



DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

1100 Commerce Street

Stop 4920 DAL

Dallas, Texas 75242

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Number: **200851027**

Release Date: 12/19/2008

LEGEND

ORG = Organization name

XX = Date

UIL: 501.03-01

Address = address

DATE: September 25, 2008

EO

**ORG
ADDRESS**

**Person to Contact:
Contact Telephone Number:**

**Last Date For Filing A
Petition With The Tax Court:**

CERTIFIED MAIL

Dear :

This is a final adverse determination that you do not qualify for exemption from income tax under section 501(a) of the Internal Revenue Code (IRC) as an organization described in IRC section 501(c)(3). Internal Revenue Service recognition of your status as an organization described in IRC section 501(c)(3) is revoked, effective January 01, 20XX.

Our adverse determination is made for the following reason(s):

- (1) You are not operated exclusively for exempt purposes within the meaning of IRC section 501(c)(3). A more than insubstantial part of your activities consists of providing seller-funded down payment assistance to home buyers.
- (2) Your activities result in a more than incidental private benefit of your client home sellers and other persons who stand to benefit from the down payment assistance transactions. The amount of down payment assistance you provide corresponds to your receipt of a payment from the home seller in substantially all of your down payment assistance transactions, and you rely on these payments for most of your funding.
- (3) Your activities include a more than insubstantial purpose of operating a trade or business that is not in furtherance of an exempt purpose within the meaning of IRC section 501(c)(3). The manner in which you operate demonstrates you are operated to further your insiders' business interests.

(4) Your operations result in private inurement.

Contributions to your organization are not deductible under IRC section 170.

As a result of this revocation of tax-exempt status, your organization may be required to file Form 1120 annually with the appropriate Campus identified in the instructions, for 20XX and all subsequent years.

The processing of subsequent income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under I.R.C. section 7428.

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 Claims 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 rules for initiating suits for declaratory judgment. You may write to the Tax Court at the following address:

We will notify the appropriate State officials of this action, as required by IRC section 6104(c).

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. If you prefer you may contact your local Taxpayer Advocate at the address indicated below.

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. This is a final revocation letter.

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

Sincerely,

Vicki L. Hansen
Acting Director, Exempt Organizations Examinations

Enclosure:
Revenue Agent's Report

LEGEND

ORG = Organization name XX = Date XYZ = State City = city Address = address
Founder = founder Founders = founders DIR-1, DIR-2, DIR-3 & DIR-4 = 1st, 2nd, 3rd & 4th Directors CO-1 & CO-2 = 1st & 2nd COMPANIES NEWS-1, MEWS-2 & NEWS-3 = 1st, 2nd & 3rd News Book-1, book-2, Book-3, Book-4 & Book-5 = 1st, 2nd, 3rd, 4th & 5th Books

ORG

Tax Years Ending December 31, 20XX, 20XX and 20XX

ISSUE:

Whether ORG (ORG) operates exclusively for exempt purposes.

FACTS:

General

ORG, founded by Founder, stated in its response to the Notice of Church Tax Inquiry that it was originally formed as an auxiliary of CO-1 and that it became a separate entity in 19XX; it was also recognized as a church exempt from federal income tax in 19XX. ORG reports that it conducts weekly religious prayer meetings and Bible studies on Mondays at 7:00 p.m. in the private residence of Founder and his wife DIR-1, located at Address, City, XYZ. The meetings are attended by 5 to 15 people. No signs outside the residence indicate that ORG meets there.

In addition to conducting meetings once a week, ORG prints and distributes religious materials, including the following five paperback books: Book-1, Book-2, Book-3, Book-4, and Book-5. The response to the Notice of Church Tax Inquiry stated that ORG has drafted three additional books that are in final review before printing.

ORG has also published a newsletter entitled "News-1." The copy of the newsletter provided includes the following statements: "ORG has many answers to these questions and this newsletter is your beginning along with the literature you requested. You will receive this newsletter as we print them until you tell us otherwise."

Neither the books nor the newsletter make reference to any times of assembly for a church service. ORG states that it has no schools for children, though the Bible studies may be attended by old and young. The current minister is Founder, who has not attended a religious college. Founder is also President and Elder of ORG.

When describing the area of the Founders residence used for ORG purposes, ORG indicated a bedroom, the kitchen, the breakfast area, a screened porch, and occasional use of the garage.

ORG is listed in the "News-3" online with a phone number and address. In addition, ORG places an ad in "News-2," a community newspaper that states the following in the "Churches" section: "PUBLIC

INVITED – BIBLE STUDY. Every Monday evening 7 pm. Seating is limited. Call now to reserve.
ORG, Address, City.”

Down Payment Assistance Program

The organization advertises on its website in its “Profile” section, that it is “a non denominational religious organization which promotes God’s teachings concerning an individual relationship with him,” that it “spends no money building large buildings,” and that it “provides a long list of assistance programs to many needy families.” It states that “[o]ne such program is . . . down payment assistance.” “This [DPA program] has been a wonderful program since its inception in 19XX, making it one of the oldest down payment assistance programs in the Country.”

The website information provided by ORG during the examination states the following as Seller Benefits:

ORG is a Church and all donor contributions are deductible as provided in section 170 of the Internal revenue [sic] Code. To our knowledge no other down payment assistance program allows this benefit to sellers.

When a closing takes place the seller/builder makes a tax deductible contribution to ORG which helps replenish the pool of funds that is used to help other buyers with down payment assistance. As a participating seller you instruct your closing agent to deduct your contribution from gross proceeds. This program meets all government guidelines which allows a buyer to receive a gift from a charitable organization.

The “ORG Confidential Program Eligibility Application” states that “The purpose of the Church and the ORG Down Payment Program is to spread the “Good News” about a coming change to the governments of the world. The message provides knowledge concerning the way to have peace, joy, and abundant living in these stressful times.”

The Organization advertises on its website that the ORG Gift Program provides gift funds for down payment assistance and closing costs to qualified home buyers and that there are no income limitations or area restrictions. The fee schedule reflects a \$ flat fee for gifts up to \$ and a fee of 5% of the gift amount over \$ for FHA insured loans; it also reflects a \$ flat fee for gifts wired to the title company and 10% of the gift amount (with a \$ minimum) if wired to the buyer’s account for sub prime loans.

ORG operates its down payment assistance (DPA) program from an office located at Address, City, XYZ. As a substantial part of its activities, ORG makes assistance available, through funds provided by the sellers, to provide part or all of the funds needed to make down payments on the purchases of homes. ORG promotes its DPA program to builders, lenders, loan officers, mortgage brokers, real estate agents, buyers, and sellers through its websites at and flyers, advertising, and other methods.

ORG does not use standards set by Federal housing statutes and administered by the Department of Housing and Urban Development to determine whether a person has a low-income. Individuals are

eligible to receive assistance in the ORG program if they qualify for loans with mortgage companies, without regard to income level. ORG allowed and welcomed home buyers to purchase as many homes (multiple homes) as they could afford using the ORG down payment assistance program.

ORG does not offer financial counseling seminars and does not conduct other educational activities to help prepare potential low-income home buyers for the responsibility of home ownership. ORG does not require that the homes under consideration be inspected and certified to meet any particular standards for habitability. It does not require a home inspection report for the property to ensure that the house will be habitable.

ORG does not provide down payment assistance to any buyer in a situation in which the seller of the home does not agree to pay to ORG an amount equal to the down payment assistance amount offered and a service fee.

The buyer must be approved for a loan through a mortgage company which will accept gift funds from a section 501(c)(3) organization and which agrees to use the ORG down payment assistance program.

The buyer and seller enter into a contract. Each participating seller must sign a "Charitable Contribution Pledge to ORG," Form A, attached as Exhibit A. This agreement obligates the seller, in consideration for participating in ORG's DPA program, to pay ORG an amount equal to the amount of the down payment assistance received by the buyer, plus a service fee. For FHA insured loans, the service fee is a flat fee of \$ for down payment assistance up to \$, and 5% of the funding amount if funding exceeds \$. For sub prime loans, the service fee is a \$ flat fee if the funds are wired to the title company, and 10% of the funding amount (\$ minimum) if wired to the buyer's account.

The agreement includes the following provision:

In consideration of the foregoing, Seller instructs the Escrow/Closing Agent to deduct from the Net Proceeds, a charitable contribution to ORG in the amount of \$ _____, (____%) of Contract Sales Amount) from the sale of the above described property. This contribution is to be disbursed within three (3) business days from close of escrow and is not to be used to provide funds to the Buyer of the subject property. The Escrow/Closing Agent must make sure gift funds have been received from ORG prior to closing.

If the sale is not completed, the seller provides no funds to ORG. Form A states:

Seller is only obligated to fulfill this pledge to make said contribution if the above named Buyer completes the purchase of subject property for the above sale amount and an escrow closing takes place.

Each home seller that enrolls in the ORG program is encouraged to increase the previously listed home price to "full market value." ORG promotes this increase as a way to compensate for the required lender's down payment and to help sell the home without any out of pocket costs. At the time of the real estate closing (held in a real estate title office), the closing officer is instructed by ORG to list the price

of the home at the new restated full market value. Form A states, "Seller authorizes Listing Broker to update MLS List Price to _____."

In its Frequently Asked Questions materials, ORG states, "There is no limit to the Gift amount however, it is based on the contribution from the seller." (emphasis added).

ORG's primary activity is to provide its client home sellers with a financing arrangement to facilitate residential real estate transactions. Through ORG's program, sellers can provide down-payment assistance funds to homebuyers through ORG, for a fee. The same amount paid by the seller to ORG (less the fee) is paid back to the seller when the buyer purchases the seller's house. ORG contractually requires the seller to transfer a designated amount funds to ORG before ORG will agree to transfer the same designated amount (minus ORG's fee) to the buyer. ORG's materials state that the seller's "contributions" are deductible, and recommends that the seller consult a tax professional.

ORG's down payment assistance process is not structured to ensure that ORG staff approving down payment assistance does not know the identity of the party selling the home or the identities of any other parties, such as real estate agents or developers, who may receive a financial benefit from the sale.

Financial Information:

Founder maintains the checkbook for ORG. Founder stated that 99 percent of ORG's revenue is from its DPA program. An examination of the bank records revealed that that the overwhelming majority of transactions involved the down payment assistance program.

ORG does not conduct a broad based fundraising program that attracts gifts, grants and contributions from foundations, businesses and the general public. Instead, ORG charges a service fee to each seller participating in the ORG down payment assistance program.

The table below provides a summary of the revenue of ORG for the three years under examination. ORG's "contribution income" is the amount paid by sellers to ORG. Its "housing assistance grants" and "net gifts to buyers" are the amounts paid by ORG to buyers.

	"Contribution Income"	"housing assistance grants" or "net gifts to buyers"	Gross Profit	Net Profit (loss)
20XX				
20XX				
20XX				

ORG responded to Information Document Request E, item 30, with respect to sources of income: "99% of monetary support comes from our Down Payment Assistance outreach program as stated in the inquiry. Very little money is provided by attendees of our services since we do not solicit or pass the hat for money. Those involved with church activities contribute with their time and effort and monetarily as they desire."

When asked, in the questions enclosed with the Notice of Church Tax Inquiry, to state the proportion of ORG resources devoted to activities other than the DPA program when compared with those devoted to the DPA program, ORG responded: "The bulk of the monies received from sellers in access [sic] of what the buyer receives are used to run the program. A portion is used for our religious and charitable purposes."

The salaries paid to ORG employees appear to be those paid in connection with marketing and operating the ORG down payment assistance program.

DIR-2 is the son of Founder and DIR-1, and is Marketing Director of the ORG Gift Program. (The ORG Gift Program is the name used by ORG for its DPA program.) He was the highest salaried employee of ORG during the years examined. Forms W-2 issued to DIR-2 reflect that he was paid \$ in 20XX, \$ in 20XX, and \$ in 20XX.

During 20XX and 20XX, DIR-3 and DIR-4 were the only other named salaried employees of ORG; their duties involved the administration of the ORG Gift Program. Forms W-2 issued to DIR-3 reflect that she was paid \$ in 20XX, \$ in 20XX, and \$ in 20XX. Forms W-2 issued to DIR-4 reflect that she was paid \$ in 20XX, \$ in 20XX, and \$ in 20XX.

During 20XX, DIR-1 received a salary in the amount of \$ and payment for health insurance from ORG. DIR-1 was the real estate agent for some of the ORG Gift Program transactions.

Although Founder signed the checks and is the President and Elder, no salary is recorded as paid to him by ORG. In response to Information Document Request E, he stated at item 31 that he "was paid 'self-employment' compensation" from ORG in 20XX. The amount was not specified.

The agent inspected approximately 850 down payment assistance real estate closing documents from 20XX, 20XX, and 20XX. Substantially all home closings used the ORG down payment program as described above. The agent noted that there were instances in which the same individual purchased multiple homes using the ORG down payment assistance program.

Founder also owned and operated _____, a mortgage business. A satellite office is operated at Address, City, XYZ, the same address from which ORG operates its DPA Program. The response to the Notice of Church Tax Inquiry states that Founder "earned mortgage fees for loans produced at the satellite office of _____ from buyers who used the ORG Program."

DIR-1 operates a business known as CO-2 at Address, City, XYZ. Founder is the registered agent and signed the annual reports of CO-2 as President in several past years.

The Founderss' real esate-related businesses were involved in some of the transactions with respect to homes participating in the organizations down payment assistance program. Both the home sellers and real estate-related businesses, including those owned and operated by the Founderss, have benefited from the sale of homes to buyers that have participated in the ORG down payment assistance program.

LAW:

Church and Section 501(c)(3) Characteristics:

The term "church" is not defined in the Internal Revenue Code. The Service has used 14 criteria set forth in American Guidance Foundation v. United States, 490 F.Supp. 304, 306 (D. D.C. 1980). Although no one characteristic is controlling, with some being considered relatively minor, "the existence of an established congregation served by an organized ministry, the provision of regular religious services and religious education for the young, and the dissemination of a doctrinal code, are [deemed to be] of central importance." Id. at 306. "Unless the organization is reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine, it cannot fulfill [the necessary] associational role." Id.

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

Treasury Regulation section 1.501(c)(3)-1(c)(1) 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 will not be so regarded if more than an insubstantial part of its activities is not in furtherance of 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" as used in IRC section 501(c)(3) 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.

Treasury Regulation section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" as used in IRC section 501(c)(3) 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 IRC 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) (unpublished table decision), the Court of Federal Claims considered whether an organization that provided adoption and related health services to pregnant women who agreed to place their newborns for adoption through the organization 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 incidental to the organization's operation of an adoption service, which, in and of itself, did not serve an exempt purpose. The organization did not provide health-related services to unwed mothers who wished to keep their children or who arranged for an adoption independent of the organization. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-86.

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 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 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 section 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.

Revenue Ruling 67-138, 1967-1 C.B. 129, held that helping low-income persons obtain adequate and affordable housing is "charitable" because it relieves the poor and distressed or underprivileged. In Revenue Ruling 67-138, the described organization carried on several activities directed to assisting low-income families in obtaining improved housing, including (1) conducting a training course relative to 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 in which organizations provided housing and analyzed whether each organization qualified as charitable within the meaning of IRC 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 eligible for loans under a Federal housing program that 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 IRC section 501(c)(3).

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 2006-27, 2006-21 C.B. 915, discusses whether down payment assistance organizations described in three situations operate exclusively for charitable purposes. Those described in Situations 1 and 2 are relevant to this discussion. The organization described in Situation 1 makes assistance available to low-income families to purchase decent and safe homes throughout the metropolitan area in which it is located. Individuals are eligible to participate if they are low-income and 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 down payment assistance. 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 grantmaking 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 that the house is habitable, conducts educational seminars, has a broad based funding program, and has policies to ensure that the organization is not beholden to particular donors, the Service held that such an 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 of Revenue Ruling 2006-27 is like that described in Situation 1 except that (1) its staff knows the identity of the party selling the home and may know the identity of other 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 down payment assistance provided) in substantially all the cases in which the organization provides assistance to the home buyers; 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 down payment assistance 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).

Revenue Ruling 72-147, 1972-1 C.B. 147, held that an organization that provided housing to low-income families did not qualify for exemption under IRC section 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.

Revenue Ruling 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 IRC section 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.

Revenue Ruling 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 section 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 Revenue Ruling 72-559, the recipients of aid were instruments for accomplishing the organization's charitable purposes.

Revenue Ruling 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 IRC section 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.

Benefiting Private Interests:

Even if an organization's activities serve a charitable class or are otherwise charitable within the meaning of section 501(c)(3), it must demonstrate that its activities serve a public rather than a private interest within the meaning of Treasury Regulation section 1.501(c)(3)-1(d)(1).

Revenue Ruling 72-147, 1972-1 C.B. 147, held that an organization that provided housing to low income families did not qualify for exemption under section 501(c)(3) because it gave preference to employees of a 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, 166 F.3d 1200 (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 section 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 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 section 501(c)(3).

Private Inurement:

An organization does not serve a public rather than a private interest within the meaning of Treasury Regulation section 1.501(c)(3)-1(d)(1) if any of its assets or earnings inure to the benefit of any insiders (or disqualified persons). Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii). Inurement is any transfer of charitable assets to the organization's insiders for which the organization does not receive adequate consideration. Inurement can take many forms. Excessive compensation for services is a form of inurement. For example, in Mabee Petroleum Corp. v. United States, 203 F. 2d 872, 875 (5th Cir. 1953), the Fifth Circuit held that the organization's payment of a full-time salary for part-time work constituted private inurement.

The use by insiders of the organization's property for which the organization does not receive adequate consideration is a form of inurement. See, e.g., The Founding Church of Scientology v. United States, 412 F.2d 1197, 1201 (Ct. Cl. 1969) (holding that the insiders' use of organization-owned automobiles and housing constituted inurement); Spokane Motorcycle Club v. United States, 222 F.Supp. 151 (E.D. Wash. 1963) (holding that the organization's provision of goods, services and refreshments to its members constituted inurement).

Loans from the organization's funds that are financially advantageous to insiders (particularly unexplained, undocumented loans) are a form of inurement. For example, in The Founding Church of Scientology, 412 F.2d 1197, 1200-1201 (Ct.Cl. 1969), the Claims Court listed unexplained loans to and from insiders among the examples of inurement. In Church of Scientology v. Commissioner, 823 F.2d 1310, 1314-15, 1318 (9th Cir., 1987), the Ninth Circuit held that "debt repayments" in the form of 10 percent of the organization's income made to the organization's founder, allegedly to compensate the founder for the organization's past use of his personal income and capital, constituted inurement. In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court held that forgiveness of interest was a form of inurement.

Leasing arrangements that favor disqualified persons to the detriment of the organization are a form of inurement. In The Founding Church of Scientology, 412 F.2d at 1201-02, the Claims Court treated the organization's payment of rent to the founder's wife as inurement in the absence of any showing that the

rental was reasonable or that the arrangement was beneficial to the organization. See also Texas Trade School v. Commissioner, 272 F.2d 168 (5th Cir. 1959) (holding that inflated rental prices constitute inurement).

A number of courts have held that unaccounted for diversions of a charitable organization's resources by one who has complete and unfettered control can constitute inurement. See Parker v. Commissioner, 365 F.2d 792, 799 (8th Cir. 1966); Kenner v. Commissioner, 318 F.2d 632 (7th Cir. 1963); and Church of Scientology, 823 F.2d at 1316-17, 1319.

The provision of inurement can be direct or indirect. In Church of Scientology, 823 F.2d at 1315, the organization transferred in excess of \$3.5 million to a for-profit corporation incorporated by the organization's founder and his wife. The directors of the corporation were high-ranking members of the Church of Scientology. The directors approved the founder's decision to transfer \$2 million from the corporation's account to the ship Apollo aboard which the founder and his family lived. The Ninth Circuit held that the funds funneled through the for-profit corporation constituted inurement to the founder and his family. Id. at 1318.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), the Ninth Circuit held that a church that conducted its activities by mail did not qualify for exemption under section 501(c)(3) because a substantial purpose of its activities was to benefit a for-profit corporation controlled by the church's insiders. The church employed an advertising agency controlled by its insiders to provide all of the printing and mailing services for the church's mass mailings. The Ninth Circuit held that the church was operated for the substantial non-exempt purpose of "providing market for [the advertising agency's] services" and, thus, primarily served the private interests of the advertising agency and its owners rather than a public purpose. Id. at 1391.

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, 2003-1 C.B. 123, §14.01 (cross-referencing §13.01 et seq.). 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. Statement of the Procedural Rules 601.201(n)(6)(i). 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. Statement of the Procedural Rules § 601.201(n)(3)(ii); Rev. Proc. 90-27, 1990-1 C.B. 514, §13.02.

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. Statement of the Procedural Rules § 601.201(n)(6)(i), § 14.01; Rev. Proc. 2003-4, § 14.01 (cross-referencing § 13.01 et seq.).

ANALYSIS

Although ORG possesses some of the essential characteristics of a church, it nevertheless does not appear to operate exclusively for an exempt purpose as required by section 501(c)(3). IRC section 501(c)(3) provides that, to qualify for tax exemption, an organization must be “organized and operated exclusively for” charitable purposes. Treasury Regulations elaborate that, for this purpose, “exclusively” means “primarily,” but that “[a]n organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.” Treas. Reg. § 1.501(c)(3)-1(c). 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. Better Business Bureau Inc. v. United States, 326 U.S. 279, 283 (1945).

The burden is on an organization purporting to be charitable to establish that it engages primarily in activities which accomplish a charitable purpose and that only an insubstantial part of the organization’s activities is not in furtherance of an exempt purpose. Treas. Reg. § 1.501(c)(3)-1. Providing a down payment assistance program in the manner ORG’s program is conducted precludes exemption because the operation of its DPA program constitutes operation for a nonexempt purpose that is more than an insubstantial part of its activities; these activities are not in furtherance of an exempt purpose. Since this DPA activity was a more than insubstantial part of ORG’s activities, ORG is not operating exclusively for an exempt purpose and is not properly described by section 501(c)(3), notwithstanding any religious or exempt activities ORG may conduct.

ORG’s down payment assistance activity is not minor or incidental when compared with its other activities. Indeed, ORG states that 99 percent of its income comes from its down payment assistance activity. ORG’s salaried employees run the program. Although it’s once a week services are attended by 5 to 15 people, it has processed approximately 850 down payment applications during the period examined, 20XX through 20XX. ORG’s website is dominated by information and forms for the down payment assistance program.

ORG’s DPA program is not operated exclusively for charitable purposes; as described in part A below, its program is nearly identical to the program discussed in situation 2 of Revenue Ruling 2006-27. Revenue Ruling 2006-27 articulates the Service’s position regarding the circumstances in which an organization that provides down payment assistance operates in a manner that is consistent with section 501(c)(3) and those in which it does not. In Revenue Ruling 2006-27, the IRS held that an organization that relies on funding primarily from home sellers to provide downpayment assistance to home buyers is not operated exclusively for charitable purposes. Just like organization Y in situation 2, the critical aspect of ORG’s operations is the receipt of a payment from the home seller corresponding to the amount of its downpayment assistance.¹

In addition, Revenue Ruling 2006-27 restates and applies existing applicable law. Therefore, even if there were not a revenue ruling directly on point, ORG fails to meet the requirements set forth in the Internal Revenue Code and in Treasury Regulations. As discussed in part B below, ORG’s DPA

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activities are not in furtherance of an exempt purpose because the DPA program provides a more than incidental private benefit to individuals and entities involved in the transactions, and because it constitutes a nonexempt trade or business.

A. ORG operates similarly to Y organization of Revenue Ruling. 2006-27, an organization that does not operate exclusively for charitable purposes and thus does not qualify for exemption from federal income tax as an organization described in section 501(c)(3).

Revenue Ruling 2006-27 sets forth the Service's position on applicable rules and standards for determining whether organizations that provide down payment assistance to home buyers qualify as tax-exempt organizations described section 501(c)(3). Revenue rulings are binding on the Service and constitute formal statements of policy and the official position of the Internal Revenue Service on the application of existing tax law to specific facts. See Tualatin Valley Builders Supply, Inc. v. United States, 2008-1 USTC ¶ 50,280 (9th Cir. April 10, 2008) citing Omohundro v. United States, 300 F.3d 1065 (9th Cir. 2002); Sidell v. Commissioner, 225 F.3d 103, 111 (1st Cir. 2000); and Weisbart v. U.S. Dep't of Treasury, 222 F.3d 93, 98 (2nd Cir. 2000).

Situation 1 of Revenue Ruling 2006-27 describes an organization whose activities exclusively further a charitable purpose and do not confer more than incidental private benefit; it therefore qualifies for tax exemption. Situation 2 describes an organization that does not qualify as a tax-exempt organization because its activities do not exclusively further a charitable purpose; in addition, the substantial private benefit it confers on home sellers and its commercial focus overshadow any charitable purposes served. ORG's down payment assistance activities lack even the favorable elements described in both Situations 1 and 2, and include all of the problematic elements flagged by Situation 2. Therefore, ORG is not described by section 501(c)(3) and does not qualify for tax exemption.

In both Situation 1 and Situation 2, the organizations were conducting the following activities which are consistent with tax exempt status. ORG lacks all of these favorable elements:

- Making assistance available exclusively to low-income individuals (ORG does not limit its program to low-income individuals; to the contrary, it states: "There are NO income, asset, or geographical restrictions with The ORG Down Payment Program"² and "[w]e do not review credit; there are no income restrictions."³);
- Using a standard, for example, the standards set by Federal housing statutes and administered by the Department of Housing and Urban Development, to determine who is a low-income individual. (ORG's program does not use any standards to determine who is a low-income individual; it is open to everyone, regardless of their income or assets.);

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- Providing assistance to low-income individuals who have the employment history and financial history necessary to qualify for a mortgage, and would so qualify *but for* the lack of a down payment. (ORG does not limit its assistance to low-income individuals who would otherwise be able to purchase a home and qualify for a mortgage *but for* the lack of a down payment.);
- Offering financial counseling seminars and conducting other educational activities to help prepare potential low-income home buyers for the responsibility of home ownership. (ORG does not offer financial counseling seminars and does not conduct other educational activities to help prepare potential low-income home buyers for the responsibility of home ownership.);
- Establishing that a home purchased through the program meets standards for habitability by requiring a home inspection report. (ORG does not attempt to establish that a home purchased through the DPA program is habitable, and does not require a home inspection report.)

In the areas where Situations 1 and 2 differ, ORG lacks all of the favorable elements described in Situation 1 and goes beyond the negative elements described in Situation 2.

- In Situation 1, X organization conducted a broad based fundraising program that attracted gifts, grants and contributions from several foundations, businesses, and the general public to fund its down payment assistance program and other activities. In Situation 2, Y organization did not conduct a broad based fundraising campaign to attract financial support, but rather was supported mostly from the home sellers and real estate-related businesses that may benefit from the sale of homes to buyers who received Y's downpayment assistance. Like Y, ORG does not conduct a broad based fundraising program that attracts gifts, grants and contributions; instead, it relies almost exclusively on payments from its client home sellers, which are contingent on the sale of particular properties.
- In Situation 1, X organization structured the grantmaking process in a way to ensure that its grantmaking staff did not know the identity of the party selling the home to the grant applicant or the identities of any other parties, such as real estate agents or developers, who may receive a financial benefit from the sale; and also did not know whether any of the interested parties to the transaction had been solicited for contributions or had made pledges or actual contributions to the organization. In Situation 2, Y organization's staff considering an application for downpayment assistance knew the identity of the party selling the home to the applicant and sometimes also knew the identities of other parties, such as real estate agents and developers, who may receive a financial benefit from the sale. Even worse than situation 2, ORG's staff not only knew the identity of the party selling the home to the downpayment assistance applicant and the identities of any other parties who may receive a financial benefit from the sale, it contractually required such interested parties to make payments to the organization that would cover the "assistance" provided to the buyer, plus ORG's service fees.
- In Situation 1, X organization did not accept any contributions contingent on the sale of a particular property or properties. In Situation 2, in substantially all of the cases in which Y

organization provided down payment assistance to a home buyer, Y received a payment from the home seller, and there was a direct correlation between the amount of the down payment assistance provided by Y and the amount of the home seller's payment to Y. Even worse than Situation 2, in every situation where ORG transfers funds to a buyer, it has previously contractually required the home sellers to make a payment that would cover the "assistance" provided, plus ORG's service fees.

In Revenue Ruling 2006-27, Situation 2, the Service concluded that Y organization did not qualify for exemption from federal income tax as an organization described in section 501(c)(3). As described above, ORG's operations are even further removed from being charitable than those described in Situation 2; thus, ORG does not qualify for exemption from federal income tax as an organization described in section 501(c)(3).

B. ORG's activities are in furtherance of a substantial nonexempt purpose, which is inconsistent with exemption. ORG's operations confer more than incidental private benefit on its client home sellers and other entities participating in the transaction, and constitute activities that further the nonexempt business purpose of earning fees for facilitating home sales.

ORG's DPA program provides its client home sellers with a circular financing arrangement to facilitate the sale of their homes. Through ORG's program, sellers provide the funds that home buyers use to make the down payment to buy the seller's home. ORG charges a fee for this service. The funds that the seller provides for the downpayment assistance end up back with the seller when the buyer purchases the seller's house.⁴ As discussed below, ORG's operations create more than incidental private benefit and constitute a more than insubstantial nonexempt business purpose.

i. ORG's DPA program confers a more than incidental private benefit on individuals and entities involved in the transactions.

An organization is not organized or operated exclusively for one or more charitable purposes unless it serves a public rather than a private interest. Treas. Reg. § 1.501(c)(3)-1(d)(ii). 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. Id. In general, providing a product or service in return for a market rate fee furthers the private purpose of persons purchasing the product or service. See Am. Ass'n of Christian Schools v. United States, 850 F. 2d 1510, 1516 (11th Cir. 1988). In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Tax Court defined impermissible private benefit as "[n]onincidental benefits conferred on disinterested persons [that] serve private interests." Id. at 1069.

It is clear that ORG's DPA program confers nonincidental benefits to private interests. ORG acts as a conduit between seller and buyer to facilitate a financing arrangement. In creating more real estate transactions, ORG's operations benefit more than incidentally the home sellers, realtors, builders, and

⁴ ORG

lenders involved in the transactions, and generate income for businesses and individuals related to ORG. ORG materials emphasize the following benefits to home sellers:

- In most cases the seller's final net results are the same.
- Buyers are usually more interested in the cash out of pocket requirement and their monthly payments verses the selling price.
- The DPA program is a very effective selling tool.
- The DPA will provide the seller with additional exposure to generate some new interest.
- Monies involved with the ORG Program are deductible as a cost of sales.

ORG also tells realtors, "YOU CAN INCREASE YOUR SALES BY 30% OR MORE!" See (Copies of current printouts from the website are attached as Exhibit B.)

The substance of ORG's DPA transactions and the elements of the participation agreement provide ample factual evidence of an impermissible private benefit. ORG provides "assistance" to homebuyers only for purchases of ORG clients' homes. The circular flow of money from the home seller to home buyer increases the seller's pool of potential buyers, can help sell a house that otherwise is not attracting offers, and can enable the seller to increase the selling price, points that ORG's marketing materials emphasize. In addition, ORG's operations benefit realtors, lenders, and companies related to ORG. ORG's DPA operations are structured in a way such that they necessarily and intentionally result in substantial private benefit – this is the keystone of why ORG does not qualify for tax exemption.

ii. ORG's operations constitute a trade or business that is not in furtherance of exempt purposes.

An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities *only if* the operation of such trade or business is in furtherance of the organization's exempt purpose(s) and the organization is *not* organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. Treas. Reg. § 1.501(c)(3)-1(e)(1). Serving as a conduit between seller and buyer to facilitate a financing arrangement is an activity normally undertaken by commercial for-profit entities. ORG admits that its staff "works with the lender and the title company to process and close the file, much in the same way a lender and title company works to close and fund a loan." The operation of this trade or business is ORG's predominant activity, and for the reasons explained above, it does not further an exempt purpose. Thus, ORG's DPA program is a substantial nonexempt purpose that disqualifies it from tax exempt status.

ORG's operations have the characteristics that courts have found to indicate a substantial nonexempt business purpose. In looking to whether organizations are operating a trade or business for a commercial purpose rather than for charitable purposes, courts have examined:

- (1) the extent and degree of low- and/or below-cost services provided (ORG's DPA program offers no low- or below- cost services);

- (2) whether the organization advertises and uses promotional materials and “commercial catch phrases” to enhance sales (ORG advertises via flyers, newsletters, websites, and other means, and uses a Sales/Marketing/Training director to train realtors and other professionals);
- (3) whether the organization is funded entirely by fees (99 percent of ORG’s income is generated from its DPA program);
- (4) whether the organization receives charitable contributions (ORG neither solicits nor receives funds from sources other than the fees generated from the sellers in its DPA program, which are not charitable contributions);
- (5) whether the organization has commercial activities as part of its overall activities or as its sole activity (ORG’s DPA activities far outweighed ORG’s other activities when measured by personnel, economic resources, or time spent).

See, e.g., Airlie Foundation v. Internal Revenue Service, 283 F.Supp.2d 58 (D.D.C. 20XX); Living Book-4, Inc. v. Commissioner, 950 F.2d 365 (7th Cir. 1991); Scripture Press Found. v. United States, 285 F.2d 800, 803 (Ct. Cl. 1961); American Inst. for Economic Research v. United States, 302 F.2d 934, 938 (Ct. Cl. 1962); Fides Publishers Ass’n v. United States, 263 F.Supp. 924 (N.D. Ind. 1967); Easter House v. United States, 12 Cl. Ct. 476, 486 (1987), aff’d, 846 F.2d 78 (Fed. Cir. 1988) (unpublished table decision).

ORG does not engage in widespread fundraising. As mentioned above, rulings and the courts consider an organization’s source of financing to be a very important factor in determining whether an organization qualifies for tax exemption. See, e.g., B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352, 354-57 (1978), Columbia Park and Recreation Assoc. v. Commissioner, 88 T.C. 1 (1987), aff’d without published opinion 838 F.2d 465 (4th Cir. 1988); Rev. Rul. 20XX-27, 20XX-1 C.B. 915; Rev. Rul. 70-585, 1970-2 C.B. 115, Rev. Rul. 74-587, 1974-2 C.B. 162; Rev. Proc. 96-32, 1996-1 C.B. 717. In this case, the source of ORG’s funding is even more pertinent since all of its funds are provided by individuals or entities that stand to benefit from the underlying real estate transactions.

In B.S.W. Group, the organization relied exclusively on fees for consulting services, and did not solicit or receive voluntary contributions from the general public. The court denied exempt status in part because the organization’s financing did not resemble that of a typical section 501(c)(3) organization. Id. at 358-60. Likewise, in Columbia Park, the court found that a key factor in determining whether such organization qualified for exemption was its source of revenues: “Petitioner does not solicit or receive voluntary contributions from the public. Rather, its source of revenue is from the members whom it serves. Petitioner thus lacks this normal trait of a section 501(c)(3) organization or, more specifically, an organization which operates primarily for a public interest.” Id. at 19-20. Similarly, ORG’s source of support is from the fees its client home sellers pay, and it receives no contributions from the general public that proceed from disinterested generosity.

Similarly to the organization in Church by Mail, Inc., ORG's DPA program benefited for-profit corporations controlled by Church insiders. Founder, President and Elder of the Church, earned mortgage fees for loans produced at the satellite office of _____ from buyers who used the ORG Program. His wife DIR-1 has earned real estate commissions through her Broker from sellers who have participated in the ORG program. The real estate office of Founder conducted some of the real estate sales transactions on homes being purchased in connection with the organization's down payment assistance program. Further, some home buyers participating in the ORG down payment assistance program purchased homes using the real estate company that is owned by the president and Board Chairman of ORG. Founder created CO-2 in the 1990's; he is currently its registered agent. ORG's DPA program enlarged the market for these for-profit businesses owned by insiders, and generated excessive income for insiders. Thus, ORG's DPA program impermissibly furthered private interests and created private inurement, which is inconsistent with tax exempt status.

ORG was recognized as an organization described in section 501(c)(3) and as a church in 19XX. According to material published on its website, ORG began its DPA program in 1994. Although the extent to which it operated its DPA program in early years is unknown, it is clear that during the years examined, it operated in a manner materially different from the manner originally represented in that the operation of the DPA program was its primary activity in 20XX, 20XX, and 20XX. Since it "operated in a manner materially different from that originally represented," retroactive revocation is appropriate. Rev. Proc. 2008-9, Sec 12.01; Statement of the Procedural Rules 601.201(n)(6)(i).

CONCLUSION:

ORG possesses some of the important characteristics of a church for purposes of sections 501(c)(3) and 170. Nevertheless, because it operates for the substantial non-exempt purpose of providing down payment assistance and home brokering for a fee, it does not meet the requirements of section 501(c)(3). See American Guidance Foundation, 490 F. Supp. 304 (D.C.D.C., 1980) and Southern Church of Universal Brotherhood, 74 T.C. 1223 (1981). ORG's down payment assistance activities are not incidental to its exempt purpose; they appear to be the primary activities of the organization, in terms of personnel, time, and economic resources and represent a material change from those initially described. As the Tax Court in Southern Church of Universal Brotherhood, 74 T.C. 1223, fn5 (1981) noted, this opinion in no way "reflects upon the merits of [the] religious beliefs. Our sole concern here is whether [the organization] qualifies for exemption from Federal income taxation under sec. 501(c)(3)." We conclude that it does not.

Organization's Position:

The organization does not agree with the position of the Internal Revenue Service and believes the ORG down payment assistance program is an integral part of the purpose of the church.

Governments' Position:

Based on the facts and the information submitted, ORG is not operating exclusively for an exempt purpose. ORG has not established that its activities exclusively serve a religious or charitable purpose or accomplish any other purpose described in section 501(c)(3). More than an insubstantial part of its activities is not in furtherance of an exempt purpose and is in furtherance of the private interests of home sellers and other private parties. In addition, ORG has not established that its net earnings do not inure to the benefit of insiders. It operates in a manner materially different from its initial representation in that the overwhelming majority of its resources are used to operate a DPA program that is not in furtherance an exempt purpose. ORG is not described in IRC section 501(c)(3) and its status as an exempt organization described in that section is revoked effective January 1, 20XX.

Exhibit A. Charitable Contribution Pledge to ORG FEI#," Form A

**Exhibit B. Excerpts from the ORG Down Payment Assistance Program website,
www. (accessed 8/26/XX)**