certificate. This certificate reserves funds for you. Print it out and give it to your Realtor or Mortgage Professional.

The Builders contract with ORG state:

The above-mentioned Builder makes application to include the above-mentioned property as a qualified home in the ORG Program. The Builder, for the property to be qualified as an enrolled home in the Program, agrees to the conditions and application process of the Program as follows: Builder will accept Buyer's financing, loan terms, and loan program that allow the Buyer to utilize the charitable gift funds provided by ORG, (hereinafter ORG). Completion of all the above-mentioned requirements qualifies the Buyer of the subject property to receive gift funds from the ORG Program. The Builder agrees to pay a contribution / processing fee at closing to the ORG Program in the amount of

\$ _____, which is _____% of the contract sales price of the home enrolled in the Program. This supports the ongoing efforts of ORG to promote affordable housing. The Builder recognizes and agrees that this fee is not to be used to provide down payment assistance to the Buyer of the subject property. The Builder is under no obligation to pay the fee if, the Buyer using the Program does not purchase the subject enrolled home from the Builder. The Builder is only obligated to pay the fee upon successful settlement / closing of the subject enrolled home. The settlement / closing agent is hereby instructed by the Builder to retain and forward the fee to the ORG Program administrator upon successful completion of settlement / closing. The Builder instructs the settlement / closing agent to return any gift funds not used by the purchaser to ORG. Furthermore, the **settlement agent is instructed to return any gift funds to ORG immediately upon an unsuccessful completion of settlement / closing.**

No changes may be made to the preprinted text of this Agreement without prior written consent from ORG.

However, ORG does not solicit outside public contributions, as funds are received from CO-1 as its source of funds, from "contributions" from sellers and related fees. Because the amount of the "contribution" is always equal to the amount of the down payment assistance provided to the buyer plus the service fee, in fact the actual source of the down payment assistance is the seller's "contribution." Clearly seen from the enrollment form downloadable from the

ORG PROGRAMSM

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“PROMOTING HOMEOWNERSHIP SINCE 19XX”

A 501(c)(3) Charitable Organization – EIN

RESALE PROPERTY ENROLLMENT AGREEMENT

I / We, _____ (Seller), hereby enter into this Agreement with the **ORG Program**SM to enroll the property located at: _____, in

_____ County, (**Property**) into the ORG Program as detailed herein.

The above mentioned Seller makes application to include the above mentioned property as a qualified home in the ORG Program. The Seller, for the property to be qualified as an enrolled home in the Program, agrees to the conditions and application process of the Program as follows: Seller will accept Buyer’s financing, loan terms, and loan program that allow the Buyer to utilize the charitable gift funds provided by ORG, (hereinafter ORG).

Completion of all the above mentioned requirements qualifies the Buyer of the subject property to receive gift funds from the ORG Program. The Seller agrees to pay a contribution / processing fee at closing to the ORG Program in the amount of

\$ _____, which is _____% of the contract sales price of the home enrolled in the Program. This supports the ongoing efforts of ORG to promote affordable housing. The Seller recognizes and agrees that this fee is not to be used to provide down payment assistance to the Buyer of the subject property. The Seller is under no obligation to pay the fee if, the Buyer using the Program does not purchase the subject enrolled home from the Seller. The Seller is only obligated to pay the fee upon successful settlement / closing of the subject enrolled home.

The settlement / closing agent is hereby instructed by the Seller to retain and forward the fee to the ORG Program administrator upon successful completion of settlement / closing. The Seller instructs the settlement / closing agent to return any gift funds not used by the purchaser to ORG. Furthermore, the **settlement agent is instructed to return any gift funds to ORG immediately upon an unsuccessful completion of settlement / closing.**

No changes may be made to the preprinted text of this Agreement without prior written consent from ORG.

Seller: _____ Print Name: _____ Date: _____
 Seller: _____ Print Name: _____ Date: _____
 Company/Address: _____ Title: _____

In 20XX, ORG brokered _____ DPA transactions between buyers and sellers of which 2 were for homes over \$. There were 10 DPA amounts in excess of \$.

In 20XX, ORG, brokered _____ DPA transactions of which 0 were for homes costing more than \$, there were 3 DPA amounts in excess of \$.

ORG also promoted its DPA program by advising house sellers and others that contributions are amounts they pay to ORG. On its website in advertisements, and in other promotional materials, ORG characterized house sellers’ payments to ORG as, *inter alia*, “gifts,” “donations,” “contributions,” and “charitable contributions.” Yet on its Forms 990, ORG listed no contributions received. Instead, it reported its funding as indirect public support.

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As seen above, on 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 DPA received by the buyer. The contract, which was required to be signed by each participating seller, stated: "Seller further understands that the seller is only obligated to make the contribution if a home buyer utilizing the ORG program purchases the participating home." In a promotion on ORG's directed at real estate agents, ORG acknowledged that sellers' payments to ORG were reimbursements for the DPA given to the buyer: "the seller agrees to reimburse ORG for the amount of the down-payment and closing-cost assistance."

The parties to the down payment assisted real estate transactions, including the realtors, builders, and lenders, benefited more than incidentally from ORG's operations. The references below, from some of ORG's promotional material, clearly demonstrate this benefit.

Sellers ORG advertised that its DPA program financially benefits sellers by providing them with ready buyers, enabling the sellers to sell for higher prices and allowing them to sell faster due to the larger pool of potential buyers, thereby reducing the costs associated with real estate remaining unsold for an extended period. For example, ORG advertised on Sell Your Home(s) Faster Increase Your Pool of Qualified Buyers Enhance Your Marketability and Exposure Less Time on the Market = Better Profit Margins Save Money on Advertising and/or Carrying Cost Advertise "No Money Down"

Realtors ORG's promotional materials tell realtors that they will "sell [their] listings faster with ORG." The materials further state, for example

Realtors across the country are discovering the benefits of using the ORG program with their prospective buyers and sellers. For many potential homebuyers, the largest obstacle of homeownership is the down payment and/or closing costs required by the buyer at closing. Many of these buyers have good credit and can afford the monthly mortgage payments yet are unable to save or put together enough money for the down payment and/or closing costs. ORG PROGRAMsm will gift up to 7% or more of the contract price to all eligible homebuyers towards down payment and/or closing costs. The gift funds need not be repaid by the buyer.

In addition, ORG stated, "Enabling more families to be able to purchase a home vastly increases the pool of qualified potential homebuyers, which in turn will sell homes quicker. The key for a realtor to be successful in using the ORG PROGRAM is for the buyer's agent to explain the benefits to both the listing agent and the seller".

Builders ORG's promotional materials tell builders that The ORG PROGRAMsm can help you sell your home FAST! By providing down payment assistance, our program enables more

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families to qualify for purchasing a home. ORG PROGRAM will gift up to 7% or more of the contract price to all eligible homebuyers for their down payment and/or closing cost. Increase your pool of potential homebuyers and enroll your property TODAY!

Sellers and Buyers together win by participating with the ORG PROGRAM.

- Sell Your Home(s) Faster
- Increase Your Pool of Qualified Buyers
- Enhance Your Marketability and Exposure
- Less Time on the Market = Better Profit Margins
- Save Money on Advertising and/or Carrying Cost
- Advertise ?No Money Down?

Allow us to help you by participating with the ORG PROGRAM! We look forward to providing you with excellent service.

Lenders ORG's promotional materials tell lenders that using ORG will "[i]ncrease your business, help your realtors and builders sell more homes, and turn your cash poor borrowers into homeowners." The materials urge them to introduce the ORG program to buyers and realtors, thereby "develop[ing] a great referral base," telling them

With the ORG PROGRAMsm, tap into the ability to help more American Families qualify for the purchase of a home. For most potential homebuyers, the largest obstacle of buying a home is the substantial sum of money required for a down payment and closing costs. Many of these potential homebuyers have good credit and can afford the monthly mortgage payments, yet are unable to save or put together enough money for their down payment and/or closing costs. You can assist more potential buyers to overcome this hurdle and achieve this important goal. Let the ORG PROGRAM help you qualify more buyers and increase your business.

Other Parties do not appear to have benefited by ORG's DPA Program

Beyond the intended benefit to the sellers, buyers, realtors, builders and lenders described above, no other individuals or entities appeared to receive additional private benefit from ORG's operations during the years examined.

There are no disclosures apparent on either balance sheet in 20XX or 20XX that are classified as related party transactions. CO-1 was not operational after 20XX and the passing of President. There were no checks submitted showing payments to CO-1, during the periods under exam.

LAW & ARGUMENT

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

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of the net earnings of such corporations inures to the benefit of any private shareholder or individual. See § 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 § 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. 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.”

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.

Section 1.501(c)(3)-1(d)(2) defines the term “charitable” for § 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.

Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term “educational” for § 501(c)(3) purposes 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) provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of § 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. U.S., 12 Cl. Ct. 476, 486 (1987), aff’d, 846 F. 2d 78 (Fed. Cir.), 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 § 501(c)(3). The court concluded that the organization did not qualify for exemption under § 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

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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 § 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 § 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 § 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 § 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 § 501(c)(3).

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

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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).

In Columbia Park and Recreation Association v. Commissioner, 88 T.C. 1 (1987), *aff'd* without published opinion, 838 F.2d 465 (4th Cir. 1988), the court held that an association formed in a private real estate development to operate parks, swimming pools, boat docks, and other recreational facilities did not qualify as a § 501(c)(3) organization. Although the organization provided some benefit to the general public, the primary intended beneficiaries were the residents and property owners of the private development. Thus, the organization operated for a substantial non-exempt purpose rather than for exclusively charitable purposes.

Rev. Rul. 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 Rev. Rul. 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.

Rev. Rul. 70-585, 1970-2 C.B. 115, 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 § 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 § 501(c)(3) and the regulations.

Rev. Rul. 72-147, 1972-1 C.B. 147, held that an organization that provided housing to low-income families did not qualify for exemption under § 501(c)(3) 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.

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Rev. Rul. 72-559, 1972-2 C.B. 247, held that an organization that subsidized recent law graduates during the first three years of their practice to enable them to establish legal practices in economically depressed communities that have a shortage of available legal services, and to provide free legal services to needy members of the community, qualified for exemption under § 501(c)(3). Although the recipients of the subsidies were not themselves members of a charitable class, the resulting benefit to them did not detract from charitable purposes. Rather, the young lawyers were merely the instruments by which the organization accomplished the charitable purpose of providing free legal services for those unable to pay for, or obtain, such services.

Rev. Rul. 74-587, 1974-2 C.B. 162, held that an organization providing low-cost or long-term loans to, or equity investments in, businesses operating in economically depressed areas qualified for exemption under § 501(c)(3). The organization provided financial assistance only to businesses that were unable to obtain funds from conventional sources, and gave preference to businesses that would provide training and employment opportunities for unemployed or under-employed area residents. Although some of the individual business owners receiving financial assistance from the organization were not themselves members of a charitable class, the benefit to them did not detract from the charitable character of the organization's program. As in Rev. Rul. 72-559, the recipients of aid were instruments for accomplishing the organization's charitable purposes.

Rev. Rul. 76-419, 1976-2 C.B. 146, held that an organization that converts blighted land in an economically depressed community to an industrial park and leases space on favorable terms to businesses that agree to hire a significant number of unemployed area residents and train them in needed skills qualifies for exemption under § 501(c)(3). The organization furthered charitable purposes by improving economic conditions for the poor and distressed and combating community deterioration. The organization offered inducements to businesses solely for the purpose of advancing charitable goals.

Rev. Rul. 2006-27, describes conditions that failed to qualify for exemption under § 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 § 501(c)(3) and the regulations. Under Y's grant making procedures, Y's staff considering a particular applicant's application knows the identity of the party selling the home to the grant applicant and may also know the identities of other parties, such as real estate agents and developers, who may receive a financial benefit from the sale. Moreover, in substantially all of the cases in which Y provides down payment assistance to a home buyer, Y receives a payment from the home seller. Further, there is a direct correlation between the amount of the down payment assistance provided by Y in connection with each of these transactions and the amount of the home seller's payment to Y. Finally, Y does not conduct a broad based fundraising campaign to attract financial support. Rather, most of Y's support comes from home sellers and real estate-related businesses that may benefit from the sale of homes to buyers who receive Y's down payment assistance.

Benefiting Private Interests

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Section 501(c) (3) of the Code requires that an organization be operated exclusively for charitable purposes in order to be exempt from federal income tax. Treas. Reg. 1.501 (c) (3) -1 states that an organization is not operated exclusively for charitable purposes unless it serves a public rather than a private interest and its net earnings do not inure to the benefit of any shareholder or individual.

If an organization serves both a public interest and a private interest, however, an organization will be exempt only if the benefit conferred to the private interest is incidental, and not substantial, to the exempt purpose served. See GCM 39598 (Jan. 23, 1987); Rev. Rul. 69-545, 1962-2 CB 117; and Rev. Rul. 78-86, 1978-1 CB 151.

However, "operated exclusively" has two meanings, both of which are contained in Treas. Reg. § 1.501(c)(3)-1(c)(1). It provides that an organization will be regarded as operated exclusively only if it engages "primarily" in activities that accomplish one or more exempt purposes such as those specified in IRC § 501(c)(3) and that it will not be so regarded if more than an "insubstantial" part of its activities does not further an exempt purpose.

Even if an organization's activities serve a charitable class or are otherwise charitable within the meaning of § 501(c)(3), it must demonstrate that its activities serve a public rather than a private interest within the meaning of Reg. § 1.501(c)(3)-1(d)(1). Furthermore, Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) holds that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Therefore the activities of an organization exempt under IRC § 501(c)(3) must benefit the general public in a way that distinguishes it from a for-profit corporation, the latter of which serves shareholders (private interests). Serving the public is a basic tenet of the law of charity whose purpose is to ensure that those who constitute the "public" benefit equally.

Rev. Rul. 72-147, 1972-1 C.B. 147, held that an organization that provided housing to low income families did not qualify for exemption under § 501(c)(3) because it gave preference to employees of business operated by the individual who also controlled the organization. The ruling reasoned that, 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.

In KJ's Fund Raisers v. Commissioner, T.C. Memo 1997-424 (1997), aff'd, 1998 U.S. App. LEXIS 27982 (2d Cir. 1998), the Tax Court held, and the Second Circuit affirmed, that an organization formed to raise funds for distribution to charitable causes did not qualify for exemption under § 501(c)(3) because its activities resulted in a substantial private benefit to its founders. The founders of the organization were the sole owners of KJ's Place, a lounge at which alcoholic beverages were served. The founders served as officers of the organization and, at times, also controlled the organization's board. The Tax Court found, and the Second Circuit agreed, that the founders exercised substantial influence over the affairs of the organization. The

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organization's business consisted of selling "Lucky 7" or similar instant win lottery tickets to patrons of KJ's Place. The organization derived most of its funds from its lottery ticket sales. The organization solicited no public donations. The lottery tickets were sold during regular business hours by the owners of the lounge and their employees. From the proceeds of the sales of the lottery tickets, the organization made grants to a variety of charitable organizations. Although supporting charitable organizations may be a charitable activity, the Tax Court nevertheless upheld the Commissioner's denial of exemption to the organization on the ground that the organization's operation resulted in more than incidental private benefit. The Tax Court held, and the Second Circuit affirmed, that a substantial purpose of KJ's activities was to benefit KJ's place and its owners by attracting new patrons, by way of lottery ticket sales, to KJ's Place, and by discouraging existing customers from abandoning KJ's Place in favor of other lounges where such tickets were available. Thus, the organization was not operated exclusively for exempt purposes within the meaning of § 501(c)(3).

Promoting improper charitable contribution deductions

Section 170(a)(1) allows as a deduction, subject to certain limitations and restrictions, any charitable contribution (as defined in § 170(c)), payment of which is made within the taxable year.

Section 170(c) defines a charitable contribution as a contribution or gift to or for the use of an entity described in one of the paragraphs of §170(c). Section 170(c)(2) describes certain entities organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes.

Generally, to be deductible as a charitable contribution under § 170, a transfer to a charitable organization must be a contribution or gift. A charitable contribution is a transfer of money or property without receipt of adequate consideration, made with charitable intent. United States v. American Bar Endowment, 477 U.S. 105, 117-18 (1986). A payment generally cannot be a charitable contribution if the payor expects a substantial benefit in return. American Bar Endowment at 116-117; see also Singer Co. v. U.S., 449 F. 2d 413, 423 (Ct. Cl. 1971). Substantial benefits are those that are greater than those that inure to the general public from transfers for charitable purposes (which benefits are merely incidental to the transfer). Singer at 423.

Organizations that promote tax avoidance schemes do not qualify for exemption under section 501(a) as organizations described in section 501(c)(3). See Church of World Peace, Inc. v. Commissioner, T.C. Memo 1994-87 (1994), aff'd, 1995 U.S. App. LEXIS 8775 (10th Cir. 1995). In Church of World Peace the church used its tax-exempt status to create a circular tax-avoidance scheme. Individuals made tax-deductible charitable donations to the church. The church then returned the money to the individuals in the form of tax-free "housing allowances" and also reimbursed the individuals for "church expenses" that were in fact unrelated to church operations. The Church emphasized tax advice in connection with this tax-avoidance scheme. The Tax Court

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held, and the Tenth Circuit affirmed, that the church did not comply with the requirements of § 501(c)(3) because, by promoting a circular flow of funds from donors to the church and back to the donors and facilitating improper charitable contribution deductions, the church did not operate exclusively for exempt purposes enumerated in § 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. 2003-4, §14.01 (cross-referencing §13.01 et seq.), 2003-1 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. 2003-4, § 14.01 (cross-referencing § 13.01 et seq.).

ANALYSIS

ORG does not qualify as an organization described in I.R.C. § 501(c)(3) because it operates a program that (1) does not exclusively serve an exempt purpose described in section 501(c)(3), (2) provides substantial private benefit to persons who do not belong to a charitable class and (2) ORG has violated the requirements of § 501(c)(3) by promoting improper charitable contribution deductions.

Charitable purposes include relief of the poor and distressed. See section 1.501(c)(3)-1(d)(2) of the regulations. ORG's down payment assistance 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. The down payment assistance program did not serve exclusively low-income persons. Despite the representations in its application for exemption, ORG does not have any income limitations for participation in its DPA program. ORG did not screen applicants for down payment assistance based on income. ORG's electronic records do not even include data on the buyers' incomes. Instead, the program is open to anyone, without any income limitations, who otherwise qualified for these loans. Our analysis showed that, in fact, for the years at issue ORG's DPA program provided down payment assistance on hundreds of expensive homes. The program is not even limited to first-time homebuyers.

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ORG's DPA program does not limit assistance to certain geographic areas or target those areas experiencing deterioration or neighborhood tensions. See Rev. Rul. 70-585, Situation 4. Down payment assistance is available for any property that is otherwise able to qualify for a mortgage. Arranging or facilitating the purchase of homes in a broadly defined geographic area does not combat community deterioration or serve other social welfare objectives within the meaning of section 501(c)(3) of the Code.

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, 326 U.S. 279, 283 (1945), 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. Even if ORG's DPA program were directed to exclusively low-income individuals or disadvantaged communities, ORG's total reliance for financing its DPA activities on home sellers or other real-estate related businesses standing to benefit from the transactions demonstrates that the program is operated for the substantial purpose of benefiting private parties.

The manner in which ORG operated its DPA program shows that the private benefit to the various participants in ORG's activities was the intended outcome of ORG's operations rather than a mere incident of such operations. ORG's down payment assistance procedures are designed to channel funds in a circular manner from the sellers to the buyers and back to the sellers in the form of increased home prices. To finance its down payment assistance activities, ORG relies exclusively on sellers and other real-estate related businesses that stand to benefit from the transactions it facilitates. ORG neither solicits nor receives funds from other sources.

Like the organization considered in American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), ORG is structured and operated to assist the private parties who fund it and give it business. Sellers who participate in ORG's DPA program benefit from achieving access to a wider pool of buyers, thereby decreasing their risk and the length of time the home is on the market. They also benefit by being able to sell their home at the home's full listed price or by being able to reduce the amount of the negotiated discount on their homes. About 15% of all ORG-assisted transactions in 20XX and 20XX involved one particular seller, a national home builder. Buyers who participate in ORG's DPA program benefit by being able to purchase a home without having to commit more of their own funds. ORG Real estate professionals who participate in ORG's DPA program, from real estate brokers to escrow companies, benefit from increased sales volume and the attendant increase in their compensation. It is evident from the foregoing that ORG's DPA program provides ample private benefit to the various parties in each home sale.

Before providing down payment assistance, ORG's grant making staff takes into account whether there is a home seller willing to make a payment to cover the down payment assistance the applicant has requested. For a short period of time, ORG specifically created a second exempt organization, CO-1. (CO-1), to give the appearance of receiving funding from the public, however, ORG neither solicits nor receives funds from other sources. ORG requires the home

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seller to reimburse it, dollar-for-dollar, for the amount of funds expended to provide down payment assistance on the seller's home, plus an administrative fee of several hundred dollars per home sale. ORG secures an agreement from the seller stipulating to this arrangement prior to the closing. No DPA assistance transactions take place unless ORG is assured that the amount of the down payment plus the fee is or will be paid by the seller upon closing. ORG's instructions to title and escrow companies provide that at the close of escrow the seller's contribution, along with any ORG fees, must be sent to ORG within 72 hours. Escrow companies that do not appropriately disburse funds in a timely manner are prohibited from utilizing the ORG DPA program. ORG's receipt of a payment from the home seller corresponding to the amount of the down payment assistance in virtually every transaction indicates that the benefit to the home seller (and others involved in the transaction) is not a mere accident but rather an intended outcome of ORG's operations. In this respect, ORG is like the organization considered in Easter House, which provided health care to indigent pregnant women, but only when a family willing to adopt a woman's child sponsored the care financially.

ORG's promotional material and its marketing activities show that ORG operated in a manner 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 one or more of the charitable purposes enumerated in § 501(c)(3). The manner in which ORG operated its DPA program shows that ORG was in the business of facilitating the sales of homes in a manner indistinguishable from an ordinary trade or business. In this respect, ORG's operations were similar to an organization, which was denied exemption because it operated a conference center for commercial purposes. See Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003).

Operating a trade or business of facilitating home sales is not an inherently charitable activity. Unlike the trade or business in Aid to Artisans, Inc. v. Commissioner, 71 T.C. 202 (1978), ORG's trade or business was not utilized as a mere instrument of furthering charitable purposes but was an end in itself. ORG provided services to home sellers for which it charged a market rate fee. ORG did not market its services primarily to persons within a charitable class. ORG's primary goal consisted of maximizing the fees it derived from facilitating the sales of real property. ORG did not solicit or receive any funds from parties that did not have interest in the down payment transactions. Like the organizations considered in American Campaign Academy, supra, and Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) a substantial part of ORG's activities furthered commercial rather than exempt purposes.

Based on the foregoing, ORG has not operated exclusively for exempt purposes, and, accordingly, is not entitled to exemption under § 501(c)(3).

ORG is also not entitled to exemption under § 501(c)(3) because it promoted improper charitable contribution deductions. A payment of money generally cannot be deducted as a charitable contribution if the payor expects to receive a substantial benefit in return. A seller's payment to ORG is not tax deductible as a charitable contribution under § 170 because the seller receives

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valuable consideration in return for the payment. In addition, the seller's payment to ORG is not tax deductible to the seller because the payment is compulsory. Furthermore, the payments from the home sellers to ORG also do not qualify as gifts under § 102. The payments from the home sellers do not proceed from detached and disinterested generosity but, rather, in response to an anticipated economic benefit, namely facilitating the sale of the seller's home. Under Commissioner v. Duberstein, 363 U.S. 278 (1960), such payments are not gifts for purposes of § 102.

An organization that promotes an abusive tax avoidance scheme is not entitled to exemption as an organization described in § 501(c)(3). See Church of World Peace, Inc. v. Commissioner, T.C. Memo 1994-87 (1994). In its promotional materials and public appearances, ORG advertised that sellers who participate in its DPA program would be able to claim a charitable contribution deduction for their payments to ORG. ORG used the prospect of a charitable contribution deduction as an inducement for sellers to participate in its DPA program. In claiming that the seller-participants in its DPA program would be entitled to a charitable contribution deduction, ORG falsely and fraudulently misrepresented the quid pro quo nature of these payments. Because ORG has promoted improper charitable contribution deductions in connection with its DPA program, ORG does not operate exclusively for exempt purposes enumerated in section 501(c)(3) and does not qualify for exemption as an organization described in § 501(c)(3).

The government proposes revoking ORG's exemption back to the organization's inception because the organization operated in a manner materially different from that represented in its application for exemption. In its application for exemption signed under penalties of perjury on June 12, 19XX, ORG represented that its purpose was to "provide down payment assistance program for low income individuals and families . . ." and that its "down payment assistance will be provided only to individuals who have a financial need for such services, and who complete the educational requirements designed to increase the likelihood of permanent home ownership." Despite these representations in its application for exemption, ORG does not have any income limitations for its DPA program and did not screen applicants for down payment assistance based on income. The electronic 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 DPA program provided "gifts" to any homebuyers who qualified for a loan. Furthermore, although ORG has an educational module on its website, ORG did not obtain verification from buyers that they had reviewed or completed the module. Revocation of a determination letter may be retroactive if the organization operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 2003-4, § 14.01. ORG's operation of its DPA activities in a manner materially different from that represented in its application for exemption justifies retroactive revocation of ORG's determination letter.

Conclusion:

In order to qualify for exemption under IRC § 501(c)(3) an organization must be both organized and operated to achieve a purpose that is described under that Code section. ORG's DPA

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program is not operated in accordance with Internal Revenue Code § 501(c)(3) and the regulations hereunder governing qualification for tax exemption under Code. ORG provides down payment assistance, purportedly in the form of a gift, to individuals and families for the purchase of a home. ORG offers its down payment assistance to interested buyers regardless of the buyers' income levels or need. ORG's DPA 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 a manner indistinguishable from a commercial enterprise. ORG's primary activity is brokering transactions to facilitate the selling of homes. ORG's primary goal is to maximize the fees from these transactions. ORG's brokering services are marketed to homebuyers, sellers, realtors, lenders, homebuilders, 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, homebuilders, and title companies to assure future business for the mutual benefit of the participants. Although ORG has an educational module on its website, ORG did not obtain verification from buyers that they had reviewed or completed the module. ORG does not engage in any counseling or other activities that further charitable purposes. Because ORG's primary activity is not conducted in a manner designed to further § 501(c)(3) purposes, provides private benefit to all commercial enterprises, home buyers and sellers, ORG is not operated exclusively for exempt purposes within the meaning of § 501(c)(3).

Furthermore, ORG has promoted an abusive tax avoidance scheme in connection with its DPA program by advising sellers that they may take a charitable contribution deduction for their payments to ORG even though such payments were quid-pro-quo payments for services rather than payments motivated by detached and disinterested generosity. ORG's promoter activities are inconsistent with § 501(c)(3) exemption.

For the foregoing reasons, revocation of exempt status is proposed. Because the facts show that, in 20XX through 20XX, ORG operated in a manner materially different from that represented in its Form 1023 application the government proposes that the revocation be effective retroactively to the date of the organization's inception.

Taxpayer's Position

ORG's position with respect to the issues, facts, applicable law, and government's position as discussed in this report is unknown. ORG failed to respond to the governments statements of fact.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
Internal Revenue Service

ORG
ADDRESS

Taxpayer Identification Number:

Form:

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 Ramirez
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Report of Examination